

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0012-SC-47-B:
APPLICATION BY JEWETT MINING LLC FOR TRANSFER OF PERMIT NO. 47A
FROM TEXAS WESTMORELAND COAL COMPANY, JEWETT E/F AREA MINE,
LEON AND FREESTONE COUNTIES, TEXAS**

**ORDER APPROVING TRANSFER OF PERMIT NO. 47A AND ISSUANCE OF
PERMIT NO. 47B TO JEWETT MINE LLC**

Westmoreland Jewett Mining LLC P.O. Box 915, Jewett Texas 75846 (WJMLLC), submitted an application to the Railroad Commission of Texas (Commission) Surface Mining and Reclamation Division by letter dated April 15, 2019 to transfer Permit No. 47A from Texas Westmoreland Coal Co. (TWCC), P.O. Box 915, Jewett Texas 75846 to WJMLLC. After publication of notice of application, WJMLLC was purchased by NRG Texas LLC effective August 5, 2020. WJMLLC was renamed Jewett Mine LLC (JMLLC) effective August 13, 2020. JMLLC, P.O. Box 915, Jewett, Texas 75846 is the applicant in this docket. Notice was republished providing the updated ownership information. No persons requested a hearing in this docket.

In its application, JMLLC did not seek to change any of the terms or conditions of the original permit or to conduct operations out of the approved permit area boundaries. If the successor does not propose this change, the applicant must file an application for revision pursuant to §12.226(a)(4) of the Regulations. JMLLC provided a revision application addressing §§12.116-.117, .118(c), .120, and .121, the submittal of a bond that is at least equivalent to the bond or guarantee of the original permittee, and an undertaking to conduct operations in full compliance with the original permit unless it obtains a new permit if required.

FINDINGS OF FACT

1. Westmoreland Jewett Mining LLC, P.O. Box 915, Jewett Texas 75846 (WJMLLC), submitted its application to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff) to transfer Permit No. 47A for the Jewett E/F Area Mine from Texas Westmoreland Coal Co. (TWCC), P.O. Box 915, Jewett Texas 75846. The permit area contains approximately 9,341 acres primarily in eastern Freestone County, Texas, north of State Highway 164, east of Farm to Market Road 80, and west of Interstate Highway 45 near Buffalo,

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Texas, with a very small portion located in Leon County. WJM LLC was the successor in interest to all assets and contracts of TWCC pursuant to Chapter 11 Bankruptcy Case 18-35672 in the Southern District of Texas, effective March 15, 2019. Westmoreland Jewett Mining LLC, P.O. Box 915, Jewett, Texas 75846. It is not organizationally related to TWCC. WJM LLC submitted the application to the Commission by letter dated April 15, 2019 to transfer Permit No. 47A from permittee TWCC, P.O. Box 915, Jewett, Texas 75846 to WJM LLC. WJM LLC was then purchased by NRG Texas LLC on August 5, 2020, effective August 6, 2020. On August 11, 2020, WJM LLC was renamed Jewett Mine LLC (JM LLC). JM LLC, P.O. Box 915, Jewett, Texas 75846, is the applicant in this docket (Supp. 11). The applicant did not provide formal notice of succession to the Commission for approval; however, WJM LLC submitted the transfer application no later than 30 days after TWCC transferred the right, title, and interest in Permit Jewett Area E/F Mine to WJM LLC. WJM LLC was subsequently purchased by NRG Texas LLC, renamed Jewett Mining LLC, and later renamed Jewett Mine LLC. (JM LLC). JM LLC proposes no mining at the Jewett Area E/F Mine. The permit has been in reclamation-only status since October 19, 2016, the date of TWCC's submittal of its notification of permanent cessation of operations. Completion of reclamation is expected to be accomplished by 2028. This transfer application seeks to authorize continued reclamation operations at the Jewett E/F Area Mine located in Leon and Freestone Counties, Texas, but does not seek to change the conditions of mining or reclamation operations, or any of the terms or conditions of the existing permit. Permit No. 47A was most recently renewed on March 9, 2010 (Docket No. C5-0032-SC-47-C). All reclamation operations shall be conducted as approved for Permit No. 47A. An application fee of \$5,000 was paid as required by SMRD pursuant to Regulation §12.108(a). SMRD attests that the appropriate fee was received by SMRD. Documentation of this payment is contained in the SMRD files.

