RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SURFACE MINING DOCKET NO. C19-0006-SC-52-F
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR RELEASE OF PHASE III RECLAMATION OBLIGATIONS FOR 269.4 ACRES
PERMIT NO. 52A, SAN MIGUEL AREA C MINE, ATASCOSA COUNTY, TEXAS

ORDER APPROVING
RELEASE OF PHASE III RECLAMATION OBLIGATIONS
FOR 269.4 ACRES OF PERMIT NO. 52A

Statement of the Case

San Miguel Electric Cooperative, Inc. (SMECI), P.O. Box 280, Jourdanton, Texas 78026 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff), for Release of Phase III Reclamation Obligations for 269.4 acres within Permit No. 52A, San Miguel Area C Mine, in Atascosa County, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations).

Permit No. 52, issued by Order dated April 28, 2008 (Docket No. C7-0008-SC-A) and renewed by Order dated April 9, 2013 (Docket No. C12-0007-SC-52-C) and renumbered as Permit No. 52A, currently authorizes surface and coal mining operations at San Miguel Area C Mine. The permit area includes approximately 4,444 acres and is located approximately sixteen (16) miles south of Jourdanton and six miles southeast of Christine, Texas on Farm-to-Market Road 140 in Atascosa County, Texas. Copies of the Application for release were filed with the required county and Commission offices. After public notice, no comments or requests for hearing were filed. The only parties to the proceeding are SMECI and Staff. There remain no outstanding issues between the parties. Based on information provided in the Application, Staff's technical analysis and the field inspection report of the area, Staff recommends the approval of release of Phase III reclamation obligations for 269.4 acres. The parties have filed waivers of preparation and circulation of a proposal for decision. The Commission approves the release as requested and finds that SMECI is eligible to reduce the amount of bond for the permit in an amount that is attributable to the subject acreage in future bond adjustments.

FINDINGS OF FACT

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

1. By letter dated October 22, 2018, San Miguel Electric Cooperative, Inc. (SMECI) filed an application (Application) with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff) for release of Phase III reclamation obligations for 274.5 acres, within Permit No. 52A, San Miguel Area C Mine, in Atascosa County, Texas. Both Staff, by correspondence dated August 30, 2019, and SMECI, by correspondence dated September 5, 2019, provided a copy of the Applicant's letter dated December 11, 2018, requesting that the proposed release acreage be reduced from 274.5 acres to 269.4 acres because of the need for a temporary haul road to access haulback and topsoil stockpiles (HB-1C and TS-1C). Staff's TA in Attachment 1, Exhibit 1, contains a copy of a revised map showing the proposed request for release of 269.4 acres.

2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann Ch. 134 (Vernon Supp. 2019) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for this Application.

3. The current $30,000,000 bond amount for Permit No. 52A was accepted by Order dated March 22, 2011, in Docket No. C11-0017-SC-52-E. By letter dated July 22, 2019, the SMRD Interim Director approved the most recent bond map update in Revision No. 12 to the permit (finding of Fact No. 14, *infra*). In this Application, SMECI does not seek an adjustment to the currently held bond.

4. The Application was filed with the Hearings Division by letter dated October 26, 2018. By letter dated April 16, 2019, Staff declared the Application administratively complete and transferred it to the Hearings Division. By letter dated May 16, 2019, Staff filed its Technical Analysis (TA) and the Field Inspection Report (Inspection Report) dated March

7, 2019, recommending approval of the release application with no outstanding comments.

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. 78711, and the office of Atascosa County Clerk, 1 Courthouse Circle Dr., Suite 102, Jourdanton, Texas 78026.

6. Notice of application was published once a week for four consecutive weeks in *The Pleasanton Express* circulated in Atascosa County on December 12, 19, 26, 2018, and January 2, 2019. The newspaper is a paper of general circulation in the area of the proposed requested release area in Atascosa County. The notice of application contains all information required by the Act and Regulations for notice of an application requesting release. 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 number of acres, permit number at the time of application and date approved, the amount of bond approved, 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 on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent.

