

**TCEQ DOCKET NO. 2025-1310-AIR
TCEQ AIR QUALITY PERMIT NO. 177380, PSDTX1650, AND GHGPSDTX244**

APPLICATION BY § **BEFORE THE**
SL ENERGY POWER PLANT I, LLC § **TEXAS COMMISSION ON**
SL ENERGY POWER PLANT I § **ENVIRONMENTAL QUALITY**
LEXINGTON, LEE COUNTY §

APPLICANT'S RESPONSE TO MOTION FOR REHEARING

December 8, 2025

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In accordance with 30 TEX. ADMIN. CODE (“TAC”) § 80.272(d), SL Energy Power Plant I, LLC (“Applicant” or “SL Energy”) submits this Response to Move the Gas Plant’s (“MTGP”) Motion for Rehearing.

I. BACKGROUND, STANDARD OF REVIEW, AND ARGUMENT SUMMARY

On August 29, 2024, SL Energy submitted an application (the “Application”) to the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) for the issuance of Air Quality Permit Nos. 177380, PSDTX1650, and GHGPSDTX244 (collectively referred to as the “Permit”). The Permit authorizes the construction of two natural gas combined-cycle gas turbines along with associated support equipment, located near Lexington, Lee County, Texas (the “SL Energy Plant”).

On September 12, 2024, Mr. Eric Allmon submitted a contested case hearing request on behalf of MTGP. Subsequently, Mr. Allmon submitted nine additional filings with the TCEQ, each of which has been classified on the TCEQ website as hearing requests. Some of these filings are duplicates and others are corrections to previous filed requests. For simplicity, the hearings requests are referred to collectively herein as MTGP’s hearing requests.

In addition to the hearing requests submitted by MTGP, two other hearing requests were submitted that were classified as timely by the TCEQ, as well as three motions for reconsideration.

The Commission considered all hearing requests and motions at its October 22, 2025 Agenda. The Commission signed an Order dated October 29, 2025, denying all hearing requests and motions for reconsideration and issuing the Permit to SL Energy. MTGP filed its Motion for Rehearing on November 24, 2025.

Pursuant to 30 TAC § 80.272(c), a motion for rehearing must contain: (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by the State Office of Administrative Hearings (“SOAH”), and official docket number assigned by the Commission; (3) the date of the decision or order; (4) the findings of fact or conclusions of law, identified with particularity, that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and (5) a statement of the legal and factual basis for the claimed error.

A motion for rehearing is a limited vehicle for error correction. It must specifically identify the Commission’s alleged errors of law or fact when making a decision, explain how those errors affected the outcome, and state the precise relief sought.

Here, however, MTGP’s Motion for Rehearing reiterates the same claims it previously argued before the Commission through its various filings. MTGP raises no new issues and therefore, each of the arguments raised by MTGP in its motion for rehearing has already been considered and addressed by the Commission as further described below.

Specifically, MTGP claims that the Commission erred for the following reasons: (1) the Commission improperly denied MTGP’s hearing request on the basis that its members were not affected persons; (2) the applicable law requires the granting of MTGP’s hearing request; (3) the Commission deprived MTGP of due process; and 4) the Commission erred in granting the Permit to SL Energy.

MTGP urges the Commission to reverse its decision to deny the hearing requests and issue the Permit, but offers no new or additional evidence to support its claims. In fact, MTGP’s Motion for Rehearing is almost identical to its Reply to SL Energy’s Response to Hearing Requests (“Reply Brief”) and doubles down on arguments that are demonstrably false. Because MTGP’s Motion for Rehearing is without merit, SL Energy respectfully requests that it be denied.

II. RESPONSE TO MOTION FOR REHEARING

In its Motion for Rehearing, MTGP largely repackages arguments the Commission, the Executive Director, and the Applicant have already addressed and rejected. A motion for rehearing is required to identify a concrete, outcome-determinative error of law or fact or present new authority or newly discovered evidence that could not, with reasonable diligence, have been raised earlier. MTGP’s Motion does neither of these things, offering no new facts, no intervening change in law, and no specific error that undermines the Commission’s Order. Therefore, the Motion for Rehearing should be denied.