2. The application for transfer of Surface Mining Permit No. 47A is made pursuant to the Texas Surface Coal Mining and Reclamation Act, (Act) TEX. NAT. RES. CODE. ANN. Ch. 134, §134.083 (Vernon Supp. 2020) and the Texas Coal Mining Regulations, TEX. ADMIN. CODE §12.231-233 (Thomson West 2020). The Act §134.083 and §12.231 of the Regulations provide that a person may not transfer, assign, or sell the rights granted under a permit issued under Chapter 12 of the Regulations without the written approval of the Commission. The permit area is contained within an area north of State Highway 164, east of FM 80 and west of Interstate Highway 45 in Leon and Freestone Counties. The permit area, comprised of 9,341 acres, was depicted in the notice of application. JM LLC has provided an Amended Certificate of Registration (Appendix 116-4, Supp. 9)

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indicating that it is authorized to do business in Texas. JM LLC is a Delaware limited liability company (Supp. 11).

3. The application for transfer initially consisted of one volume. Staff's letter dated April 25, 2019 indicated that the application was incomplete and made comments regarding deficiencies. JM LLC filed eleven (12) supplements to the application addressing deficiencies noted by Staff in its reviews. Supplement No. 1 was filed by letter dated June 13, 2019. (Supplement No. 1 and further supplements will be referred to by "Supp." or "Supps." and the Arabic numeral representing the sequence of receipt of the supplement.) Supps. 2, 3, 4, and 5 were submitted by letters dated June 28, 2019 (two supplements), September 23, and November 15, 2019, respectively, responding to verbal and email completeness requests from the Commission's Office of General Counsel (OGC). Staff filed its Technical Analysis document (TA) by letter dated March 25, 2020. JM LLC submitted Supp. 6 by letter dated May 8, 2020. Supps. 7, 8, and 9 were submitted by letters dated June 11 and 26, and July 10, 2020, in response to application deficiencies identified in Staff's TA Addendum (TAA), dated June 1, 2020, and by email dated July 6, 2020. Supp. 10 was submitted by letter dated September 23, 2020, in response to email of July 10, 2020 to incorporate changes that arose in its corporate structure and resulting adjustments in this permit transfer application. Staff's TAA2, dated November 30, 2020, covered its review of Supps. 7 through 10. Supp. 11 was submitted by letter dated December 17, 2020, in response to Staff's TAA2. Staff filed its TAA3 reviewing Supp. 11 by letter dated February 26, 2021. After a request by the Hearings Division, JM LLC filed Supp. 12 to provide updated insurance certificates. In TAA4, Staff reviewed the updated insurance information provided in Supp. 12 and recommended approval of the permit application with the adoption of six permit provisions (three existing provisions recommended for retention with minor changes and three new permit provisions).
4. The application was accompanied by the required Form SMRD-1C in the format required by the Commission in accordance with §12.107(a) of the Regulations. The information in the application is accurate and is presented clearly with required references and meets §12.107(b) and (f). The information in the application includes required technical data, references, methodology, analyses prepared under the direction of professionals qualified in the subjects analyzed and technical data; maps and plans meet requirements of Regulation §12.107(c)-(e). The information in the application and supplements was verified by and attested as true and correct to the best of their belief by authorized representatives of the applicant for permit in accordance with §12.107(g) of the Regulations. In addition to these

