

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C18-0012-SC-47-E
APPLICATION BY TEXAS WESTMORELAND COAL COMPANY
FOR ACCEPTANCE OF REPLACEMENT SURETY BOND
FOR JEWETT E/F AREA MINE, PERMIT NO. 47A
FREESTONE AND LEON COUNTIES, TEXAS**

ORDER ACCEPTING REPLACEMENT SURETY BOND

Statement of the Case

Texas Westmoreland Coal Co. (TWCC) holds Railroad Commission of Texas (Commission) Permit No. 47A for the Jewett E/F Area Mine located in Freestone and Leon Counties, Texas. The permit area is currently bonded with two bonds, a surety bond in the amount of \$15,500,000 by Aspen American Insurance Company and a surety bond in the amount of \$18,000,000 by Liberty Mutual Insurance Company, for a total of \$33,500,000 in total bonding for the permit.

TWCC now requests acceptance of a surety bond issued by Aspen American Insurance Company in the amount of \$18,654,123 to replace the existing surety bond in the amount of \$15,500,000. The surety bond of Liberty Mutual Insurance Company in the amount of \$18,000,000 will remain in place. This request is made pursuant to TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the "Coal Mining Regulations." By letter dated April 23, 2018, the Surface Mining and Reclamation Division approved a revised reclamation cost estimate for the permit in the amount of \$36,654,123, exceeding the accepted amount of total bonding for the permit. The replacement surety bond has been filed to address this issue. The total bond amount with the existing accepted surety bond by Liberty Mutual Insurance Company in the amount of \$18,000,000 and the surety bond in the amount of \$18,654,123 proposed to replace the surety bond from Aspen American Insurance Company will total \$36,654,123, increasing the total bond amount by \$3,154,123. Evidence in the record indicates that \$36,654,123 is equal to the latest approved reclamation cost estimate and will provide sufficient bonding for the permit.

The Commission finds that the proffered replacement surety bond issued by Aspen American Insurance Company, with the Liberty Mutual Insurance Company surety bond that

remains in place, will be sufficient in form and substance and may be accepted to replace the existing surety bond by Aspen American Insurance Company in the amount of \$15,500,000.

FINDINGS OF FACT

Based upon the evidence in the record, the Commission makes the following Findings of Fact:

1. Texas Westmoreland Coal Company (TWCC) holds Permit No. 47A for the Jewett E/F Area Mine in Freestone and Leon Counties, Texas. The application is made pursuant to TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the "Coal Mining Regulations." By letter dated April 23, 2018, the Commission's Surface Mining and Reclamation Division (Staff) approved a revised reclamation cost estimate for the permit that exceeds the amount of currently accepted bonds for the permit and notified TWCC that a modified bond would need to be submitted to account for the shortfall. By letter dated June 6, 2018, SMRD filed TWCC's submittal to replace its current surety bond by Aspen American Insurance Company with the Hearings Division, along with its staff attorney's review of the documents.
2. There are currently two accepted reclamation bonds for Permit No. 47A: a surety bond issued by Liberty Mutual Insurance Company, in the amount of \$18,000,000 accepted by the Commission by Order dated June 12, 2012, and a surety bond in the amount of \$15,500,000 by Aspen American Insurance Company accepted by the Commission by Order dated August 9, 2016, for total bonding in the amount of \$33,500,000. These two bonds were determined to remain sufficient by Commission Order dated August 9, 2016. TWCC has filed a surety bond by Aspen American Insurance Company, Surety Bond No. SU48308, in the amount of \$18,654,123 to replace the surety bond in the amount of \$15,500,000. Acceptance of the proffered surety bond in the amount of \$18,654,123 with the currently accepted Liberty Mutual Insurance Company surety bond in the amount of \$18,000,000 remaining in place will result in an increase of \$3,154,123 in the total bond amount. It will increase the total bond amount from \$33,500,000 to \$36,654,123.
3. The most recent reclamation cost estimate was approved administratively by letter dated April 23, 2018 in Revision No. 40. This estimate is in the amount of \$36,654,123. As set out in Finding of Fact No. 2, acceptance of the surety bond in the amount of \$18,654,123 with the currently accepted Liberty Mutual Insurance Company surety bond in the amount of \$18,000,000 remaining in place will result in an increase in the total proposed bond

amount of \$3,154,123. It will increase the total bond amount from \$33,500,000 to \$36,654,123. Based on the last estimate, the bond amount will be equal to the reclamation cost estimate for Permit No. 47A.