A. The Commission Properly Considered the Factors Expressly Identified in the Texas Administrative Code in Determining Affected Person Status

MTGP contends that MTGP identified members who are affected persons and therefore, the Commission erred in denying its hearing requests. MTGP first claims that the Commission improperly denied its hearing requests because MTGP “identified a member with property interest near the proposed emissions sources, some of whom are undisputedly within one mile of the proposed Facility.” This is the exact same argument articulated by MTGP in its Reply Brief and provides no new evidence or information that was not already considered by the Commission. Because the Commission has already considered this issue and MTGP has presented no news facts or information, the Motion for Rehearing should be denied.

Furthermore, MTGP suggests that because it identified a member within one mile of the proposed Facility that it should automatically be granted “affected person” status. This is not the standard when determining whether a hearing requester is an “affected person.” In its contested case hearing request analysis, the Commission must make two determinations:

- 1) whether the contested case hearing request threshold requirements are substantially complied with; and
- 2) whether the requestor is an “affected person.”¹

In determining whether a hearing requester is an affected person, the Commission has the authority to consider the merits of the underlying application, including whether the application meets the requirements for permit issuance, the Executive Director’s analysis of the permit application, and expert reports, affidavits, and opinions.²

TCEQ has adopted rules that specify the factors that must be considered in evaluating whether a person is an affected person. The factors are as follows:

- 1) Whether the interest claimed is one protected by the law under which the application will be considered;
- 2) Distance restrictions or other limitations imposed by law on the affected interest;
- 3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) The likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person;
- 5) The likely impact of the regulated activity on the use of the impacted natural resource by the person;
- 6) For a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- 7) For governmental entities, their statutory authority over or interest in the issues relevant to the application.³

¹ See TEX. WATER CODE §§ 5.115, 5.556.

² 30 TAC § 55.203(d).

³ 30 Tex. Admin. Code (“TAC”) § 55.203(c).

In determining “affected person” status, a key factor is the likelihood of the impact on the individual due to the regulated activity. This is not just a “check the box” exercise as MTGP would have you believe—these factors require a case-specific inquiry grounded in the administrative record. The TCEQ has discretion to look closely at the merits of any submissions made by the public, as well as the application, and the analysis and opinions of the Executive Director. In determining what evidence to apply to the above factors when evaluating a given request, the Third Court of Appeals explained that TCEQ “enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity . . . will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources.”⁴

This discretion to consider the underlying merits of the application is also reflected in TCEQ rules, which allow the Commission to consider the following:

- 1) The merits of the underlying application and supporting documentation in the commission’s administrative record, including whether the application meets the requirements for permit issuance;
- 2) The analysis and opinions of the executive director; and
- 3) Any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.⁵

Thus, in its analysis of a contested case hearing request, the Commission must apply the multi-factor affected person standards set forth in 30 TAC § 55.203(c). Even MTGP’s Motion for Rehearing admits that “there is no bright-line distance test”⁶ and therefore, the location of one of

⁴ See *Sierra Club v. Tex. Comm’n on Envtl. Quality*, 455 S.W.3d 214, 225 (Tex. App.—Austin Dec. 30, 2014).

⁵ 30 TAC § 55.203(d); see also, *Tex. Comm’n on Envtl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013) (recognizing that the Commission has the discretion to deny a hearing requestor party status at the agenda hearing stage of the process based on “the sworn application, attached expert reports, the analysis and opinions of professionals on its staff, and reports, opinions, and data” it has before it).

⁶ MTGP’s Motion for Rehearing at 11.

MTGP’s members within one mile of the facility does not independently provide MTGP with affected person status.

