

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0003-SC-11-F  
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.  
FOR RELEASE OF PHASE III RECLAMATION OBLIGATIONS ON 82.2 ACRES  
PERMIT NO. 11H, SAN MIGUEL LIGNITE MINE, ATASCOSA AND MCMULLEN  
COUNTIES, TEXAS**

**ORDER APPROVING  
RELEASE OF PHASE III RECLAMATION OBLIGATIONS  
ON 82.2 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 Release of Phase III Reclamation Obligations for 82.2 acres within Permit No. 11H, San Miguel Lignite Mine, located 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 at SMECI's San Miguel Lignite Mine, within its 16,000-acre permit area. 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 information provided by SMECI and the inspection of the area, Staff recommends release of Phase III reclamation obligations for the requested 82.2 acres. The parties have filed waivers of preparation and circulation of a proposed order.

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 82.2 total acres when a future adjustment to the bond is requested.

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

### FINDINGS OF FACT

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

1. By letter dated September 27, 2019, San Miguel Electric Cooperative, Inc. (SMECI) filed an application with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff) requesting Phase III Release of Reclamation Obligations on 82.4 acres within Permit No. 11H, San Miguel Lignite Mine, located in Atascosa and McMullen Counties, Texas. The application was hand-delivered to and filed with the Hearings Division for review of the proposed public notice on September 30, 2019. By letter dated November 13, 2019, the application was supplemented to reduce the requested acreage from 82.4 acres to 82.2 acres. The SMRD Director declared the application administratively complete on January 3, 2020. Staff's initial Technical Analysis (TA) and field inspection report were filed with Hearings on February 12, 2020. SMECI submitted additional ground water and surface water assessment on August 27, 2021, and October 26, 2021. Staff filed its TA Addendum 1 (TAAD 1) on November 1, 2021, and recommends Phase III release from reclamation obligations for the proposed 82.2 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. 2021) (Act), and the "Coal Mining Regulations," Tex. Railroad 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 filing fee is required for this Application.
3. By Order dated April 13, 2021, the Commission approved the application by SMECI for renewal/revision of Permit No. 11H 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.
4. Copies of the Application were filed for public review, in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas, and in the offices of the County Clerk in Jourdanton, Texas, and Tilden, Texas. The administrative law judge (ALJ) reviewed the public notice, which was approved by letter dated October 10, 2019. The public notice was published in *The Pleasanton Express* once per week for four consecutive weeks (October 23, 30, and November 6 and 13, 2019). Proof of publication (Publisher's Affidavit and tear sheets of public notice) was received on December 30, 2019. By letter dated

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

November 17, 2021, the ALJ informed the parties that the record showed that public notice had only been effected in Atascosa County, and not in McMullen County. In response, by letter dated November 23, 2021, SMECI filed a revised publisher's affidavit from *The Pleasanton Express*, a newspaper of general circulation and regularly published in McMullen County dated November 22, 201, to show that public notice had occurred in McMullen 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.

5. SMECI sent notice by letters dated November 11, 2019, 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 County Judges/Commissioners' Court of Atascosa and McMullen Counties, the Texas General Land Office, the Natural Resources Conservation Service offices (Pleasanton, Texas and Tilden, Texas), the U.S. Environmental Protection Agency, the Texas Commission on Environmental Quality, the Nueces River Authority, Atascosa County Soil and Water Conservation District, McMullen County Soil and Water Conservation District, Evergreen Underground Water Conservation District, McMullen County Water, Atascosa Rural Water Supply, and the U.S. Army Corp 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 Staff by letter dated November 13, 2019.
6. Staff notified McMullen County Judge James E. Teal and Atascosa County Judge Robert L. Hurley of the application by certified letter dated October 11, 2019. Copies of these letters were provided in Attachment II of Staff's TA. 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 1, 2019, of the date and time of Staff's field inspection scheduled for October 16, 2019. 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

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

inspection. Staff provided copies of the letters sent pursuant to §12.312(b) in Appendix II of Attachment III (Inspection Report) of the TA.

