

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C18-0009-SC-55-D
APPLICATION BY THE SABINE MINING COMPANY
FOR ACCEPTANCE OF SELF-BOND WITH THIRD-PARTY GUARANTEE
FOR RUSK MINE, PERMIT NO. 55
RUSK, HARRISON AND PANOLA COUNTIES, TEXAS**

ORDER ACCEPTING RECLAMATION PERFORMANCE BOND

Statement of the Case

The Sabine Mining Company (SMC), 6501 Farm Road 968 West, Hallsville, Texas 75650, requests that the Railroad Commission of Texas (Commission) accept a supplemental self-bond with third-party guarantee by Southwestern Electric Power Company (SWEPCO) in the amount of \$25,000,000 for reclamation performance bonding for surface mining Permit No. 55, Rusk Mine, located in Harrison, Panola, and Rusk Counties, Texas. The Commission has previously accepted reclamation performance bonds to ensure that the permit area will be reclaimed in accordance with the regulatory requirements in the amounts of \$35,000,000 and \$5,000,000.

SMC requests that the Commission accept the subject supplemental self-bond with third-party guarantee by SWEPCO to provide additional reclamation performance bonding required for activities proposed in its application for renewal/revision of Permit No. 55 that is being processed as a separate docket (Docket No. C16-0012-SC-55-C). A reclamation cost estimate in the amount of \$63,609,893 has been calculated for the operations proposed in the renewal/revision application. The current reclamation cost estimate for the Rusk Mine in the amount of \$39,750,228 was approved administratively by letter dated June 28, 2017. SMC has requested the Commission consider the subject bond application prior to the resolution of Docket No. C16-0012-SC-55-C. The Commission accepts the proffered supplemental bond and finds that the total bond amount of \$65,000,000 will be sufficient to reclaim the permit area should a third-party be required to complete reclamation at the direction of the Commission.

FINDINGS OF FACT

Based on the evidence in the record, the following Findings of Fact are made:

1. The Sabine Mining Company (SMC), 6501 Farm Road 968 West, Hallsville, Texas 75650, applied to the Railroad Commission of Texas (Commission) for acceptance of a self-bond with third-party guarantee and indemnity agreement in the amount of \$25,000,000 for its Permit No. 55 for its Rusk Mine located in Rusk, Harrison and Panola Counties by letter dated December 11, 2017. SMC filed additional information by letter dated January 22, 2018. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2018), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2018) (Regulations).
2. By letter dated February 16, 2018, the Director, SMRD, transferred the application and original bond instruments to the Hearings Division, along with copies of legal and financial review memoranda from the Commission's Office of General Counsel and Financial Services Division. Pursuant to §12.309(6), SMC submitted SMC's and SWPECO's audited financial statements for their fiscal year ending December 31, 2017 by letter dated March 27, 2018. On May 3, 2018, legal and financial review memoranda from the Commission's Office of General Counsel and Financial Services Division addressing the audited financial statements for the most recently completed fiscal year were filed in the docket. By memorandum dated May 25, 2018, the Office of General Counsel provided additional review addressing §§12.309(j)(2)(A)-(B), 12.309(j)(3) and 12.309(j)(5) of the Regulations.
3. Permit No. 55 is currently bonded by two self-bonds with third party guarantees in the amounts of \$35,000,000 and \$5,000,000 accepted by Commission Orders dated July 26, 2011 and May 8, 2012, respectively. The most recent reclamation cost estimate for the Rusk Mine in the amount of \$39,750,228 was approved administratively by letter dated June 28, 2017, in Revision No. 13. By letter dated February 9, 2016, SMC filed an application for renewal/revision of Permit No. 55 that is being processed as a separate docket that is currently pending (Docket No. C16-0012-SC-55-C). SMC provided an updated estimate of reclamation costs in the amount of \$63,609,893 in Supplement No. 3 of the renewal/revision application. In Addendum No. 1 to Staff's Technical Analysis filed in Docket No. C16-0012-SC-55-C, Staff reviewed SMC's reclamation cost estimate and

stated it concurs with the assumptions, calculations and estimated costs provided in the renewal/revision application. On June 1, 2018, SMC requested the Commission consider the subject bond application prior to resolution of Docket No. C16-0012-SC-55-C. The proffered bond, together with the accepted bonds, exceeds the approved reclamation cost estimate for Permit No. 55 and will exceed the minimum amount required for reclamation performance bonding if the Commission adopts the updated reclamation cost estimate provided in Supplement No. 3 of the renewal/revision application.