7. SMECI sent notice by letter dated November 19, 2018, 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) of the Regulations. SMECI mailed notice to the following government agencies: County Judges of Atascosa and McMullen Counties, County Clerks of Atascosa and McMullen Counties, Atascosa Rural Water Supply, Atascosa County Soil and Water Conservation District, McMullen County Water, McMullen County Soil and Water District, Environmental Protection Agency, Evergreen Underground Water

Conservation District, Natural Resources Conservation Service (Tilden and Pleasanton), Nueces River Authority, Texas Commission on Environmental Quality (TCEQ), Texas General Land Office, and U.S. Army Corps of Engineers. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with the Commission on April 11, 2019.

8. 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).

9. Staff provided notification of the Application by certified letters dated May 10, 2018, to the Atascosa County Judge. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of 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 Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated October 30, 2018, of the date and time of Staff's field inspection. 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. Staff provided copies of the letters sent pursuant to § 12.312(b) in Appendix II within Attachment III (Inspection Report) of the TA.

10. The inspection occurred on November 19, 2018. The Inspection Report states that the inspection was originally scheduled for November 20, 2018; however, the inspection was conducted a day early due to scheduling conflicts and to accommodate landowners. Both Staff by correspondence dated August 30, 2019, and SMECI by correspondence dated September 5, 2019, explained that the inspection date was changed at the request of the sole landowner included in the release area and the communication was done via a phone conversation between SMECI reclamation staff and a landowner representative. A Commission inspector and a SMECI representative attended the pre-inspection meeting and inspection on November 19, 2019. No landowners were present for the inspection or

accompanied the inspector during the inspection of the property. A sign-in sheet of the meeting participants is included in Staff's TA, Appendix III. (The sign-in sheet, "Field Inspection Participants," lists the inspection date as "Tuesday – November 20, 2018;" however, the Inspection occurred on November 19, 2018).

11. The permit area includes approximately 4,444 acres and is located approximately sixteen (16) miles south of Jourdanton and six miles southeast of Christine, Texas on Farm-to-Market Road 140 in Atascosa County, Texas. The proposed release area was disturbed by mining operation in 2009, and final grading was performed in 2009 and 2010.

12. The acreage requested for Phase III release was approved for Phase I release of reclamation obligations for 274.5 acres by Commission Order in Docket No. C12-0020-SC-52-F (Order dated September 10, 2013) and Phase II release of reclamation obligations for 274.5 acres in Docket No. C14-0018-SC-52-F (Order dated November 15, 2016).

13. Based upon the Application and Staff's review, Phase III release of reclamation obligations have been met for the proposed subject area requested in accordance with Phase III requirements for the completion of the extended responsibility period (ERP), soil resampling and vegetation standards as provided in §12.313(a)(3). Surface water and groundwater within and adjacent to areas have been protected in accordance with §§12.313(a)(3), 12.348, and 12.349.

    a. Staff's indicates that observations made during the inspection of the requested area confirm that the land has been reclaimed to, and managed consistent with, the approved postmine land use of pastureland. Revegetation has been established on all areas requested and approved for release of Phase III in this order in accordance with §12.395(c)(2) during the 2012 and 2013 growing season. There are no structures located within the proposed release boundary.

    b. The area that has been previously disturbed has met Phase III requirements for successful completion of the ERP of five years for areas that received more than 26

inches of rainfall annually [§12.395(c)]. Pastureland revegetation-success standards must be met in the final year of the ERP to qualify for Phase III release. The pastureland area requested for Phase III release are included in two land management units (LMUs) (C-1a, 40.4 acres, and C-1b, 229.0 acres). The extended responsibility area for the ERP for the LMUs was initiated on October 24, 2012. SMECI submitted 2014 and 2015 ground-cover and productivity data for the LMUs by letters dated April 8, 2015, and March 14, 2016, respectively. By subsequent letters dated June 27, 2016, and July 21, 2016, respectively, Staff determined that the vegetation data for the LMUs met the performance standards in accordance with §12.395(c)(2) during the 2014 and 2015 growing seasons. (Copies of the 2016 approval letters are contained in Staff's TA within Appendix V).