7. The 82.2-acre area requested for Phase III release received Phase I release of reclamation obligations on November 4, 1997, in Docket No. C7-0046-SC-11-F, or on October 7, 2003, in Docket No. C3-0019-SC-11-F. The proposed release area received Phase II release of reclamation obligations on March 3, 1999, in Docket No. C9-0006-SC-11-F, or on October 7, 2003, in Docket No. C3-0019-SC-11-F. Any ash that was placed in requested release areas was performed in accordance with the disposal plans that were approved in Permit Nos. 11D and 11E.
8. No adverse comments or written objections were received regarding the request for release pursuant to the notification. An informal conference was held on December 15, 2021, to provide clarification to waste disposal plans for the permit were resolved. No other requests for hearing or informal conference were filed pursuant to §12.313(d).
9. The inspection occurred on October 16, 2019. Three Commission inspectors and two representatives of SMECI attended the pre-inspection meeting and participated in the inspection of the property. No landowners were present for the pre-inspection meeting or accompanied the inspectors during the inspection of the property. A sign-in sheet of the meeting participants is included in Staff's TA, Appendix III.
10. The 16,000-acre permit area is located 16 miles south of Jourdanton, Texas, and 6 miles south of Christine, Texas, on FM 3387. A general location map of the permit area, with those areas proposed for release distinguished, is provided in the published public notice and in Staff's TA, Appendix I to Attachment III.
11. The application, as supplemented, includes ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are three affected tracts within, and two additional tracts listed as adjoining the area requested for Phase III release of reclamation obligations. A list of the tract owners within and adjoining the requested release acreage is contained in application Section 2.0, *Landowners Information*.
12. The subject acreage requested for release was mined or otherwise disturbed between 1992 to 2000, and final grading was completed between 1993 and 2001. Staff conducted routine monthly inspections of the proposed release area from 1992 to present.
13. Based upon the Application and Staff's review, Phase III release of reclamation obligations have been met for the 82.2 acres requested for Phase III release in accordance with Phase III requirements for the completion of the ERP, soil resampling, and vegetation standards as provided in §12.313(a)(3). The SMRD has approved as permanent all structures within the area requested for Phase III release. Surface water and groundwater within and

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

adjacent to the requested release area have been protected in accordance with §§12.313(a)(3), 12.348, and 12.349. The postmining land use in the area requested for Phase III release consists of 51.8 acres of pastureland and 30.4 acres of industrial/commercial.

- (a). There are six small-area depressions, E17-D1, E20-D1, E20-D2, E20-D4, E20-D5, and E21-D1, within the 82.2-acre area requested for Phase III release. SMRD approved these structures as permanent by letter dated September 13, 2019, which is contained in Attachment IV of Staff's TA. The structures are identified in the application on Exhibit No. 5 and described in Staff's Inspection Report dated November 15, 2019. Photographs taken during Staff's field inspection on October 16, 2019, support Phase III release of the acreage requested and are provided in Staff's November 15, 2019, Inspection Report. [§§12.154, 12.347, 12.400, 12.401].
- (b). Areas that have been previously disturbed have met Phase III requirements for successful completion of the ERP of five years for areas that received 26 or more inches of rainfall annually [§12.395(c)]. The pastureland areas requested for Phase III release are included in two LMUs within two extended responsibility areas (ERAs).

<u>LMU</u>	<u>ERA</u>
E-17	July 9, 1998
E-20	February 3, 2003

Successful revegetation of all acres requested for Phase III has been accomplished in accordance with §12.395 of the Regulations. Pastureland revegetation-success standards must be met in the final year of the ERP to qualify for Phase III release. Industrial/commercial land-use areas must demonstrate sufficient erosion control. For the 51.8 acres of pastureland, ground-cover and productivity data for LMU E-17 were approved by letters dated July 28, 2003, and June 28, 2004, and ground-cover and productivity data for LMU E-20 were approved by letters dated May 6, 2005, and July 19, 2006. Ground-cover and productivity data for the 30.4-acre I/C area were approved by letters dated May 6, 2005, and July 19, 2006. Although I/C land use is not required to be in an ERA, the 30.4 acres proposed for Phase III are contained within LMU E-21, which is an ERA initiated on February 3, 2003. Copies of the SMRD ground-cover approval letters are included in Section 5 of the initial application. Revegetation success has been sufficiently addressed by SMECI's application, as supplemented, and confirmed in Staff's TA.

