RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SURFACE MINING DOCKET NO. C19-0005-SC-11-F:
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR RELEASE OF RECLAMATION OBLIGATIONS FOR PHASE III RELEASE ON 366.4 ACRES, FOR PERMIT NO. 11H, SAN MIGUEL LIGNITE MINE, ATASCOSA AND McMULLEN COUNTIES, TEXAS

ORDER APPROVING
RELEASE OF RECLAMATION OBLIGATIONS
PHASE III RELEASE ON 366.4 ACRES IN PERMIT NO. 11H

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 Phase III release of reclamation obligations on 366.4 acres within Permit No. 11H, San Miguel Lignite Mine, in Atascosa and McMullen Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2021) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations).

Permit No. 11H currently authorizes surface and coal mining operations within the 16,000-acre permit area of SMECI's San Miguel Lignite Mine. Copies of the application for release were filed in the required county and Commission offices and notice was mailed to landowners of the areas requested for release and to adjoining landowners. 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 the information provided in the application, Staff's analysis, and the inspection of the area, Staff recommends the approval of the release, to which SMECI concurs. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based upon the evidence in the record, reclamation requirements have been met for the acreage requested for release. The Commission approves the request as set out in this Order. SMECI is eligible to reduce the bond by an amount attributable to the aggregate 366.4 total acres when a future adjustment to the bond is requested.

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 with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for Phase III release of reclamation obligations on 366.4 acres within Permit No. 11H, San Miguel Lignite Mine, in Atascosa and McMullen Counties, Texas. Pursuant to Staff's recommendation, SMECI submitted Supplement No. 1 on January 24, 2020, requesting a small change in the requested permit area to accurately depict the location of the area (approximately 0.3 acres) encompassing long-term groundwater monitoring (LTGM) well E-MW-1 and its associated access road, and to provide additional necessary groundwater and surface-water information. A Supplement No. 2 was filed by letter dated February 19, 2020, to provide several updated exhibits from the first supplement. In its initial Technical Analysis (TA) document dated March 12, 2020, Staff did not recommend Phase III release from reclamation obligations on the requested 366.4 acres due to instability of the water levels in the spoil monitoring wells. By letter dated August 27, 2021, SMECI submitted a Supplement No. 3 containing additional groundwater-level data and an assessment of the data for a 12-month period for the spoil wells in the vicinity of the proposed release area. Subsequently, by letter dated September 20, 2021, Staff filed Addendum No. 1 to its initial TA recommending Phase III release for the requested 366.4 acres. Additional information pertinent to the application was filed by letter from SMECI dated October 15, 2021, and from Staff by letter dated October 20, 2021, both in response to a letter of inquiry dated October 12, 2021. The initial application, supplements, and pertinent correspondence are collectively referred to as the "Application" in this Order.

2. The initial application was filed with the Commission's Hearings Division by letter dated October 25, 2018, and, following submittal of the public-notice tear sheets and affidavits, and copies of letters to agencies and landowners, the Director of SMRD determined by letter dated February 13, 2020, that the supplemented application was administratively complete for the requested 366.4 acres. Based on the fully supplemented Application, Staff analyses, and the inspection of the area, Staff recommends release of Phase III reclamation obligations on the requested 366.4 acres.

3. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2021) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for the Application.

4. By Order dated April 13, 2021, the Commission approved the application by SMECI for renewal/revision of Permit No. 11G for a five-year term, within San Miguel Lignite Mine located in Atascosa and McMullen Counties, Texas, and issued the renewed and revised permit as Permit No. 11H. The proposed permit area consists of approximately 16,000 acres located approximately 50 miles south of San Antonio, 16 miles south of Jourdanton, and 6 miles southeast of Christine, Texas. SMECI's Permit No. 11H, as well as Permit

Nos. 52A and 60, are bonded in a blanket bond at a total amount of $140,000,000, an amount that is sufficient to cover the aggregate sum of the recommended reclamation cost estimates for the three permits.

5. The acreage requested for release is located in Atascosa and McMullen Counties within Permit No. 11H, San Miguel Lignite Mine in the mine area known as E Area. All of the acreage requested for Phase III release was mined. The approved postmine land uses are pastureland and industrial/commercial.

6. Release of Phase I or II reclamation obligations have previously been made by the Commission on the 366.4 acres requested for Phase III release only, and therefore are not requested in this application. Any ash that was placed in requested release areas was performed in accordance with the disposal plans that were approved in Permits No. 11D and 11E.