c. All initial soil data for the proposed Phase III area have been approved by the Commission as detailed during the review for Phase I release. Per the approved Permit No. 52A soil testing plan 10% random resample data are not required. Both Staff by correspondence dated August 30, 2019 and SMECI by correspondence dated September 4, 2019, references to the Soil-Testing Plan (STP) that states that "[i]ntial, one-time soil sampling will consist of composite samples from each 5.7-acre grid as may be delineated by the advance of spoil leveling." Staff states in its correspondence that it cannot state with certainty why the STP does not include this requirement but speculates that it is because the approved soil-handling plan calls for removal and sequential replacement of topsoil and subsoil, "the [Surface Mining Control and Reclamation Act of 1977 (SMCRA)] default and preferred method of soil handling." SMECI states in is correspondence that there is no mention of a 10% random resample plan with the approved Soil Testing Plan. (Copy of Soil-Testing Plan contained in Order of Approval of Renewal/Revision of Permit 52 dated April 9, 2013, Appendix II).

d. SMECI has conducted surface mining activities to ensure surface water quantity and quality have been protected in accordance with §§12.313(a)(3) and 12.349. Runoff from areas disturbed by mining is treated in ponds to prevent additional contributions

of sediment to streamflow and siltation outside the permitted areas. Runoff from disturbed areas at the mine is monitored under Texas Pollutant Discharge Elimination System (TPDES) wastewater Permit No. 02043 and as described in the long-term surface water monitoring plan. Runoff from the proposed release areas ultimately drains to Metate Creek and the Atascosa River (Stream Segment No. 2107) in the Nueces River Basin, and then to the Gulf of Mexico. Staff examined SMECI's analysis of surface water information and discharge data from five long-term surface water monitoring (LTSM) stations which are located upstream on the Metate Creek (MK003, SM005, and SM006) and downstream located on an unnamed tributary of the Atascosa River (MK004 and SM008).

i. A comparison of upstream to downstream LTSM water quality indicates that the surface water quality from each downstream LTSM station compared to its corresponding upstream LTSM station is similar.

   A. In Metate Creek, pH, total dissolved solids (TDS), chloride, and sulfate concentrations are similar at upstream Station SM005 and downstream Station MK004. Three artesian wells (Metate Creek Well, Ranch Well No. 1 and Ranch Well No. 2), discharge to and affect water quality in Metate Creek. Water in these wells exhibit high natural dissolved solids reflecting the chemical makeup of soils and geological formations in the area.

   B. At the unnamed tributary of Atascosa River, pH values at upstream Station SM006 and downstream Station SM008 are similar. Average TDS, chloride, and sulfate concentrations are slightly higher in the downstream station than in the upstream station but are generally lower than concentrations measured during baseline monitoring for each surface water station (except for slightly higher average sulfate concentrations in Station SM008 during mining (425 mg/L) compared to baseline data (405 mg/L).

ii. A comparison of disturbed LTSM data to TCEQ stream segment criteria was provided in the Application and reviewed by Staff. Although the TCEQ stream segment criteria are not directly applicable to discharges from the downstream LTSM stations, they provide a point of reference for comparison purposes. Water flowing through the downstream stations eventually drains into Stream Segment No. 2107.

A. The pH values collected at the downstream LTSM stations (MK004 and SM008) were above the stream segment standard limits (6.5-9.0) during some of the monitoring period. However, pH values were similar during pre-mining (baseline) and post-mining monitoring. The majority of pH measurements collected during baseline at Stations MK004 and SM008 and in upstream Stations SM005 and SM006 were above 9.0, indicating that high pH is not related to mining activities in Area C.