4. The proffered surety bond issued by Aspen American Insurance Company lists Texas Westmoreland Coal Company as Permittee/Principal with the notation that it is then referred to as "Principal" in the instrument. Although the Permittee/Principal is responsible for completion of reclamation requirements, if the permittee does not, the financial backing for the bond to ensure reclamation comes from the surety. The Regulations do not require a financial review of any kind for the principal on the surety bond, unlike self-bonds or self-bonds with third-party guarantees. The Texas Department of Insurance requires financial filings by the surety. There is a contractual relationship that exists between the surety and the principal whereby if reclamation is not completed, the surety will either complete reclamation or pay the performance bond amount. There is an additional attachment to the surety bond whereby NRG Texas Power LLC (that is party to a lignite supply agreement with TWCC) signed as a guarantor for TWCC. This attachment was submitted for informational purposes and is accepted as such.
5. The bond and other documents submitted provide all required information for acceptance of the bonds. Documentation has been submitted to demonstrate that the requirements for surety bond set out in the Act and Regulations have been met.
 - (a). A surety bond is an acceptable form of bond under §12.308(a)(1). The surety bond is properly executed.
 - (i). Documentation has been provided to establish that Aspen American Insurance Company is a corporate surety licensed to do business in Texas. TWCC submitted a copy of a Certificate of Authority from the Texas Department of Insurance, Certificate No. 15019, dated September 23, 2010, certifying that Aspen American Insurance Company is authorized to transact business as a surety in Texas. Supplemental documentation was submitted in the form of a supplemental search from the Texas Department of Insurance's website, dated May 18, 2018, showing that the insurance company has an active Texas license and is currently licensed as a surety.

The two items together are sufficient to show that the surety is licensed in Texas.

- (ii). The bond is properly signed on behalf of TWCC by Michael G. Altavilla, Environmental Superintendent, on May 2, 2018. An original certification dated May 2, 2018 by an officer of Texas Westmoreland Coal Company, sworn before a notary, was submitted, stating that Mr. Altavilla was authorized to act on behalf of TWCC before the Commission for Permit No. 47A, the date Mr. Altavilla signed the bond. The bond is properly signed by Aspen American Insurance Company's attorney-in-fact, Mark W. Edwards II. A power of attorney with an imprinted corporate seal with authorization documentation that Mark W. Edwards II may act as attorney-in-fact for the company were submitted by TWCC in its bond package. The power of attorney and accompanying resolutions exhibit the authorization of the person designated with power of attorney and of the instruments. The power of attorney for Aspen American Insurance Company was adopted on May 11, 2016 and certified on May 11, 2016. It was further authenticated by a certification dated May 2, 2018 that it has been in full force and effect since the date of execution. The bond was signed on May 2, 2018 by Mr. Edwards.
- (iii). The supplemental sheet to the surety bond is signed by Glen Mackey, Sr. Vice President and Chief Risk Officer, NRG Texas Power LLC, for NRG as between NRG and the surety as a guarantor. The two signatures are attested.
- (iv). The surety bond contains all other provisions required by the Act and Regulations. The bond is conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations. The bond contains provisions that it shall remain in full force and effect for the

duration of the reclamation obligation as required. The bond is non-cancellable during its term.

- (v). The bond, with the accepted surety bond by Liberty Mutual Insurance Company, must be in an amount sufficient to cover the costs of reclamation of disturbed lands within the permit area should a third party complete reclamation at the direction of the Commission in the event of forfeiture. The amount of the proffered bond with the surety bond by Liberty Mutual Insurance Company that will remain in place will total an amount equal to reclamation costs (Finding of Fact No. 3, *supra*).
 - (vi). Bond coverage has been continuous and with acceptance of the replacement bond will continue uninterrupted.
- (b). The Texas Department of Insurance (TDI) is responsible for review of a surety's financial status. The Commission has no financial criteria for sureties set out in the Regulations. Financial documents must be filed with the TDI. Although not required, the bond package includes as a part of Exhibit 7 of the bond package Aspen Insurance Holdings Limited's Form 10-K for the fiscal year ending December 31, 2017 and Form 10-Q for the quarterly period ending March 31, 2018. Aspen Insurance Holdings Limited holds subsidiaries that provide insurance and reinsurance. Aspen American Insurance Company is one of its principal subsidiaries.
6. The Act and Regulations direct that the Commission shall determine the amount of bond required based on the costs of reclamation and shall periodically adjust the amount of bond required or terms of acceptance. In accordance with the Regulations §12.304(d), the required amount shall be based on, but not limited to, the reclamation cost estimate submitted by the applicant and reviewed by Staff. Together with the surety bond accepted from Liberty Mutual Insurance Company, the proffered surety bond requested for

acceptance in this docket will provide reclamation performance bonding in an amount equal to the estimate of reclamation costs.