4. The \$25,000,000 bond submitted by letter dated December 11, 2017 by SMC is a self-bond with third-party guarantee and indemnity agreement. The third-party guarantor is Southwestern Electric Power Company (SWEPCO). In addition to Permit No. 55 for the Rusk Mine, SMC also currently operates the South Hallsville No. 1 Mine in Harrison County pursuant to Commission Permit No. 33H. The South Hallsville No. 1 Mine currently has self-bonds with third party guarantees for \$65,000,000 and \$10,000,000 with SWEPCO as the guarantor. SWEPCO also serves as third-party guarantor for the \$35,000,000 and \$5,000,000 self-bonds for Permit No. 55. Thus, the total amount of outstanding and proposed bonds backed by SWEPCO is \$140,000,000.
5. The self-bond submitted is on a Commission form for self-bond. The bond is accompanied by the third-party guarantee and indemnity agreement also on a Commission form.
6. The bond submitted will provide bonding for operations as shown on the approved bond maps contained within the approved permit.
7. The self-bond submitted by SMC is signed by SMC's President, Andrew J. Hawbaker who is authorized to execute the bond on behalf of SMC [Incumbency Certificate dated November 6, 2017 (Item 9) and certified copy of Board Resolution dated November 15, 2017 (Item 8)]. The third-party guarantee and indemnity agreement is signed on behalf of the third-party guarantor SWEPCO by Venita McCellon-Allen, President and Chief Operating Officer of SWEPCO, and Lonni L. Dieck, Treasurer of SWEPCO, who are duly

authorized to execute the guarantee and indemnity agreement on behalf of SWEPCO [certified copy of Corporate Resolution dated October 24, 2017 (Item 16)]. The third-party guarantee and indemnity agreement is signed on behalf of principal-permittee SMC by SMC's President, Andrew J. Hawbaker, and Treasurer, Eric A. Dale, who is authorized to execute the guarantee and indemnity agreement on behalf of SMC (Item 9). Corporate authorizations for SMC and SWEPCO along with an affidavit from SMC has been submitted to certify that the documents and agreements are valid under all state and federal laws [Affidavit of Counsel (Item 12)]. The third-party guarantee and indemnity agreement contains the required undertaking by SWEPCO to complete the reclamation plan for lands in default or to forfeit to the Commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. The requirements of §12.309(j)(5) have been met.

8. The self-bond and third-party guarantee and indemnity agreement provide that SMC and SWEPCO will comply with the requirements of the Texas Surface Coal Mining and Reclamation Act and applicable Commission Regulations.
9. The Commission regulation at 16 TEX. ADMIN. CODE §12.309(j)(3) provides that the Commission may accept a self-bond from the applicant and the applicant's third-party guarantor when the applicant meets the self-bonding requirements for a business entity set out in 16 TEX. ADMIN. CODE §12.309(j)(2)(A), (B), and (D) and when the third-party guarantor meets the requirements for a business entity set out in 16 TEX. ADMIN. CODE §12.309(j)(2)(A), (B), (C), and (D).
10. The applicant, SMC, has met the requirements of 16 TEX. ADMIN. CODE §12.309(j)(2)(A), (B), and (D).
 - (a). SMC has designated a suitable agent to receive service of process in Texas, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218 (Item 13) [§12.309(j)(2)(A)].

- (b). SMC has been in continuous operation for a period of not less than 5 years immediately preceding the date of application and has not been subject to bankruptcy proceedings during that time (Item 8) [§12.309(j)(2)(B)].
 - (c). SMC submitted required audited financial statements for the fiscal year ending December 31, 2016 in the application (Item 10). By letter dated March 27, 2018, SMC submitted audited financial statements for the fiscal year ending December 31, 2017. The auditors' statements contain no adverse opinions. By letter dated May 25, 2017, SMC submitted its unaudited income statement and balance sheets for the first quarter of the current fiscal year ending March 31, 2017 [§12.309(j)(2)(D)].
11. SWEPCO as third-party guarantor has met the requirements of 16 TEX. ADMIN. CODE §12.309(j)(2)(A), (B), (C), and (D).
- (a). SWEPCO has designated a suitable agent to receive service of process in Texas, CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201 (Item 23).
 - (b). SWEPCO has been in continuous operation for a period of not less than 5 years immediately preceding the date of application and has not been subject to bankruptcy proceedings during that time (Item 17).
 - (c). SWEPCO demonstrated that it meets the financial criteria for a third-party guarantor set out in §12.309(j)(2)(C)(iv).
 - (1) SWEPCO demonstrated that it has an investment grade rating for its most recent bond issuance of "Baa3" or higher from Moody's Investor Service and "BBB-" or higher from Standard and Poor's Corporation. The rating for SWEPCO's most recent bond issuance is "Baa2" from Moody's Investor

Service and "A-" from Standard and Poor's Corporation, based on the December 31, 2017 audited Form 10-K.

(2) SWEPCO also demonstrated that it also meets the financial criteria set out in §12.309(j)(2)(C)(iv)(II).

(i) SWEPCO has a net worth of at least \$100,000,000; its net worth is \$2,234,500,000.

(ii) SWEPCO fixed assets in the U.S. of at least \$200,000,000; SWEPCO has demonstrated that it has fixed assets in the U.S. of \$6,632,000,000.

(iii) SWEPCO has outstanding securities pursuant to the provisions of the Securities Act of 1933 and is subject to the periodic financial reporting requirements established by the Securities Act of 1934.

(iv) SWEPCO's present and proposed self-bonds and guaranteed self-bonds for surface mining and reclamation operations do not exceed 16⅔ percent of its net worth in the U.S. The total amount of self-bonds and guaranteed self-bonds will be \$140,000,000; SWEPCO's net worth in the U.S. is \$2,234,500,000 for a ratio of 6.27%.