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requirements, §12.233(b) of the Regulations sets out the rules for which proof must be set out in an application for transfer when any successor in interest seeks to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit. When the change involves conducting operations outside the original permit area, a new application for permit must be filed. In its application, JMLLC did not seek to change any of the terms or conditions of the original permit or to conduct operations outside of the approved permit area boundaries. If the successor does not propose this change, the applicant must file a transfer application pursuant to §12.231 and 12.232. JMLLC provided a transfer application addressing §§12.116-.117, .118(c), .120, and .121, the submittal of a bond that is at least equivalent to the bond or guarantee of the original permittee, and an undertaking to conduct operations in full compliance with the original permit unless it obtains a new permit if required.

5. Copies of the application and supplements were filed by JMLLC in the Leon and Freestone County Clerks' offices for public review. Copies were also available for public review in the offices of the Commission in Austin, Texas. The Commission mailed letter notice to state and federal agencies and local authorities accompanied by a map of the permit area and the public notice.
6. Public notice was provided by JMLLC's publication of notice of application in accordance with §12.233(b) in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the permit number and specific geographic location of the permit, and the address to which written comments may be sent. A one-time notice of application was published on July 29, 2020 in *The Jewett Messenger*, a newspaper regularly published and generally circulated in Leon County (a county of which a very small portion of the permit area lies), and also circulated in Freestone County, Texas (where the majority of the permit lies) and other counties), and on July 30, 2020 in *The Groesbeck Journal*, a newspaper regularly published and generally circulated in Limestone County, a county in which former portions of the permit area were located, and in *The Fairfield Recorder*, regularly published and generally circulated in Freestone County, Texas, wherein the majority of the permit area lies. After the sale of the applicant and its renaming, a second notice incorporating this change was published on October 15, 2020 in the *Teague Chronicle*, a newspaper regularly published and generally circulated in Freestone County, Texas, and on October 21, 2020 in the *Jewett Messenger*, a newspaper regularly published and generally circulated in Freestone County, Texas (and other counties). The Commission also sent written notice to persons

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whose interests were or might be adversely affected, including, but not limited to, the head of any local, State or federal government agency, inviting written comments on the application within the time required by the Regulations JMLLC provided the publishers' affidavits and clippings to the Commission by letters dated September 28, 2020 and December 20, 2020 (publication of revised notice). In addition, JMLLC provided information indicating that cover letters with notices of application were mailed by JMLLC to owners of lands within and adjacent to the permit area. No public hearing was requested.

7. JMLLC has provided required information for the application for ownership and control required by §12.116 of the Regulations as revised in Supp. No. 11. As set out in detail in Exhibits 116-14-2, 116-14-3, 116-14-4, 116-14-6 and 116-14-7, the initial applicant, WJMLLC, after publication of notice of application, was purchased by NRG Texas LLC, a Delaware limited liability company, on August 5, 2020, effective August 6, 2020; on August 11, 2020 WJMLLC was renamed Jewett Mining LLC and subsequently renamed to Jewett Mine LLC (JMLLC). JMLLC's 100% owner, NRG Texas LLC, is a wholly owned subsidiary of NRG Energy Inc, a Delaware corporation. NRG Texas Power LLC, the mine property and asset owner, has a lignite supply agreement (service agreement for mine management) with JMLLC. JMLLC's resident agent is Mr. Mike Altavilla, Mine Manager of Jewett Mine, JMLLC, P.O. Box 915, Jewett, Texas 75846-0915. An organizational structure chart for JMLLC and related entities is included in Appendix I to this Order (taken from Figure 116-1, Supp. 11).
8. The application, as supplemented, meets the requirements of §12.116 of the Regulations with adoption of Permit Provision Nos. 4(a) and 4(b) as set out in subparagraph (c) of this Finding of Fact and as contained in Appendix II, *Permit Provisions*, to this Order.
 - (a). The application contains all required organizational and compliance information related to the proposed transferee, including ownership, names of officers and directors, persons or entities with controlling interests, JMLLC's resident agent, identification numbers, and compliance record of JMLLC and related entities that own 10% or more of JMLLC. JMLLC holds no other mining permits in Texas; however, its application for transfer of Permit No. 32G is pending before the Commission. The applicant/operator and its controlling persons or entities include JMLLC, its sister company NRG Texas Power LLC, which owns the mine property and assets, both wholly owned by NRG Texas LLC, a holding company, and the ultimate