7. Notice of the request for release was published in the *Pleasanton Express*, a newspaper of general circulation in Atascosa and McMullen Counties in the locality of the surface coal mining operation and the requested release area, once a week for four consecutive weeks on September 25, and October 2, 9, and 16, 2019. SMECI provided to the Commission an updated publisher's affidavit by letter dated October 29, 2021, with copies of the newspaper notices provided by letter dated November 8, 2019. 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)(3) 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.

8. By letters dated October 1, 2019, notices of the request for release were sent by letters mailed by SMECI to the owners of interests in the lands within the areas requested for release, A. M. Peeler, Jr., and San Miguel Electric Cooperative, Inc., the Atascosa County Clerk and County Judge, the McMullen County Clerk and County Judge, the Natural Resources Conservation Service offices in Tilden, Texas, and Pleasanton, Texas, the Texas Commission on Environmental Quality (TCEQ), the U.S. Army Corps of Engineers (USACE), the Nueces River Authority, the U.S. Environmental Protection Agency (USEPA), the Texas General Land Office, the Atascosa County Soil and Water Conservation District (SWCD), the McMullen County SWCD, the Atascosa Rural Water Supply, and the Evergreen Underground Water Conservation District, and McMullen County Water. The areas requested for release are not located within the territorial

boundaries of any municipality. The Staff sent notice by certified letters dated September 13, 2019, to the Atascosa County and McMullen County Judges. This notification letter date is not later than the 31st day before the date of release as required by §134.133 of the Act.

9. The SMRD Inspection and Enforcement (I&E) Staff mailed letters dated October 31, 2018, to the landowners of the areas requested for release, to SMECI, and to the U.S.D.I. Office of Surface Mining Reclamation and Enforcement (OSM), providing notification that a release had been requested and informing them of the opportunity to participate in the on-site inspection to be conducted on November 20, 2018. Staff Inspector John Standridge conducted the November 20, 2018, inspection. SMECI personnel Joe D. Harris and Michael Nicholson attended the inspection. Landowners Alonzo Peeler, Jr., Jason Peeler, and Ryan Botkin also participated in the inspection of the Peeler Tract lands requested for release. No OSM representative attended the inspection.

10. No adverse comments or objections were filed regarding the request for release. No requests for a public hearing or an informal conference were filed.

11. The Staff prepared an evaluation and recommendation to determine whether the areas requested for Phase III release have been reclaimed in accordance with reclamation requirements of §134.131 of the Act and §12.313(a)(3) of the Regulations. Staff recommends release of Phase III reclamation obligations for the requested 366.4 acres.

12. A portion of one permanent structure is located within the area requested for release—a permanent diversion (Ditch E5). Ditch E5 was approved as permanent by SMRD letter dated December 5, 1996.

13. All 366.4 acres proposed for Phase III release have met Phase III requirements as required by §12.313(a)(3).

    (a). The ground-cover and productivity has been evaluated. SMECI has met the vegetation requirements of §12.395 in accordance with approved standards for ground cover and productivity. SMECI submitted ground cover and productivity data to indicate that the vegetation met the performance standards in accordance with §12.395(c)(2) and the approved reclamation plan.

    (b). Completion of the five-year period of extended responsibility applicable to this permit area, having at least 26 inches of rainfall annually, has been met for the approved postmine land use, which is pastureland, within the requested release areas. [§12.395(c)(2)].

(c). No portion of the areas requested for release of reclamation obligations had a soils classified as prime farmland prior to mining for which specific reclamation standards would apply. [§§12.624 - 12.625].

(d). No small-area depressions are present within the requested Phase III release areas. [§12.385].

14. The 366.4 acres requested for Phase III release meet requirements for protection of the groundwater resources.

(a). No monitoring wells are located within the areas requested for Phase III release of reclamation obligations. One long-term groundwater monitoring (LTGM) well completed in the spoil was initially proposed for Phase III release but the well location was subsequently removed from the requested area after the issue was noted by Staff.