- (c). As part of the approved soil-testing plan, SMECI is required to submit soil fertility data for the year immediately prior to the first year of productivity assessment and during the first and second year of productivity assessment for each pastureland management unit. Soil samples are also to be analyzed in the year immediately

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

prior to the second year of productivity assessment when the first and second years of productivity assessment are not consecutive. SMECI included copies of soil-fertility approval letters in Section 5 of the application reflecting the following actions:

- (i). SMECI submitted soil-fertility data for the July 9, 1998, ERA by letter dated February 21, 2003. By letter dated October 6, 2003, SMRD determined that the soil fertility data did not indicate that augmented fertilization occurred within this ERA during the growing season.
  - (ii). SMECI submitted soil-fertility data for the February 3, 2003, ERA by letter dated August 7, 2009. By letter dated September 1, 2010, SMRD determined that the soil fertility data did not indicate that augmented fertilization occurred within the ERA during the growing season.
14. All 82.2 acres proposed for Phase III release have met Phase III requirements for backfilling, regrading, and drainage control.
- (a). All areas requested for release are stable with no eroded areas. All highwalls, spoil piles, ponds, and depressions were eliminated. Backfilling and regrading were conducted in accordance with permit requirements. All areas have been filled, graded, or otherwise stabilized. Mining of the areas requested for release was conducted between 1992 to 2000, and final grading was completed in 2001. The areas meet requirements for regrading to approximate premine topography. The subject acreage does not contain any cut-and-fill terraces or underground drains. All requirements for covering acid- and toxic-forming (AFM/TFM) and combustible materials have been met.
  - (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 or industrial/commercial within the requested release areas. [§12.395(c)(2)].
  - (c). No portion of the areas requested for release of reclamation obligations had a soil classified as prime farmland prior to mining for which specific additional reclamation standards would apply. [§§12.624 - 12.625].
  - (d). Six small-area depressions are present within the requested Phase III release areas. These features were evaluated by SMRD inspectors on September 12, 2019, and Staff determined by letter dated September 13, 2019, that the small-area depressions met the requirements for approval as permanent structures [§12.385].
  - (e). Areas requested for Phase III release meet requirements for protection of the groundwater resources.

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

- (i). No long-term groundwater monitoring (LTGM) wells are located within the areas requested for Phase III release of reclamation obligations. LTGM well E-MW-2R was located within the requested release area but was removed from this request in Supplement No. 1 filed by letter dated November 13, 2019.
  - (ii). Groundwater monitoring for the areas requested for Phase III release has been performed in accordance with provisions of the approved mining permit. No substantive premine overburden water-bearing strata were present premining in the reclaimed portions of the E Area of the San Miguel Lignite Mine; therefore, none were destroyed by mining. Isolated pockets of connate water occur in E Area, but none were identified as significant. One underburden aquifer (Unit 22) in the San Miguel Lignite Mine area is separated from the overburden 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.
  - (iii). Based on water levels observed in the three-area spoil LTGM wells, there is at least 15 feet of resaturated spoil in E Area, with 43 feet or more 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 E Area, and consideration of the potential for ground-water discharge to the surface, and the additional monitoring data provided by letter dated October 26, 2021, in response to Staff's TA, Staff 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.
  - (iv). Staff notes no problems relating to the protection of the ground-water hydrologic balance that would preclude the Phase III release of the requested areas from reclamation performance obligations.
- (f). SMECI has met the Phase III reclamation performance obligations for protection of surface-water resources.
- (i). SMECI provided surface-water and groundwater assessments in the initial application for release of reclamation obligations in a report dated September 2019 in the initial application submittal, and an updated report dated October

San Miguel Electric Cooperative, Inc.  
 Permit No. 11H, San Miguel Lignite Mine  
 Docket No. C20-0003-SC-11-F

2021 filed by letter dated October 26, 2021.