(d). Financial information has been submitted pursuant to the requirements of §12.309(j)(2)(D). SMC has submitted SWEPCO's audited financial statement for the most current fiscal year ended December 31, 2017. The auditors' statement contains no adverse opinion. SWEPCO's Form 10-Q for the quarterly period ending March 31, 2017 was submitted by letter dated May 25, 2018.

12. The terms of the third-party guarantee contain the provisions required for a third-party guarantee by 16 TEX. ADMIN. CODE §12.309(j)(3)(A). The guarantee provides that if SMC

fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Commission sufficient to complete the reclamation plan not to exceed the bond amount. The guarantee shall remain in force unless SWEPCO sends notice of cancellation as required by 16 TEX. ADMIN. CODE §12.309(j)(3)(B) and such cancellation is accepted by the Commission. The third-party guarantee guarantees all obligations of SMC under the bond that includes providing replacement bonding as required.

13. The Regulations at 16 TEX. ADMIN. CODE §12.309(j)(4)(B) provide that for the Commission to accept a self-bond with third-party guarantee pursuant to qualification by 16 TEX. ADMIN. CODE §12.309(j)(2)(A), (B), (C)(i), and (D), the total amount of the guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25% of the guarantor's tangible net worth in the United States [§12.309(j)(4)(B)]. Pursuant to §12.309(j)(1)(I), tangible net worth is equal to net worth minus intangibles such as goodwill and rights to patents or royalties. Net worth is equal to total assets minus total liabilities [§12.309(j)(1)(F)]. With the self-bonds accepted for SMC's existing Permit Nos. 33H and 55 and the proffered bond, SWEPCO will have guaranteed self-bonds in a total amount of \$140,000,000 [Finding of Fact No. 4, *supra*]. This amount is approximately 6.27% of \$2,234,500,000 SWEPCO's tangible net worth in the U.S. based upon the audited statements of its fiscal year ending December 31, 2017. SWEPCO meets the requirement of 16 TEX. ADMIN. CODE §12.309(j)(4)(B).
14. Acceptance of the self-bond with third-party guarantee and indemnity agreement in the amount of \$25,000,000 will allow SMC to begin conducting surface coal mining and reclamation operations as proposed in its application for renewal/revision (Docket No. C16-0012-SC-55-C) if the Commission adopts an amount less than the accepted \$65,000,000 as the minimum amount required to reclaim the permit area should a third-party be required to complete reclamation at the direction of the Commission.
15. The bond contains a clause that it may be used to satisfy any reclamation obligation or liability that may have accrued prior to the effective date of the bond.

16. SMC and SWEPCO are authorized to conduct business in Texas and are current in the payment of franchise taxes.
17. No public notice other than notice of proposed action by the Commission in open meeting is required. Open meeting notice has been provided.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the following Conclusions of Law are made:

1. Required notice has been provided.
2. The Railroad Commission of Texas has the authority to determine the sufficiency of the value and form of reclamation performance bonds and to accept or deny reclamation performance bonds pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE Ch. 134 (Vernon Supp. 2018).
3. The reclamation performance self-bond, guarantee, and indemnity agreement meet the financial criteria of §12.309(j)(2)(A), (B), (C)(iv), and (D) of the Regulations for a self-bond with third-party guarantee.
4. The reclamation performance bond with third party guarantee and indemnity agreement submitted by SMC and executed by SMC and by SWEPCO meets the requirements of the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE Ch. 134 (Vernon Supp. 2018) and the Coal Mining Regulations of the Railroad Commission of Texas, 16 TEX. ADMIN. CODE Ch. 12, for value, form, and financial criteria for a self-bond with third-party guarantor.
5. The proffered bond, together with the accepted bonds in the amounts of \$35,000,000 and \$5,000,000, will provide sufficient bonding for the permit area.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the above Findings of Fact and Conclusions of Law are adopted; and

IT IS FURTHER ORDERED that the self-bond and the third-party guarantee and indemnity agreement in the amount of \$25,000,000 are accepted for reclamation performance bonding for the permit area; and

IT IS FURTHER ORDERED that the Commission may vary the total bond amount as affected land acreage is increased or decreased or where the cost of reclamation changes; and

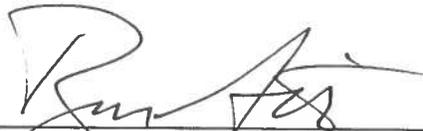
IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED this 19th day of June, 2018.

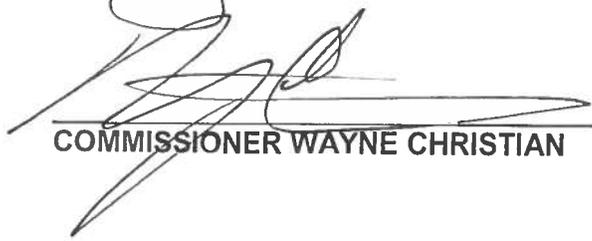
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK

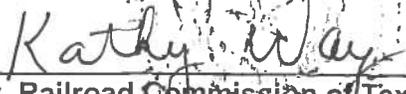


COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

