

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SMRD DOCKET NO. C14-0003-SC-47-F

APPLICATION OF TEXAS WESTMORELAND COAL COMPANY FOR PHASE I RELEASES OF RECLAMATION OBLIGATIONS, PERMIT NO. 47A, FREESTONE AND LEON COUNTIES, TEXAS

ORDER APPROVING RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 583.6 ACRES

Statement of the Case

Texas Westmoreland Coal Company (TWCC), applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phases I release of reclamation obligations for 583.6 acres in the aggregate within Permit No. 47A, Jewett E/F Area Mine, Freestone and Leon Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2011-2012), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (West 2012).

The currently accepted reclamation performance bond for Permit No. 47A is a Surety Bond from Liberty Mutual Insurance Company for the amount of \$18,000,000, approved on June 12, 2012 and a self-bond with third-party guarantee by NRG Energy, Inc. (NRG) in the amount of \$18,500,000 accepted on March 22, 2011, for a total bonding in the amount of \$36, 500,000.

No comments or requests for hearing were filed following public notice. The only parties to the proceeding are TWCC and the Commission's Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on information provided by TWCC and its inspection of the area, the Staff recommends the requested releases. The parties waived preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations as recommended by Staff. TWCC does not request adjustment to the approved reclamation bond at this time. The most recent bond-map update (Revision No. 22) was approved by letter dated August 23, 2013. The approved reclamation cost estimate is \$32,695,237. The reclamation cost estimate is based on the "worst-case pit" bond calculation method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. As a result, the revised area recommendation for Phase I release of reclamation liability is not eligible for release of bond monies.

FINDINGS OF FACT

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

1. By letter dated September 27, 2013, Texas Westmoreland Coal Company (TWCC) filed its application for Phase I on 583.6 acres at the Jewett E/F Area Mine, Permit No. 47A located in portions of Freestone and Leon Counties. The permit area contains approximately 9,341 acres. TWCC conducted mining operations on the acreage between 2002 and 2009.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. ADMIN. CODE ANN. CH. 134 (Vernon 2011-2012) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. TWCC does not request a reduction in the amount of the approved reclamation bond instruments. The currently accepted reclamation performance bond for Permit No. 47A is a Surety Bond from Liberty Mutual Insurance Company for the amount of \$18,000,000, approved on June 12, 2012 and a self-bond with third-party guarantee by NRG Energy, Inc. (NRG) in the amount of \$18,500,000 accepted on March 22, 2011, for a total bonding in the amount of \$36, 500,000.
4. The application was supplemented with supplemental information submitted by letter dated October 8, 2013 (revised draft notice of application and draft landowner and agency notification letters) and January 10, 2014 (proof of publication and copies of notification letters).
5. Publication occurred once each week for four consecutive weeks on December 18 and 25, 2013 and on January 1 and 8, 2014 in *Jewett Messenger* and on November 14, 21 and 28 and December 5, 2013 in the *Fairfield Recorder*. These publications are newspapers are papers of general circulation in the area of the proposed operations. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. TWCC submitted affidavits of publication with clippings. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: the name of the permittee, the precise location of the land affected, the total number of acres, permit number at the time of application and date approved, the amount of bond filed, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contains information concerning the applicant, the location and boundaries of the permit area, the availability of the

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application for inspection and address to which comments should be sent. Copies of the application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the offices of the Leon and Freestone County Clerks.

6. TWCC sent notice to owners of interests in the areas requested for release and adjacent lands and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality as required by §12.312(a)(2). TWCC also mailed notice to the County Judges and Commissioners' Courts of Freestone, Limestone, and Leon Counties, the Environmental Protection Agency, the Texas Department of Transportation, the Texas Commission on Environmental Quality, local offices of the Natural Resources Conservation Service, Texas General Land Office, Donie Water Works, Concord-Robbins Water System, U.S. Army Corps of Engineers, and the Brazos River Authority. The areas requested for release are not located within the territorial boundaries of any municipality.
7. By letter dated February 3, 2014, the Surface Mining and Reclamation Division filed documents with the Hearings Division and declared the application administratively complete. Staff's technical evaluation and inspection report were filed with the Office of General Counsel on February 10, 2014.
8. The Staff provided notification of the application by certified letter dated October 15, 2013 to the County Judge of Freestone County, the county in which the acreage requested for release is located as required by §134.133 of the Act; additionally Staff notified by certified letter dated October 15, 2013 to the County Judge of Limestone and Leon Counties, the county in which the acreage of the permit is located, the date of notification was at least 31 days prior to the date of release as required by the Act. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for release and the date and time of Staff's field inspection by letters dated October 2, 2013 (approximately 36 landowners). The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection scheduled for October 15, 2013. The Division also sent notice to the applicant and to the Office of Surface Mining Reclamation and Enforcement (OSM) (Tulsa, Oklahoma office), however, no OSM representative attended. Approximately eight persons and the Staff inspector attended a meeting prior to the inspection, including approximately three landowners. No adverse comments or written objections were filed regarding the request for release. No requests for hearing were filed pursuant to §12.313(d).