B. Average TDS concentrations in Stations MK004 and SM008 are above the respective stream segment criteria of 1,500 mg/L, with Station MK004 averaging 3,333 mg/L and SM008 averaging 4,367 mg/L. However, concentrations measured during baseline and during/post-mining in Stations MK004 and SM008 are similar. TDS concentrations in upstream Stations SM005 and SM006 are also similar to concentrations in downstream Stations, indicating that elevated TDS concentrations are not related to mining activities in Area C.

C. Average chloride concentrations at Station MK004 (1,005 mg/L) and at Station SM008 (1,181 mg/L) are above the stream segment criterion of 600 mg/L. Chloride concentrations are similar at both stations during pre- and post-mine monitoring periods. The average chloride concentration at SM008 is lower during/post-mining monitoring than during baseline monitoring. The water in Metate Creek is characterized as a sodium chloride-type water and high chloride concentrations were anticipated in the PHC determination.

D. Average sulfate concentration in SM008 (425 mg/L) is below the stream segment criteria of 500 mg/L and the average concentration at Station MK004 is slightly higher (608 mg/L) than the criterion. Concentrations during baseline monitoring are similar to concentrations measured during/post-mining monitoring. Average sulfate concentration in upstream Station SM005 (558 mg/L) is also similar to concentrations in downstream Station MK004, indicating that elevated sulfate concentrations are not related to mining activities in Area C.

iii. A comparison of LTSM station quality to baseline data was provided in the Application and reviewed by Staff. Stations MK003 and MK004 (Metate Creek) were initially established as baseline stations for the mine in 1995. However, as indicated in Permit 52A, SMECI monitored baseline streamflow and water quality monthly from March 2005 through March 2006 for Area C. Baseline surface water quality and flow rates were monitored for Area C at LTSM Stations MK003 and MK004 on Metate Creek and new stations established in 2005 as follows: Station SM005 above Station MK003 on Metate Creek and Stations SM006, SM007, and SM008 on small drainages that join the Atascosa River east of Area C. MK004 is located downstream of mining in the Permit 11G area but was used to indicate water quantity and quality before mining began in Area C. Five artesian wells lie within Area C: Mare Well, Bull Trap Well, Metate Creek Well, Ranch Well No. 1, and Ranch Well No. 2.

iv. Trend analysis for water quality at disturbed LTSM Stations was provided in the Application and reviewed by Staff. The pH values at upstream stations and downstream stations have been relatively stable during the monitoring period. The trend lines indicate that TDS concentrations have been generally stable at upstream and downstream stations. Chloride concentrations at the upstream and downstream stations have fluctuated but have exhibited a relatively stable trend during the entire monitoring period. Sulfate concentrations at the upstream and downstream stations on Metate Creek have been slightly increasing during the

monitoring period. However, because a similar trend is observed in the upstream Station (SM005), it is likely that the overall increase in sulfate concentrations is not related to mining activities in Area C. Sulfate concentrations have been relatively stable in those surface water stations on the unnamed tributary of the Atascosa River through the monitoring period.

v. Staff's TA states that SMECI has demonstrated that disturbance to the hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area and recommends Phase III release for the proposed area.

vi. SMECI's evaluation of flow data for the LTSM stations includes a discussion of impacts to water quantity relating to the PHC determination, stating that: "long-term reliable streamflow records were not available within the project area and vicinity; therefore the stream-flow records available for the USGS Station 08110100, located on Davidson Creek near Lyons, Texas, were used to estimate average annual runoff from the project area." The drainage area monitored by this gauge is 195 sq. mi. (124,800 acres). Mean monthly stream flow records in acre-feet from 1984 through 2014 were used to develop the long-term average flows. The average monthly stream flows in acre-feet for this station were used to characterize the monthly runoff that may be expected to occur in the project area per acre of drainage area. The average annual runoff was calculated in this manner was 0.4 acre-feet per acre, or approximately 5 inches. Staff concluded in the CHIA, with respect to water quantity, that the attenuation of storm runoff and increase in sustained flows in the Navasota River basin will be insignificant when compared to the amount of storm runoff originating within the cumulative impact drainage area (CIDA).