- (a). The currently accepted bond issued by Liberty Mutual Insurance Company in the amount of \$18,000,000 will remain in place. The proffered surety bond issued by Aspen American Insurance Company in the amount of \$18,654,123, that is proposed to replace the accepted surety bond in the amount of \$15,500,000, when added to the accepted bond in the amount of \$18,000,000 will total \$36,654,123 and will equal the amount of the most recently approved reclamation cost estimate (Finding of Fact No. 3, *supra*).
- (b). The approved reclamation cost estimate by TWCC is based on the worst-case bonding method. This method uses estimated costs for reclaiming the worst-case pits, estimated costs for reclaiming each individual temporary structure used to support the mining operation, and costs for revegetation and maintenance of all disturbed lands, taking into consideration ongoing reclamation activities during the term of the bond. The estimate includes a factor of 10% for administrative costs. TWCC's estimate, \$36,654,123, was reviewed by Staff and is an appropriate estimate for reclamation work that may be performed by a third-party at the direction of the Commission in the event of forfeiture.
- (c). Because the administratively approved reclamation cost estimate is based on the worst-case method and operations in the permit area are ongoing and change with time, it is critical that reclamation operations remain contemporaneous, and close monitoring by Staff inspection must be employed to ensure adequate bond coverage. Quarterly aerial photography of the permit area is conducted by TWCC to track current disturbances, and the photographs are available for review at the mine. Tracking in this manner and inspection by Staff will ensure that any increases required for the bond will be identified. In the event that the approved reclamation plan is modified, the Commission will review the bond for adequacy and, if necessary, will initiate a bond adjustment to conform to the modified plan [§12.307(c)].

7. The proffered surety bond will remain in effect according to its terms, unless released or replaced by Commission Order, as will the surety bond issued by Liberty Mutual that will remain in place. TWCC as permittee must complete the reclamation obligations for the mine as required by the Act and Regulations. If TWCC does not complete reclamation as required by the Act and Regulations, then the surety is liable on its bond.
8. TWCC's request for acceptance of the surety bond is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. §134.127 (Vernon Supp. 2018) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2018) (Regulations).
9. Bond coverage has been continuous and with acceptance of the proffered surety bond will continue uninterrupted.
10. Acceptance of the replacement bond is not a bond release or a release of any reclamation obligations; no public notice is required other than notice of the Commission meeting to consider the matter. The accepted bond, with the bond in place from Liberty Mutual Insurance Company, will bond the permit area in the required amount until all reclamation within the permit area has been completed and the Principal/Permittee and sureties have been released from liability or until the bonds are replaced.
11. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041.
12. TWCC and the Staff submitted written waivers of the preparation and distribution of a Proposal for Decision in this matter.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the following Conclusions of Law are made:

1. All required notice for consideration of this matter has been provided.

2. The surety bond submitted by TWCC and Aspen American Insurance Company are in proper form and, along with the surety bond issued by Liberty Mutual Insurance Company currently accepted, are in required amounts so that the total will be sufficient to ensure reclamation of the permit area. The proffered surety bond meets the requirements for an acceptable reclamation performance bond as set forth in TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the Regulations.
3. All requirements of the Act and Regulations have been satisfied for acceptance of the surety bond.
4. The Commission is authorized by the Act and Regulations to accept the surety bond in the amount of \$18,654,123 to replace the surety bond in the amount of \$15,500,000.

THEREFORE IT IS ORDERED that the above Findings of Fact and Conclusions of Law are adopted; and

IT IS FURTHER ORDERED that the surety bond in the amount of \$18,654,123 is hereby accepted and together with the Liberty Mutual Insurance Company's surety bond will replace the existing surety bond in the amount of \$15,500,000; and

IT IS FURTHER ORDERED that the surety bond along with the currently accepted Liberty Mutual Insurance Company surety bond will continue to provide performance bonding of required reclamation operations under Permit No. 47A, Jewett E/F Area Mine; and

IT IS FURTHER ORDERED that the surety bonds issued by Aspen American Insurance Company and Liberty Mutual Insurance Company will remain in place until released or replaced by Commission Order; and

IT IS FURTHER ORDERED that the Commission may vary the total bond amount as affected land acreages are 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.

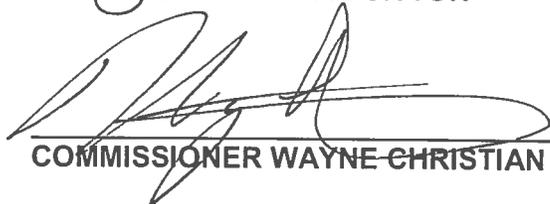
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



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ATTEST:



Secretary, Railroad Commission of Texas