- (ii). 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 and/or 15E. Pond outfalls at the San Miguel Lignite Mine are currently monitored under TPDES Permit No. WQ0002043000, although Pond 12E is a non-discharge pond. The watersheds of these ponds are delineated on Exhibit 4, *82.2-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.
- (iii). Long-term surface-water monitoring (LTSM) stations are located upstream and downstream of the mine on La Jarita Creek. LTSM stations for which monitoring data were evaluated for this Application are as follows:

<b>LTSM Stations</b>	
<b>Upstream/Undisturbed Station</b>	<b>Location LTSM Station/River Watershed</b>
1E	La Jarita Creek / San Miguel Creek
<b>Downstream/Disturbed Station</b>	<b>Location LTSM Station/River Watershed</b>
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.

- (iv). Comparisons of LTSM-station surface-water data:
  - (A). Data for upstream LTSM station 1E show an average TDS concentration



San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

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 ( $\text{SO}_4^{-2}$ ), and chloride ( $\text{Cl}^-$ ), 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.
- (v.) 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).

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

- (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 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  $\text{SO}_4^{-2}$  concentration (73.7 mg/L) is less than the baseline average  $\text{SO}_4^{-2}$  concentration (186.0 mg/L), and that the downstream LTSM  $\text{SO}_4^{-2}$  concentration range (7.0 mg/L to 313.0 mg/L) is similar to the baseline  $\text{SO}_4^{-2}$  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  $\text{Cl}^-$  concentration (26.2 mg/L) is slightly higher than the baseline average  $\text{Cl}^-$  concentration (23.7 mg/L), and that the downstream LTSM  $\text{Cl}^-$  concentration range (10.0 mg/L to 60.0 mg/L) is also slightly greater than the baseline  $\text{Cl}^-$  concentration range (5.0 mg/L to 55.0 mg/L).
- (vi.) Comparison to criteria established for applicable TCEQ stream segment (Stream Segment No. 2108, San Miguel Creek in the Nueces River Basin):

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

- (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 ( $\text{SO}_4^{-2}$ ) at the downstream station to the stream segment criterion (500 mg/L) indicates that the average  $\text{SO}_4^{-2}$  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  $\text{SO}_4^{-2}$  (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.
- (vii.) 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  $\text{SO}_4^{-2}$  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

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

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 0.7 million gallons per day (mgd) and 0.6 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.

(viii.) 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 is less than 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

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

than the stream segment TDS criterion (2,000 mg/L).

(ix.) 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 82.2 acres.

15. No monitoring wells are located within the requested release area.
16. The areas requested for release of reclamation obligations are capable of sustaining the postmining land uses. Monthly inspections and Staff's inspection on October 16, 2019, demonstrate that the land has been reclaimed to and managed in accordance with the approved postmining land uses.
17. Pursuant to §12.313(a)(3), the Commission may release the remaining bond monies attributable to the subject 82.2 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.

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

For areas recommended 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. 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.

24. 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.
25. 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. No exceptions to the proposed order were filed.
26. 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 82.2 acres as set out in this order.
4. SMECI has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in this Order.
5. The Commission may approve a Phase III release of reclamation obligations on 82.2 acres, as set out in the above Findings of Fact and Conclusions of Law.

San Miguel Electric Cooperative, Inc.  
Permit No. 11H, San Miguel Lignite Mine  
Docket No. C20-0003-SC-11-F

6. SMECI is eligible to reduce the amount of bond for Permit No. 11H by an amount that is attributable to the 82.2 acres in future bond adjustments.

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

**IT IS FURTHER ORDERED** a release of Phase III reclamation obligations on 82.2 acres is hereby approved 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 82.2 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 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 acreage is 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. C20-0003-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 February 8, 2022.

**RAILROAD COMMISSION OF TEXAS**

DocuSigned by:  
*Wayne Christian*  
C1C746B4E446422

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**CHAIRMAN WAYNE CHRISTIAN**

DocuSigned by:  
*Christi Craddick*  
15404B7DF4GG424

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**COMMISSIONER CHRISTI CRADDICK**

DocuSigned by:  
*Jim Wright*  
CAA604782E9E4AE

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**COMMISSIONER JIM WRIGHT**

**ATTEST:**  
DocuSigned by:  
*Callie Farrar*  
3551C80DFDE0476

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**SECRETARY**

