

**TCEQ AIR QUALITY PERMIT NUMBERS 177380, PSDTX1650, and GHGPSDTX244  
TCEQ DOCKET NUMBER 2025-1310-AIR**

APPLICATION BY  
SL ENERGY POWER PLANT I, LLC  
SL ENERGY POWER PLANT I  
LEXINGTON, LEE COUNTY

§ § §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR'S RESPONSE TO THE MOTION FOR REHEARING**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
CHAIRWOMAN PAUP, AND COMMISSIONERS GONZALES AND MILLER

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files this Brief in response to Perales, Allmon, and Ice, P.C.'s Motion for Rehearing (MFR) on behalf of Neighbors for Neighbors, Inc., d/b/a Move the Gas Plant (MTGP or Movant), and in support thereof shows the following:

**I. INTRODUCTION**

On August 29, 2024, SL Energy Power Plant I, LLC (SL Energy or Applicant) applied to TCEQ for an initial issuance of Air Quality Permit Numbers 177380, Prevention of Significant Deterioration (PSD) Permit Number PSDTX1650, and Greenhouse Gas (GHG) Permit Number GHGPSDTX244. The Commission considered this application at an open meeting on October 22, 2025. The Commission considered all requests for hearing and reconsideration, as well as all responses to the requests for hearing and reconsideration filed by the ED, the Office of Public Interest Counsel (OPIC), and the Applicant; replies; all timely public comments; and the ED's Response to Comments (RTC). On October 30, 2025, the Commission issued an order denying all requests for hearing and reconsideration. In this order, the Commission also adopted the Executive Director's RTC and approved the application of SL Energy's Air Quality Permit Nos. 177380, PSDTX1650, and GHGPSDTX244.

**II. STANDARD OF REVIEW**

A motion for rehearing must identify, with particularity, the findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.<sup>1</sup> The Texas Supreme Court has held that a motion for rehearing must be sufficiently definite to apprise the regulatory agency of the error claimed and to allow the agency an opportunity to correct the error or to prepare to defend it on appeal.<sup>2</sup> The purpose of a motion for rehearing, in the administrative context, is to allow the agency to correct its own errors.<sup>3</sup>

**III. RESPONSE TO MOTION FOR REHEARING**

MTGP filed a Motion for Rehearing to address the following issues: (1) the denial of MTGP's hearing requests; and (2) the issuance of Air Quality Permit Nos. 177380, PSDTX1650, and GHGPSDTX244. MTGP's Motion for Rehearing restates arguments

<sup>1</sup>30 Texas Administrative Code (TAC) § 80.272(c)(4).

<sup>2</sup>*Suburban Utility Co. v. Public Utility Comm'n of Texas*, 652 S.W.2d 358, 365 (Tex. 1983).

<sup>3</sup>*United Savings Assoc. of Texas v. Vandygriff*, 594 S.W.2d 163, 168 (Tex. Civ. App.--Austin, 1980, writ ref'd n.r.e.).

raised in their comments, hearing requests, and reply to the Executive Director's Response to Hearing requests.

MTGP argues that their hearing requests should have been granted for the following reasons: (1) MTGP identified members who are affected persons in their hearing requests; (2) applicable law required the granting of MTGP's hearing request; and (3) denying the hearing requests deprived MTGP of due process. MTGP also argues that the Commission erred in granting permit nos. 177380, PSDTX1650, and GHGPSDTX244 for the following reasons: (1) the permit improperly allows for indeterminate exemptions for periods of startup; (2) the permit would result in the Austin Metro Area becoming nonattainment for ozone and PM<sub>2.5</sub>; (3) the permit does not reflect implementation of Best Available Control Technology (BACT); (4) the permit fails to incorporate the emission limits of 30 TAC § 111.153; (5) the permit fails to ensure that the facility will be protective of health and public property; and (6) the modeling provided in support of the application is inadequate.

A Motion for Rehearing must identify with particularity the findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.<sup>4</sup> Although MTGP claims the Commissioners erred in denying their hearing requests and issuing the permits, MTGP does not raise any issues that were not already addressed.

Movants argued that denial of their hearing requests based on "disputed materials and opinions" deprived requesters of their due process.<sup>5</sup> Texas law is well established that in order to be considered an "affected person" in a contested case hearing a person must be "a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest."<sup>6</sup> This standard has been in effect since 1999.<sup>7</sup> The Texas Natural Resources Conservation Commission adopted rules reflecting the affected person standard established by the legislature in October of 1999.<sup>8</sup> The rules in the Texas Administrative Code reflect the statute.<sup>9</sup>

In determining whether a person is affected for the purposes of granting a hearing request, the Commission may consider the merits of the underlying application and documentation in the administrative record, the analysis and opinion of the Executive Director, and any other reports, opinions, or data submitted by the Executive Director, Applicant, or hearing requester.<sup>10</sup> The Commission denied the requests for hearing after evaluation under applicable statutes and Commission Rules and evaluation of all

---

<sup>4</sup> 30 TAC § 80.272(c)(4).