(b). Groundwater monitoring for the areas requested for Phase III release has been performed in accordance with provisions of the approved mining permit. Premine overburden water-bearing strata (shallow systems approximately within 150 feet from the surface) are not present in the reclaimed portions of the E Area of the San Miguel Lignite Mine; therefore, none have been destroyed by mining. Two baseline overburden wells were monitored for baseline, wells MW-E4A and MW-9, but these monitored strata were mined through, and were not considered significant groundwater resources. A non-potable underburden aquifer in the area, designated Unit 22, is separated from the mined seams by underclays having a thickness of 40 feet or more. These underclays include some thin silty sand lenses of limited lateral hydrologic extent interbedded within thicker clay layers. The Unit 22 non-potable underburden aquifer is monitored in E Area by LTGM wells MW-E3, MW-E4B, and MW-EA7. The locations of all evaluated LTGM and baseline wells are shown on Staff's Map 1 in its March 12, 2020, TA, and on Figure 1 in the January 2020 report titled *366.4 Acre Area E Bond Release, Phase III Groundwater and Surface Water Assessment*, contained in the supplement filed by letter dated January 24, 2020.

(c). Based on water levels observed in the E Area monitoring wells, there are at least 40 feet of unsaturated spoil above the water table. The presence of resaturation is consistent with that predicted in the approved probable hydrologic consequences (PHC) determination. Based on the geometry of the reclaimed overburden in the requested release areas and the surrounding area, and consideration of the potential for ground-water drainage to the surface, Staff, after evaluation of the supplemented application, believes it unlikely that the surface-water system will be impacted by the reclamation operations in the area, in that the development of surface-water seeps is unlikely to occur. No private wells completed in the overburden or in the underburden Unit 22 aquifer exist in the area. The Carrizo-Wilcox aquifer, the

uppermost source of potable groundwater in the area, is more than 3,000 feet below the ground surface in the San Miguel Lignite Mine area.

(d). In its initial TA review, Staff identified an issue regarding upward trends of non-potable spoil groundwater exhibiting a rapid rise at rates of approximately 1-4 ft per year. Staff indicated that it was unable to make a reasonable assessment that surface-water seeps would not develop as a result of this continuing rise. In its August 27, 2021, submittal, SMECI provided additional quarterly water-level data for its spoil LTGM wells, and Staff, in its September 20, 2021, TA Addendum No. 1, determined that the additional data were sufficient to demonstrate that the water levels in the spoil were approaching a stable elevation. Staff concluded that no problems relating to the protection of the ground-water hydrologic balance are present that would preclude the Phase III release of the requested areas from reclamation performance obligations.

15. SMECI has met the Phase III reclamation performance obligations for protection of surface-water resources.

(a). SMECI provided surface-water and groundwater assessments in the initial application for release of reclamation obligations in a report dated October 2018 in the October 24, 2018, initial application submittal, and an updated report dated January 2020 in the supplement filed by letter dated January 24, 2020.

(b). As indicated in the evaluation report contained in the initial application and supplement, runoff from all areas requested for Phase III release drain to the southwest to La Jarita Creek, to San Miguel Creek, to the Frio River, and ultimately to the Nueces River. For the period of record, runoff from the area proposed for release from reclamation obligations has been controlled by Sedimentation Ponds 12E, 13E, and/or 15E. Pond outfalls at the San Miguel Lignite Mine are currently monitored under TPDES Permit No. WQ0002043000. The watersheds of these ponds are delineated on Exhibit 4, *366.4-AC. PHASE III BOND RELEASE: PONDS & WATERSHEDS*, and required TPDES monitoring data [flow in gallons per minute (gpm), pH, total suspended solids (TSS) in mg/L, and total iron (Fe) and manganese (Mn) in mg/L] are provided in the surface-water and groundwater assessments in the Application.

(c). Long-term surface-water monitoring (LTSM) stations are located upstream and downstream of the mine on La Jarita Creek. The locations of these LTSM stations are shown on Staff's Map 1 in its March 12, 2020, TA, and on Figure 1 in the January 2020 report titled *366.4 Acre Area E Bond Release, Phase III Groundwater and Surface Water Assessment*, contained in the supplement filed by letter dated January 24, 2020. LTSM stations for which monitoring data were evaluated for this Application are as follows:

LTSM Stations	
Upstream/Undisturbed Station	**Location LTSM Station/River Watershed**
1E	La Jarita Creek / San Miguel Creek
Downstream/Disturbed Station	**Location LTSM Station/River Watershed**
2A	La Jarita Creek / San Miguel Creek

Staff and SMECI evaluated slightly different parameter-value sets due to different periods of record for the data; nevertheless, in comparing surface-water quality of flows at disturbed versus undisturbed (downstream versus upstream), Staff and SMECI concurred in their ultimate conclusions. Comparisons were conducted on: (1) LTSM station surface-water data; (2) baseline surface-water data; (3) applicable stream-segment criteria, including Federal and State effluent standards; (4) predictions contained in the approved probable hydrologic consequences (PHC) determination; and (5) estimates of effect contained in Staff's Cumulative Hydrologic Impact Assessment (CHIA) conducted for the mine for specific mass-balance points.

