

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SURFACE MINING DOCKET NO. C17-0015-SC-52-F

**APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 484.6 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 52A, SAN MIGUEL C-AREA MINE, ATASCOSA COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 484.6 ACRES**

STATEMENT OF THE CASE

San Miguel Electric Cooperative, Inc. (SMECI), P.O. Box 280, Jourdanton, Texas 78026, has applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I (backfilling, regrading, and drainage control) release of reclamation obligations for 484.6 acres. Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage located within Permit No. 52A, San Miguel C-Area Mine. The permit area is located in Atascosa County, Texas, approximately sixteen (16) miles south of Jourdanton and six miles southeast of Christine, Texas on Farm-to-Market Road 140. SMECI does not currently request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2018) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (Thomson West 2018) (Regulations).

Permit No. 52, issued by Order dated April 28, 2008 (Docket C7-0008-SC-00-A) and renewed by Order dated April 9, 2013 (Docket C12-0007-SC-52-C) and renumbered as No. 52A, currently authorizes surface mining operations at San Miguel's C-Area Mine, located within Atascosa County, Texas. The permit area includes

approximately 4,444 acres. The only parties to the proceeding are SMECI and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release. No comments were made following public notice and mailed notice, and no public hearing was requested. Additionally, only SMECI personnel attended the inspection conducted by Staff.

Based on the record in this docket including the application and Staff review, the Administrative Law Judge recommends the application for Phase I release should be approved for all 484.6 requested acres, as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

FINDINGS OF FACT

1. By letter dated May 4, 2017, San Miguel Electric Cooperative Inc. (SMECI) filed its initial request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 484.6 acres, located within the 4,444-acre permit area of the San Miguel C-Area Mine in Atascosa County, Texas, Permit No. 52A.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2018) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2018) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. SMRD approved the most recent bond map on March 31, 2017. The approved reclamation cost estimate is \$29,663,805. The current \$30,000,000 bond was accepted by Order dated March 22, 2011. The referenced \$29,663,805

reclamation cost estimate is based on the worst-case pit reclamation cost calculation method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. Under this method of bonding, Staff's reclamation cost estimate does not generally vary with partial bond release. In this application, SMECI does not seek an adjustment to the currently held bond.

4. The area proposed for release is detailed in the Technical Analysis, Attachment I and Appendix I (Location Map), Attachment III (Staff Inspection Report), and Appendix IV to Attachment III (Photographs and Photograph Location Map.) The application, photographic evidence, Staff Inspection Report and Evaluation provide support for release of Phase I reclamation obligations.
5. Copies of the application were filed for public review in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the office of the Atascosa County Clerk, Jourdanton, Texas.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *Pleasanton Express*, a newspaper of general circulation in Atascosa County, Texas. The newspaper is in the locality of the surface mining and reclamation operations. The publications in the newspaper occurred on July 12, 19, and 26, and on August 2, 2017. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of Phase I reclamation obligations for backfilling, regrading, and drainage control. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at

the time of application and date approved, the amount of approved bond, 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 contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be sent. The notice included a map providing sufficient notice of the boundaries of the area requested for release.

7. The Director, SMRD, determined the application to be administratively complete by letter dated March 7, 2018. Staff's evaluation document was filed with the Hearings Division by letter that day. The Technical Analysis (TA) and Inspection Report indicated that SMECI had met all requirements for Phase I release of the full 484.6 acres identified in the application.
9. The area of the permit requested for release is located in the C Mine Area and is comprised of a single parcel of land within the permit area and is located approximately sixteen (16) miles south of Jourdanton and six miles southeast of Christine, Texas on Farm-to-Market Road 140. The approved postmining land use is pastureland.
10. SMECI provided copies of letters of notification of the application for release to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. By letter dated February 27, 2018, SMECI submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and holders of other property interests, and the following: the Atascosa County Judge, Atascosa County Clerk, Nueces River Authority, Natural Resources Conservation Service in Tilden, Texas, Natural Resources Conservation Service in Pleasanton, Texas,

Evergreen Underground Water Conservation District, Texas General Land Office, Environmental Protection Agency, Texas Commission on Environmental Quality, Atascosa County Soil and Water Conservation District, and San Miguel Electric Cooperative, Inc., as required by §12.312(a)(2) of the "Coal Mining Regulations" and §134.129 of the Surface Coal Mining and Reclamation Act and as indicated in the application. The area requested for release is not located within the territorial boundaries of any other municipality that would be notified pursuant to §12.313(c) of the Regulations.

11. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
12. SMRD's Inspection and Enforcement Section mailed letters dated May 9, 2017 to SMECI, landowners, holders of other interests within the area requested for release, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, June 1, 2017, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). Staff sent an original notice by certified mail of the application to the Atascosa County Judge by letter dated July 6, 2017 (Attachment II to Staff's Inspection Report) as required by the Act, §134.133.
13. The area requested for release was disturbed by mining operations from 2010 to 2011, and final grading was accomplished between 2010 and 2012. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2009 to the date of the inspection and have continued.
14. Based upon the application and Staff's TA, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for

backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.

15. The area requested for Phase I release has been backfilled and graded to approximate original contour [§12.385(a)]. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. Drainage patterns similar to premine drainage have been established. All areas requested for Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389]. Surface water from the reclaimed area flows through sedimentation ponds.

- (a). SMECI submitted an initial postmine soil report for 103.3 acres of the proposed release area to Staff on November 18, 2011. This area included eighteen (18) soil sampling grids. Upon review, Staff found by letter dated June 8, 2012 that the data met the parameters of the approved soil testing plan and the state suitability criteria in that the measured pH for more than 90 percent of the reported values ranged between 5.0 and 8.4.
- (b). On September 19, 2013, SMECI submitted an initial postmine soil report for the remaining 381.3 acres of the requested release area. This area included sixty-four (64) complete soil sampling grids and five (5) partial grids. The report was thereafter supplemented at Staff's request. Upon review, Staff found by letter dated August 4, 2016 that the postmine soil report for these acres also met the approved soil testing plan and the state suitability criteria.

- (c). There are no temporary or permanent diversions located in the area proposed for Phase I release of reclamation liability [§12.341].
 - (d). There are no temporary or permanent impoundments located in the area requested for Phase I release [§12.347(b)]. No sediment ponds are located within the area requested for release.
 - (e). The area proposed for Phase I release contains no permanent roads [§12.400(f)].
 - (f). Surface water runoff from the proposed Phase I release area will flow through Sediment ponds 29C, 35C, 37C and 38C, located in the permit area [§12.344].
16. The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste [§12.375].
 17. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply [§12.624].
 18. The area requested for Phase I release has been marked in the field with white PVC pipe with red, black, and green tape at the corners to distinguish the area from active mining and reclamation areas. Clear identification of this area will assist future inspection of this area and adjacent areas by field office staff.
 19. SMECI and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment. Finally, the matter has been posted for Commission consideration.
 20. The 484.6 acres meet the requirements for Phase I release of reclamation obligations, which include backfilling, regrading, and drainage control.

CONCLUSIONS OF LAW

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. SMECI has complied with all applicable provisions of the Act and Regulations regarding notice for jurisdiction to attach to allow the Commission to consider this matter.
4. SMECI has met all requirements for Phase I release for 484.6 acres within the San Miguel C-Area Mine.
5. The Commission may approve a release of Phase I reclamation obligations for the 484.6 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that SMECI continue to effectively mark the area approved for release so that Staff mapping and tracking will be efficient.

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 Phase I release of reclamation obligations is approved for 484.6 acres as set out in the Findings of Fact and Conclusions of Law;

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

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 all area released from reclamation obligations shall be clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as reclamation costs change; 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 AT AUSTIN, TEXAS, on May 22, 2018

RAILROAD COMMISSION OF TEXAS

Christi Craddick

CHAIRMAN CHRISTI CRADDICK

Ryan Sitton

COMMISSIONER RYAN SITTON

Wayne Christian

COMMISSIONER WAYNE CHRISTIAN

ATTEST:

Kathy Way

Secretary, Railroad Commission of Texas