9. One Commission inspector conducted the inspection, and three landowners attended the inspection. The inspection occurred on October 15, 2013. The area proposed for release is detailed in Staff's Technical Evaluation and Field Inspection Report. Figures and photographs of the proposed release area in the Staff Inspection Report and Evaluation provide depictions of the areas included within the application and the specific releases proposed. Photographs from the inspection are included in Appendix IV of the Inspection Report and provide support for the application and the inspection report.
10. The application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 22 tracts with approximately 28 landowners within the areas requested for release of reclamation obligations and seven adjacent tracts with 37 landowners. There are nine leaseholders.
11. The land use within the areas requested for release is pastureland and developed water resources.
12. No structures are located within the areas requested for release.
13. The acreage requested for release from Phase I reclamation obligations (583.6 acres) has met Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations and are approved for Phase I release.
 - (a). The areas requested for Phase I release are stable with no major erosion evident. Several areas of erosion were observed during the inspection. Minor erosion was observed forming along the eastern slopes of the northern section of the proposed release area. Also, erosion had formed a ditch feeding Wilkerson Branch (Photograph 2, Appendix IV, Staff Evaluation). Staff's inspection reported noted a shallow depression, currently holding water, was observed in the south central area proposed for release (photograph 3 Appendix IV, Staff Evaluation). The erosion referenced in Staff's inspection report was not an issue that would prevent approval of the proposed release
 - (b). Final grading of the areas requested for release occurred between 2003 and 2010. All highwalls have been eliminated, and the areas were regraded to approximate original contour. Suitable materials have been placed so that non-acid-forming and non-toxic-forming materials were placed to a depth of at least four feet over regraded soil. No cut-and-fill terraces have been constructed (§12.385).

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- (c). Soil testing did not indicate the presence of acid- and/or toxic-forming materials in the top four feet of postmine soil (§12.386). The Staff inspection report cites letters submitted by TWCC to the Commission submitting initial soil sample results for soil grids within the proposed release area. In addition, Staff indicates that the results of soil testing submitted by TWCC did not indicate the presence of acid and/or toxic-forming materials in the top four feet of postmine soils (Staff memorandum dated February 22, 2012).
 - (d). No roads are located within the areas requested for Phase I release.
 - (e). One permanent impoundment is located within the areas requested for release. The permanent impoundment, RP-F1, was submitted by TWCC for approval by letter dated February 24, 2011. Staff approved RP-F1 by letter dated July 12, 2011. Surface water runoff from all area proposed for Phase I release of reclamation obligations flows into Sedimentation Ponds 031, 033, and 034. No other structures are located within the areas requested for release.
 - (f). No silt dams are present within the area proposed for Phase I bond release. (§12.344).
 - (g). No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release. (§12.375).
- 15. The reclamation cost estimate for the currently accepted bond is based on the “worst-case” pit method of calculation that assumes that reclamation operation is contemporaneous. Estimated costs are not based on a per-acre cost, except for soil preparation, revegetation, and maintenance, but are instead calculated based on the worst-case pit and reclamation of all temporary structures. Therefore, area recommended for Phase I release of reclamation liability is not eligible for release of bond monies.
 - 16. TWCC has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed.
 - 17. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
 - 18. Open meeting notice has been posted for consideration of this application.

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. A public hearing on the request has not been requested and is not warranted.
3. TWCC has complied with all applicable provisions of the Act and the Regulations for release of Phase I reclamation obligations for the areas proposed for release as set out in the Findings of Fact.
4. The Commission may approve the following release of reclamation obligations: Phase I release of reclamation obligations for backfilling, regrading, and drainage control for 583.6 acres are not eligible for a bond reduction as set out in the Findings of Fact.
5. No eligible bond reduction amount is applicable.

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

IT IS FURTHER ORDERED that a release of Phase I reclamation obligations for 583.6 acres is hereby approved;

IT IS FURTHER ORDERED that no eligible bond reduction amount is applicable;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this ORDER;

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time 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 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of 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 Commission action. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED this 22nd day of May, 2014.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN BARRY T. SMITHERMAN

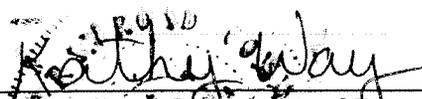


COMMISSIONER DAVID PORTER



COMMISSIONER CHRISTI CRADDICK

ATTEST:



Secretary, Railroad Commission of Texas