MTGP’s Motion for Rehearing raises no new legal or factual issue. The Commission already considered and rejected these points, with a record showing: (i) the Commission applied the multi-factor “affected person” test (not a bright line test), focusing on likely impacts, location, residence, frequency and duration of occupancy, and dispersion modeling-based health risk; (ii) the Executive Director’s analysis demonstrated that the project complies with the applicable air permit standards; and (iii) for MTGP members with residences located greater than one mile from the facility, no unique, particularized, non-speculative injury was shown, and for those cited within one mile, the record did not establish a likely, adverse impact on health, safety, or use of property in a manner distinct from the public.

MTGP’s reliance on other TCEQ proceedings for other facilities and is not new and, in any event, is misplaced given the case-specific nature of the purported emissions impacts on the specific MTGP members at issue in this case. Therefore, the Commission correctly determined MTGP’s members were not affected persons and the Motion for Rehearing should be denied.

B. The Applicable Law Supports Denial of MTGP’s Hearing Requests

MTGP asserts that the “affected person” inquiry mirrors judicial standing in Texas courts and that once a requester demonstrates a personal justiciable interest and raises a disputed issue of material fact, “the Commission *must* grant a hearing.”⁷ This argument, once again, is recited almost verbatim from its Reply Brief. MTGP further argues the Commission misapplied three cases cited by Applicant. With this argument, MTGP once again fails to present any new authority and instead repeats legal theories it has already presented to the Commission, which the

⁷ MTGP’s Motion for Rehearing at 13.

Commission subsequently rejected. The Commission evaluated likely impact and personal justiciable interests by considering the merits-based materials in the record, including the Executive Director's analysis, modeling, and expert toxicology, as expressly contemplated by the Commission's rules and precedent. The Motion for Rehearing neither identifies a controlling legal principle the Commission misapprehended nor demonstrates that any disputed, outcome-determinative fact bearing on personal justiciable interest was decided without evidentiary support. Here, in makings its determination to deny the hearing requests, consistent with its regulations, the Commission considered:

- 1) all relevant filings,
- 2) the distance of the requesters' residence from the proposed facility,
- 3) the Executive Director's conclusion that emissions from the SL Energy Plant "should not cause or contribute to a violation of the NAAQS and are protective of human health and the environment,"⁸
- 4) the affidavit of Dr. Lucy Fraiser, an expert toxicologist, which concludes that emissions from the proposed Plant will not cause adverse impacts to human health or the environment,⁹ and
- 5) a wind rose showing that Ms. Siler's property is outside the prevailing wind pattern and is expected to experience wind from the emission points to her property, approximately ten (10) days per year.¹⁰

Based on the factors, the Commission denied all hearing requests, adopted the Executive Director's Response to Comments, and issued the Permit to SL Energy.

MTGP failed to provide any additional information and failed to establish that they or any named member had a personal justiciable interest affected by the challenged permit. The Commission's analysis here was reasonable and supported by substantial evidence in the record—

⁸ Executive Director's Response to Comments at 6.

⁹ Applicant's Response to Requests for Reconsideration and Requested for Contested Case Hearing, Attachment B (Fraiser Aff. ¶ 22) (September 25, 2025).

¹⁰ Applicant's Response to Requests for Reconsideration and Requested for Contested Case Hearing, Attachment D (September 25, 2025).

which established that MTGP members were not expected to experience any discernible impact from the permitted emissions in a manner that is different than the general public.

The Texas Supreme Court has recognized that that the “affected person” definition satisfies the Article III constitutional principles of standing and has emphasized that constitutional principles also require a party to “establish a concrete and particularized injury in fact, not common to the general public.”¹¹ Furthermore, to have a justiciable interest, the requester must show that a concrete, particularized, actual or imminent injury faces him or her due to the decision; a hypothetical or speculative injury is not enough.¹² The person seeking to be admitted as a party has the burden of making a minimum jurisdictional showing of a justiciable interest.¹³ To have a justiciable interest, a hypothetical or speculative injury is not enough.¹⁴

The Legislature gave the Commission the tools and discretion to make affected person determinations based on the Commission’s expertise on environmental permits (including air permits) within its jurisdiction.¹⁵ The Commission acted within its legislatively granted authority when determining that MTGP was not an affected person entitled to hearing. Further, as the 3rd Court of Appeals has explained, in making the affected person determination:

TCEQ enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity . . . will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources. TCEQ’s inquiry into these and the other factors may include reference to the permit application, attached expert reports, the analysis and

¹¹ *Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013).