(i). Comparisons of LTSM-station surface-water data:

(A). Data for upstream LTSM station 1E show an average TDS concentration of 108.3 mg/L, and a range from 44.0 mg/L to 224.0 mg/L. LTSM data for downstream LTSM station 2A show an average TDS concentration of 187.2 mg/L, and a range from 47.0 mg/L to 900.0 mg/L. The flow-weighted average TDS concentration at downstream LTSM station 2A (145.1 mg/L) remains much lower than the maximum annual average concentration for the stream segment (2,000 mg/L for Stream Segment No. 2108, San Miguel Creek) even though it is slightly higher than the flow-weighted average TDS concentration at the upstream LTSM station 1E (106.9 mg/L).

(B). Data for upstream LTSM station 1E yield an average pH of 7.2 s.u., with a range from 6.7 s.u. to 7.7 s.u. For downstream LTSM station 2A, the data yield an average pH of 7.3 s.u., with a range from 6.8 s.u. to 7.9 s.u. These data show essentially no change in pH as a result of the mining operations.

(C). For parameters Mn and Fe, average concentrations are slightly lower or the same as at the downstream station than are measured at the upstream station.

(D). For parameters TSS, sulfate (SO_4^{-2}), and chloride (Cl^-), the average concentrations are slightly higher at the downstream station than at the upstream station. The highest TSS concentration (600.0 mg/L) for disturbed LTSM station 2A occurred on April 26, 1990. The highest

sulfate concentration (225 mg/L) occurred in September 1992. Averages for both upstream and downstream stations are skewed by early data obtained more than 25 years ago.

(ii). Comparison to baseline surface-water data:

(A). Average hydrogen-ion concentration (pH) at the downstream station (7.3 s.u.) is slightly greater than the baseline pH for the mining-area surface waters (7.0 s.u.).

(B). The downstream average measured TDS concentration and range of TDS concentrations (187.2 mg/L, ranging from 47.0 - 900.0 mg/L) is somewhat higher than the baseline TDS concentration and range (127.7 mg/L, ranging from 68.0 - 168.8 mg/L). Staff indicates that the flow-weighted average TDS concentration at downstream LTSM station 2A (145.1 mg/L) is, nevertheless, significantly less than the maximum annual average TDS concentration criterion for Stream Segment No. 2108 (2,000.0 mg/L).

(C). Staff compared LTSM TSS data for downstream LTSM station 2A to baseline surface-water data for the same station. These data indicate that the average downstream TSS concentration (82.0 mg/L) is slightly less than the baseline average TSS concentration (87.3 mg/L), and that the downstream TSS concentration range (12.0 mg/L to 600.0 mg/L) is greater than the baseline TSS concentration range (9.0 mg/L to 190.0 mg/L). However, the highest TSS concentration (600.0 mg/L) for downstream LTSM station 2A occurred more than 30 years ago, on April 26, 1990.

(D). Staff's comparison of LTSM total-iron data to baseline surface-water data for downstream LTSM station 2A indicates that the average Fe concentration (3.0 mg/L) is less than than the baseline average Fe concentration (8.9 mg/L), and that the downstream Fe concentration range (0.7 mg/L to 6.5 mg/L) is smaller than the baseline Fe concentration range (1.5 mg/L to 23.8 mg/L).

(E). A comparison of LTSM total-manganese data for downstream LTSM station 2A to baseline surface-water data for the same station indicates that the average Mn concentration (0.1 mg/L) is less than the baseline average Mn concentration (0.2 mg/L), and that the downstream Mn concentration range (0.03 mg/L to 0.4 mg/L) is similar to the baseline Mn concentration range (0.2 mg/L to 0.3 mg/L).

(F). Staff's comparison of sulfate data for downstream LTSM station 2A to surface-water baseline sulfate data indicates that the average SO_4^{-2} concentration (73.7 mg/L) is less than than the baseline average SO_4^{-2} concentration (186.0 mg/L), and that the downstream LTSM SO_4^{-2} concentration range (7.0 mg/L to 313.0 mg/L) is similar to the baseline SO_4^{-2} concentration range (20.0 mg/L to 314.0 mg/L).