e. The groundwater hydrologic balance has been protected for the proposed release area, Area C, as required by §§12.313(a)(3) and 12.348. In addressing the requirements of §12.348, SMECI submitted a groundwater data report on long-term

groundwater monitoring (LTGM) addressing the overburden, underburden, and spoil wells in the subject area.

i. The LTGM overburden wells were installed in December 2004, as part of the groundwater baseline study for Area C. The overburden wells are completed in the undisturbed Alluvium Unit sandy strata located above the uppermost recoverable lignite seam of the mine. There are five overburden wells, also referred to as alluvial wells, located in the proposed release area: Wells C-AL-1; C-AL-2; C-AL-3; C-AL-4; and C-AL-5R. In May 2016, overburden Well CA-AL-5 was plugged, abandoned, and replaced by Well C-AL-5R. The overburden Jackson Group hydrogeology of Area C does not contain sand units; however, isolated water-bearing alluvium and fluviatile terrace material near Metate Creek and the Atascosa River has been identified within the subject area. The overburden Alluvium Unit consists of fluvial and terrace deposits of sand and silt located in the top 10 to 20 feet in the area of Metate Creek and the Atascosa River.

A. SMECI's groundwater quantity data shows that the water levels in: Well C-AL-1 have been relatively stable during the entire monitoring period; Well C-AL-2 have slightly decreased (less than 2.5 feet) since monitoring began in 2004; Well C-AL-3 have been stable from September 2011 through June 2015 and increased from June 2015 to April 2016 (in August 2016, the well was plugged and abandoned); Well C-AL-4 well have slightly decreased (less than 2.5 feet) since monitoring began in 2004, and has been dry since March 2011; and Well C-AL-5R well have increased from December 2014 to January 2016 by nearly 10 feet, and thereafter water levels have returned to initial measurement levels.

B. SMECI's groundwater quality data report indicates that the average concentrations of sulfate, sodium, and boron during and after mining are similar to concentrations measured during baseline monitoring in the overburden wells. Chloride and TDS concentrations are slightly higher than concentrations

measured during baseline monitoring. Sulfate concentrations have been generally stable over the duration of monitoring. TDS concentrations at Well C-AL-1 show a slight increase but have been stable over the past five years. TDS concentrations at Well C-AL-3 show an increase but have been decreasing from 2014 to 2016. Both Wells C-AL-2 and C-AL-4 have been mostly dry since 2010. TDS concentrations at Well C-AL-5 show a slight decrease from that measured during baseline monitoring.

ii. The LTGM underburden wells were completed in Unit 22, the uppermost water-bearing zone in Area C below the deepest mined seam. Unit 22 is separated from the deepest minable seam by approximately 36 to 44 feet of clay-silt lagoonal fill sediments and clayey sand, and ranges in thickness from less than 25 feet to about 60 feet. Groundwater levels in underburden wells have been influenced by depressurization activities in Unit 22 in Area C as well as from depressurization activities in the adjacent Permit No. 11G. There are six LTGM underburden wells in Area C: Wells C-22-1R; C-22-2; C-22-3; C-22-4R; C-22-5; and C-22-6. In May 2010, underburden Wells C-22-1 and C-22-4 were plugged, abandoned, and replaced by Wells C-22-1R and C-22-4R. All the underburden water levels have fluctuated and generally decreased since the beginning of mining activities. Well C-22-1 was flowing from December 2004 through August 2008, before depressurization activities related to mining activities in Area C began. In 2013-2014, water levels in Wells C-22-2, C-22-3, and C-22-5 were stable. Staff indicates that these wells appear to indicate that the potentiometric surface has started to recover after termination of depressurization pumping. Sulfate concentrations in underburden wells have been relatively stable. TDS concentrations in underburden wells have been relatively stable or slightly decreasing during the entire monitoring period. The overall average TDS concentration in the Unit 22 wells is slightly higher during mining compared to the baseline monitoring data. Sodium, chloride, and boron concentrations in the underburden wells have been generally stable since December 2004.