<sup>5</sup> See generally filings of Move the Gas Plant.

<sup>6</sup> Texas Water Code (TWC) § 5.115(a) (Tex. Vernon's Code Ann. 1999).

<sup>7</sup> See H.B. 801, 76th Leg., R.S. (1999). House Bill 801 was adopted prior to the name change from Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality in 2004.

<sup>8</sup> 24 Tex. Reg. 9015 (Oct. 20, 1999).

<sup>9</sup> 30 Texas Administrative Code (TAC) § 55.203(a). "[A]n affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." *Id.*

<sup>10</sup> 30 TAC § 55.203(d).

relevant filings.<sup>11</sup> The public comments and hearing requests submitted by Movant were responded to in the Executive Director's filings, and considered by the Commission in determining affectedness.

Movant raises issues that were addressed in the Executive Director's RTC and further addressed in the Executive Director's Response to Hearing Requests. Additionally, the Commission considered all requests for hearing and reconsideration, as well as all responses to the requests for hearing and reconsideration filed by the ED, OPIC, and the Applicant; all replies; all timely public comments; and the ED's RTC. After evaluation of all relevant filings, the Commission denied the requests for hearing and reconsideration, adopted the RTC, and issued the permits. Since the Movants raised no new issues, a rehearing is not proper because the standard of review is not met. Therefore, the Motion for Rehearing should be denied.

#### IV. CONCLUSION

Accordingly, the Executive Director supports the October 30, 2025, Decision of the Commission on the Application.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director  
Office of Legal Services

Amy L. Browning, Acting Deputy Director  
Environmental Law Division



---

Elizabeth Black, Staff Attorney  
Environmental Law Division  
State Bar Number 24142684  
PO Box 13087, MC 173  
Austin, Texas 78711-3087

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

<sup>11</sup> 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 30, 2025).

**CERTIFICATE OF SERVICE**

I certify that on this 8<sup>th</sup> day of December 2025, a true and correct copy of the "Executive Director's Response to Motion for Rehearing" for Air Quality Permit No. 177380, PSDTX1650, and GHGPSDTX244 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



---

Elizabeth Black, Staff Attorney  
Environmental Law Division

**MAILING LIST**  
SL Energy Power Plant I, LLC  
TCEQ Docket No. 2025-1310-AIR  
Air Permit Nos. 177380, PSDTX1650, and GHGPSDTX244

**FOR THE APPLICANT**

Benjamin Rhem  
Jackson Walker LLP  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
[brhem@jw.com](mailto:brhem@jw.com)

Tommy Hodges, Chief Operating Officer  
SL Energy Power Plant I, LLC  
2100 Ross Avenue, Suite 895  
Dallas, Texas 75201  
[tommyh@slenergyco.com](mailto:tommyh@slenergyco.com)

**MOVANT(S)**

Eric Allmon  
Perales Allmon & Ice PC  
1206 San Antonio St  
Austin, Texas 78701-1834  
[mahita@txenvirolaw.com](mailto:mahita@txenvirolaw.com)

Vic McWherter  
Perales Allmon & Ice Pc  
1206 San Antonio St  
Austin, Texas 78701-1834  
[gwyneth@txenvirolaw.com](mailto:gwyneth@txenvirolaw.com)

**FOR THE EXECUTIVE DIRECTOR**

via electronic mail:

Elizabeth Black, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711  
[Elizabeth.black@tceq.texas.gov](mailto:Elizabeth.black@tceq.texas.gov)

Huy Pham, Technical Staff  
Texas Commission on Environmental Quality  
Air Permits Division, MC-163  
P.O. Box 13087  
Austin, Texas 78711  
[Huy.pham@tceq.texas.gov](mailto:Huy.pham@tceq.texas.gov)

Ryan Vise, Deputy Director  
Texas Commission on Environmental Quality  
External Relations Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711  
[pep@tceq.texas.gov](mailto:pep@tceq.texas.gov)

**FOR PUBLIC INTEREST COUNSEL**  
via electronic mail:

Jessica M. Anderson, Attorney  
Garrett Arthur, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711  
[Jessica.anderson@tceq.texas.gov](mailto:Jessica.anderson@tceq.texas.gov)  
[Garrett.arthur@tceq.texas.gov](mailto:Garrett.arthur@tceq.texas.gov)

**FOR THE CHIEF CLERK**  
via eFilings:

Docket Clerk  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711  
<https://www.tceq.texas.gov/goto/efilings>