(G). A comparison of LTSM chloride data for downstream LTSM station 2A to baseline chloride surface-water data indicates that the average Cl^- concentration (26.2 mg/L) is slightly higher than the baseline average Cl^- concentration (23.7 mg/L), and that the downstream LTSM Cl^- concentration range (10.0 mg/L to 60.0 mg/L) is also slightly greater than the baseline Cl^- concentration range (5.0 mg/L to 55.0 mg/L).

(iii). Comparison to criteria established for applicable TCEQ stream segment (Stream Segment No. 2108, San Miguel Creek in the Nueces River Basin):

(A). The highest measurement for downstream pH, at 9.2 s.u., exceeded the stream segment criterion maximum of 9.0 s.u., occurring in February 2009. Since that time, pH has remained within the stream segment range criterion (6.5 s.u. - 9.0 s.u.). The average pH (7.8 s.u.) remains within this range.

(B). The average TDS concentration at downstream LTSM station 2A, at 187.2 mg/L) is significantly less than the stream segment criterion maximum of 2,000 mg/L. All measured TDS concentrations (ranging from 47.0 mg/L to 900.0 mg/L) also remain much lower than this criterion.

(C). No stream segment criteria exist for TSS, total iron, and total manganese.

(D). A comparison of LTSM data for sulfate (SO_4^{-2}) at the downstream station to the stream segment criterion (500 mg/L) indicates that the average SO_4^{-2} concentration (73.7 mg/L) and range (7.0 mg/L to 313.0 mg/L) are much less than the stream segment criterion for SO_4^{-2} (700.0 mg/L).

(E). A comparison of LTSM data for chloride (Cl^-) at the downstream station to the stream segment criterion (700 mg/L) indicates that the average Cl^- concentration (26.2 mg/L) and the range (10.0 mg/L to 60.0 mg/L) are much less than the stream segment criterion for Cl^-.

(iv). Comparison to approved probable hydrologic consequences (PHC) determination:

(A). SMECI did not address effects predicted in the approved permit with

regard to water quality. In its TA, Staff summarized the approved PHC determination, indicating that the determination predicts increases during mining to sediment load and to TDS, Fe, Mn, and SO_4^{-2} concentrations relative to the premining conditions, with a subsequent decrease to at or below premining conditions in the post-reclamation period. Staff indicates that average TDS concentrations (187.2 mg/L) and flow-weighted average TDS concentrations (145.1 mg/L) at downstream LTSM station 2A are expected to remain near the levels observed in recent water samples and within or lower than the average TDS concentrations of the baseline surface-water data for the same station. From its analysis, Staff indicates that the monitoring data support a conclusion that water quality in the postmine period is consistent with the approved PHC determination and has been protected.

(B). SMECI's evaluation of flow data for the upstream and downstream LTSM stations includes a discussion of impacts to water quantity relating to the PHC determination, stating that: "[Both] stations have been dry for over 70% of the monitoring period as shown in Appendix C. The average flow at the upstream station and downstream station is 0.6 million gallons per day (mgd) and 0.5 mgd, respectively. The discharge measurements collected during mining as part of quarterly sampling are consistent with the predictions and suggest that there has been minimal disturbance to the hydrologic balance."

Staff summarizes the water-quantity predictions in the approved PHC determination to indicate that runoff volumes will increase from premining to postmining conditions as a result of decreased vegetation density. This increase is somewhat mitigated by the increase in surface-water impoundments, which will act to retain and detain surface-water runoff. By detaining runoff, peak flows from precipitation events will be attenuated and infiltration to aquifers will be increased, as well as the evapotranspiration. Thus, longer sustained flows will be expected because of the controlled discharge through the pond's outlet and increased groundwater contributions to stream baseflow. Staff concurs with SMECI's assessment that the monitoring data support that the prediction in the approved PHC determination has been borne out, with the downstream surface-water monitoring stations generally showing greater flow volumes compared to the upstream surface-water monitoring stations, indicating no significant water volume loss across the mine areas.

(v). Comparison with estimates of effect in the approved CHIA:

(A). As described in the TA, in the approved CHIA (contained in Staff's May 10, 2017, TA for the application for the San Miguel Lignite Mine, F, G and H Area Mine, Docket No. C14-0020-SC-00-A), Staff predicted the greatest potential increase in the indicator parameter (TDS concentration) is anticipated at Mass-Balance Point No. 5 (USGS Gauging Station No. 08206900, located at the outfall of Choke Canyon Reservoir near Three Rivers). At this location, TDS concentration is predicted to increase by as much as 1.9%, from approximately 413 mg/L to 421 mg/L. Staff indicates that this increase remains well below the threshold value of 2,000 mg/L for Stream Segment No. 2108.