iii. The LTGM spoil wells were completed in the reclamation areas and overburden disturbed mining areas. There are four LTGM spoil wells: Wells C-SP-1; C-SP-2; C-SP-3; and C-SP-4. Spoil Well C-SP-1 was installed in April 2018 and no water has been measured. Spoil Wells C-SP-2 through C-SP-4 were installed in May 2016. Well C-SP-2 has shown no saturation since it was installed and, at Well C-SP-3, no water has been measured. Staff states that all the LTGM spoil wells have been dry since completion in 2016, except for Well C-SP-4. Well C-SP-4 has steadily increased by approximately 3.5 feet from June 2016 to May 2018; however, the depth to groundwater in the well is greater than 40 feet below ground surface. Well C-SP-4 has a high concentration of sulfate and the average concentrations of TDS, chloride, sodium, and boron were within or below the range of concentrations measured during baseline monitoring in the overburden. Staff's TA states that the rising static water levels in Well C-SP-4 is not considered to be a resource and any possible effect it may have on adjacent overburden equivalent units would not be considered a degradation of groundwater conditions because there has never been any overburden groundwater in the mine and adjacent area.

iv. The approved Probable Hydrologic Consequences (PHC) determination states that recharge in Area C reclaimed overburden (spoil) will be relatively slow and limited in extent and sourced from lateral inflow from the adjacent undisturbed Alluvial Unit, infiltration from surface water ponds, and minor contribution from rainfall infiltration. SMECI's analysis states that the groundwater levels in the reclaimed spoil area are not anticipated to recharge to the point of developing groundwater to surface water seeps. Staff states that the three-year time frame from 2016 to the present may not be long enough to evaluate whether the spoils will or will not re-saturate; however, recovery of the underburden Unit 22 static water levels have not yet occurred, although there are indications that recovery has begun.

v. There are no water wells located directly within the Phase III release area.

14. Pursuant to §12.313(a)(3), the Commission may release the remaining portion of the bond attributable to the subject 269.4 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. By letter dated July 22, 2019, the SMRD Interim Director approved the most recent bond map update and reclamation cost estimate in the amount of $20,554,661 in Revision No. 12. SMECI does not request an adjustment to the approved bond in the Application (Finding of Fact No. 3, *supra*); therefore, any eligible reduction amount based on the current RCE would be superseded once the costs for reclamation are calculated at a future date when SMECI requests a reduction of the bond itself. Additionally, because the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, this Order prescribes that SMECI is eligible to reduce the amount of bond attributable to the 269.4 acres granted Phase III release but does not specify the amount of the reduction.

15. The areas requested for release were marked in the field to distinguish them from active mining and reclamation areas. (Photographs of marked areas are contained in Staff's TA in Appendix IV).

16. 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.

17. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. CH. 551 (Vernon Supp. 2019).

CONCLUSIONS OF LAW

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

1. Proper notice of application and notice of consideration by the Commission has been 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 the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter.

4. SMECI has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.

5. The Commission may approve a release of Phase III reclamation obligations for 269.4 acres as set out in the above Findings of Fact and Conclusions of Law.

6. Pursuant to the Commission's authority for inspections and evaluation of release applications, the Commission may order that SMECI continue marking the area approved for release so that Staff mapping, and tracking will be efficient.

7. SMECI is eligible to reduce the amount of bond for Permit 52A by an amount that is attributable to the subject 269.4 acres in future bond adjustments.

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 III reclamation obligations for 269.4 acres is hereby approved;

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 in accordance with its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED that SMECI is eligible to reduce the amount of bond for the permit by the amount that is attributable to the 269.4 acres granted Phase III release in this Order;

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 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 on November 19, 2019.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN WAYNE CHRISTIAN

Christi Craddick

COMMISSIONER CHRISTI CRADDICK

COMMISSIONER RYAN SITTON

ATTEST:

Sharon Walker

Deputy

Secretary, Railroad Commission of Texas