¹² *Tex. Comm’n on Env’tl. Quality and Max Midstream, LLC v. San Antonio Bay Estuarine Waterkeeper*, 714 S.W.3d 270, at 284 (Tex. App—Austin [15th Dist.] May 20, 2025); *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304–05 (Tex. 2008).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 287; see also *Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013); see also *Sierra Club v. Tex. Comm’n on Env’tl. Quality*, 455 S.W.3d 214, 221, 223 (Tex. App.—Austin 2014, pet. denied).

opinions of professionals on its staff, and any reports, opinions, and data it has before it.¹⁶

The Commission weighed the evidence in light of these considerations and properly determined that MTGP was not an affected person entitled to a contested case hearing.

As the Executive Director’s Response to Comments (adopted in the Commission’s Order) explains, “[f]or this type of air permit application, potential impacts to human health and welfare or the environment are determined by comparing the Applicant’s proposed air emissions to appropriate state and federal standards and guidelines.”¹⁷ “These standards and guidelines include the . . . NAAQS, TCEQ Effects Screening Levels (ESLs), and TCEQ rules.”¹⁸ The Executive Director summarized its response to the same comment by stating that:

Based on the Executive Director’s staff review, it is not expected that existing health conditions will worsen, or that there will be adverse health effects on the general public, sensitive subgroups, or the public welfare and the environment as a result of proposed emission rates associated with this project.¹⁹

SL Energy provided affidavits, maps, and wind roses showing the locations of requesters’ residences, and also provided an expert affidavit by toxicologist Dr. Lucy Fraiser. The Commission reasonably found that “there is not a reasonable likelihood that MTGP’s members will be impacted in a manner that is different than the general public,”²⁰ and denied the hearing requests.²¹ Thus, because the Motion for Rehearing merely reasserts the same legal framework and arguments the Commission rejected, it fails to justify rehearing in this proceeding.

¹⁶ *Sierra Club v. Tex. Comm’n on Envtl. Quality*, 455 S.W.3d 214, 223–24 (Tex. App.—Austin, 2014, pet. denied) (citing 30 TAC § 55.256(c); *City of Waco*, 413 S.W.3d at 420).

¹⁷ Executive Director’s Response to Public Comment at 3 (July 24, 2025).

¹⁸ *Id.*

¹⁹ *Id.* at 10.

²⁰ Statement of Chairwoman Brooke Paup, TCEQ Commissioners’ Agenda Meeting (Oct. 22, 2025), at [00:57:04], video available at <https://www.youtube.com/watch?v=9Rao71ayVHg>.

²¹ TCEQ Order Concerning the Application by SL Energy Power Plant I, LLC for Air Quality Permit No. 177380, PSDTX1650, and GHGPSDTX244; TCEQ Docket No. 2025-1310- AIR (October 29, 2025).

C. MTGP Has Not Been Deprived of Due Process

MTGP contends that by crediting the Executive Director's technical review and Applicant's modeling at the agenda stage, the Commission effectively resolved disputed technical matters against requestors without a hearing, thereby creating an insurmountable bar to affected-person status and undermining public participation guarantees.