(B). Staff's postmine assessment of the predictions regarding TDS concentrations at the downstream station evaluated for this requested release area is that the postmine concentrations are significantly less than the stream segment TDS criterion (2,000 mg/L).

(d). Staff's summarized the assessment of surface-water protection pursuant to requirements at §12.349 of the Regulations, indicating that SMECI has demonstrated that disturbance to the surface-water hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area. Staff noted no impediments to Phase III release from reclamation obligations for the requested 366.4 acres.

16. Pursuant to §12.313(a)(3), the Commission may release the remaining bond monies attributable to the subject 366.4 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. For the renewal/revision application for Permit No. 11H, approved by the Commission on April 13, 2021, the most recent reclamation cost estimate and bond information was summarized as follows:

> Commission Order signed on December 8, 2020, Docket No. C20-0021-SC-00-E, accepted two Blanket Self Bonds with Third Party Guarantees to cover reclamation obligations in sum for Permits 11G, 52A and 60. The accepted Self Bond instruments covering the three permits are in the amounts of $131,000,000 and $9,000,000, for a total $140,000,000. The final pit areas are currently bonded utilizing the Area Bond methodology, which equates to $11,438.00/acre for the mined rate. This cost includes the following work categories: overburden spoil leveling, topsoil distribution, soil preparation, revegetation, and vegetation maintenance for a five year period. SMECI provided a detailed estimate of the cost of reclamation required to be covered by the performance bond is contained in the Application, in accordance with §12.145(b)(2). SMECI provided a revised detailed reclamation cost estimate in section .145, in Appendices 145-1 and 1a, *Reclamation Cost*

> *Determination*, in the initial submittal, and in Supps. 2 through 5. Staff's reclamation cost estimate is $41,903,538 for Areas A and E of the mine, and $42,730,060 for Areas B and BX of the mine, for a total estimate of $84,633,598 recommended by Staff as the necessary performance bond amount for the proposed activities in this Application.

For Phase III release, any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when SMECI requests a reduction of the bond, thereby ensuring the proposed bond amount is sufficient to cover the cost of outstanding reclamation work. SMECI does not request an adjustment to the approved bond in the Application, and no new bond instrument has been filed. In its TA, Staff concurred with the amount of the Phase III reduction that was calculated by SMECI in the amount of $388,127.52. This Order prescribes that SMECI is eligible to reduce the amount of bond attributable to the requested acreage, but does not specify the amount of the reduction.

17. The areas requested for release have been marked in the field with boundary markers at corners sufficient so that these areas can be distinguished from active mining and reclamation areas. Permanent markers shall be maintained; marking the areas will appropriately identify them to aid in inspection and enforcement.

18. SMECI and the 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. No exceptions to the proposed order were filed.

19. Open meeting notice has been posted for Commission consideration of this Application in accordance with Tex. Gov't Code §551.048.

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 pursuant to the Act, the Regulations, and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon Supp. 2021).

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 for release of Phase III reclamation obligations for 366.4 acres as set out in this Order.

4. SMECI has complied with all applicable provisions of the Act and the Regulations for release of Phase III reclamation obligations for 366.4 acres as set out in this Order.

5. The Commission may approve a release of Phase III reclamation obligations for 366.4 acres as set out in the above Findings of Fact and Conclusions of Law.

6. SMECI is eligible to reduce the bond for the permit by the amount that is attributable to the 366.4 acres in future bond adjustments.

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

IT IS FURTHER ORDERED that a release of Phase III reclamation obligations on the requested 366.4 acres as set forth in the above Findings of Fact is hereby approved;

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 366.4 acres granted release in this Order;

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 from other 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 the Commission may vary the total amount of bond required from time to time as affected land acreages are increased or decreased or where the cost of reclamation changes; and

San Miguel Electric Cooperative, Inc.
Permit No. 11H, San Miguel Lignite Mine
Docket No. C19-0005-SC-11-F

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 January 11, 2022.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
C1C746B4F446422...

CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Christi Craddick
15494B7DE4CC424...

COMMISSIONER CHRISTI CRADDICK

DocuSigned by:
Jim Wright
FAAE94782E9E4AE...

COMMISSIONER JIM WRIGHT

ATTEST:

DocuSigned by:
Callie Farrar
3581C80DEDE0476...

SECRETARY