This due process claim is not new and was addressed in the Commission's disposition of standing. The Commission's rules authorize consideration of the administrative record, the Executive Director's analysis, and expert evidence when determining likely impact and whether an individual or association qualifies as affected person. The Commission, consistent with its regulations, evaluated whether any requester demonstrated a concrete, particularized, non-speculative injury distinct from the general public. Relying upon the record in this case, including the materials provided through the Application that demonstrate compliance with the applicable air emission standards and expert toxicology showing no adverse health effects, the Commission reasonably found no likely impact supporting affected-person status for MTGP's members. The Motion for Rehearing identifies no newly discovered facts, no intervening authority, and no specific procedural or legal error. Instead, it simply repackages prior assertions and does not justify granting the Motion for Rehearing.

D. The Commission's Decision to Issue the Permit is Supported by the Facts

Last, MTGP argues that the Commission erred in granting the Permit to SL Energy, asserting flaws in startup provisions, potential ozone non-attainment for the Austin-Round Rock-San Marcos metropolitan statistical area, alleged deficiencies in the Best Available Control Technology ("BACT") analysis (including volatile organic compounds ("VOC") averaging periods, Particulate Matter ("PM") averaging, and ammonia limits), omission of a particulate cap

identified in 30 TAC § 111.153, insufficient protectiveness of health and property, and purported modeling inadequacies.

These critiques of the Application are the same as those raised by MTGP during the comment period and in its hearing requests and have already been addressed in the Executive Director's Response to Comments, the Applicant's Response to Hearing Requests and Requests for Reconsideration, and the Executive Director's Response to Hearing Requests and Requests for Reconsideration. Although SL Energy has already addressed MTGP's claims in Response to Hearing Requests and Requests for Reconsideration, below the Applicant briefly reiterates why each of the issues raised by MTGP are without merit and do not justify rehearing.

Specifically, the record clearly demonstrates the following: (1) MTGP's claim that the Permit improperly allows for indeterminate exemptions for periods of startup is incorrect as the Permit indicates that startups can last no longer than 60 minutes; (2) the facility will not cause or contribute to an exceedance of the NAAQS; (3) the BACT analysis was not deficient, as a Tier I BACT analysis was conducted for all facilities authorized by this project, BACT will be used as the proposed site, the VOC averaging periods were not based on solely on a 24-average as MTGP claims, the Permit is compliance with the PM emissions as the Tier I BACT for PM emissions does not include specifying an averaging period, the ammonia limit aligns with current BACT ranges; (4) the Permit complies with the requirements of 30 TAC § 111.153, as confirmed by the Executive Director;²² and (5) the proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment; and (6) the modeling used in the Application is adequate, as it utilized TCEQ pre-processed meteorological

²² Executive Director's Response to Public Comments at 28.

data, a conservative set of representative background monitors, with Executive Director's review confirming technical adequacy of such modeling.

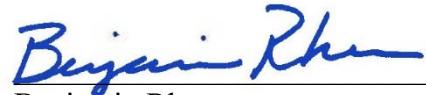
Thus, the Motion for Rehearing identifies no new data, no error in the Executive Director's technical review, and no substantive error in the Commission's Order that would warrant revisiting issuance of the Permit. MTGP's Motion for Rehearing should be denied.

III. CONCLUSION

The Commission's decision to deny MTGP's Hearing Request and issue the Permit complied with applicable statutory and regulatory requirements. MTGP has provided no new evidence that it qualifies as an affected person, nor does it provide any specific, outcome-determinative legal or factual error made by the Commission in its analysis. The denial of MTGP's hearing requests was based on a detailed analysis of its hearing requests, the Application, the Executive Director's analysis, expert reports, and applicable case law. MTGP has failed to raise any new issues or provide any additional facts that justify granting rehearing. The Commission has already considered all of the arguments raised in MTGP's Motion for Rehearing; therefore, the Commission should deny the Motion for Rehearing.

Respectfully submitted,

JACKSON WALKER LLP

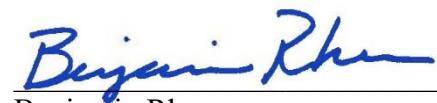


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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list.



Benjamin Rhem

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