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100% owner of all, NRG Energy Inc. Exhibit 116-14-4 (Supp. 11) is a comprehensive Certificate of Formation setting out the ownership history for TWCC to JMLLC.

- (b). The officers and directors of JMLLC and upstream companies are included in the application in Annex 116-1 (Supp. 11) and Annex 116-2 (Supp. 10). None own 10% or more of the applicant. A list of all notices of violation and related information has been submitted for the applicant/operator for the three-year period preceding the date of submission of the application with the status of the violation (Supp. 11) consisting of three violation notices issued by the Commission related to Permit No. 32G for the Jewett Mine pertaining to surface water control and/or pond discharges. All notices have been terminated. Neither the applicant/operator nor any subsidiary, affiliate, or persons controlled by or under common control with JMLLC has had a federal or State mining permit suspended or revoked in the five years preceding the date of submission of the application, nor forfeited a performance bond or similar security deposited in lieu of bond.
- (c). The owners of record for lands within Permit No. 47A are listed in Table 116-1 (Supp. 11), with tracts depicted on Exhibit 116-1 (Supp. 10). Staff recommends a new permit provision to require the filing of a new Exhibit 116-1 to delete an erroneous label of "E1" that should be "SH 164" for consistency with Table 116-1. The Commission adopts this as Permit Provision No. 4 in Appendix II for clarity and consistency. The owners of record of tracts contiguous to the permit boundary are identified on Exhibit 116-1 (Supp. 10), and the owners of surface and subsurface interests for these contiguous tracts are listed in Table 116-3 (Supp. 11). All tracts within and adjacent to the permit boundary are depicted on Exhibit 116-1 (Supp. 11), with the following exception: Tract 396 that represented a former portion SH 164 is no longer adjacent to the permit boundary, but it is still included in Table 116-3. Permit Provision No. 4 also includes, for accuracy in Table 116-3, a requirement of removal of the entry of Tract 396 in the table and a revised footer noting the provision response date and action. Easements and other interests are identified in Table 116-2 (Supp. 10). Oil and gas interests and tracts to which they apply are identified in Table 116-4 (Supp. 10). These interests are depicted on Exhibit 117B (Supp. 10). JMLLC is authorized to do business in Texas (Amended Certificate of Registration, Appendix 116-4 in Supp. 10). Official notice has been taken of the current franchise tax account status pages available on the Texas

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Comptroller of Public Accounts' website that evidence an active right to transact business in Texas. JMLLC and NRG Texas LLC are current in payment of required franchise taxes.

9. JMLLC has provided required information as set out in §12.117 of the Regulations for right-of-entry documentation. Supp. 8 as updated in Supp. 11 contains Table 116-1, *Land Within Permit 47A*, that sets out the land by tract number, landowners, type of ownership, document description as to right of entry and lease requirements for leased lands if applicable. Appendix 116A includes the documents on which right of entry is based by tract and lease description. References are included as to the type of right of entry claimed, tract or lease number, parties, recording information, document types for the right claimed, whether the right is the subject of pending litigation, and identification of lands. The document types are included as Exhibits .117A through .117S in Supp. 6 as revised in Supp. 8. Easements and other interests are identified for the owners of such interests in Table 116-2 (Supp. 8). Table 116-4 (Supp. 8) identifies oil and gas lessees (Legacy Reserves, CL & F Operating, LLC, Valence Operating Company, and XTO Energy Inc.) and applicable surface tracts. No claims to right of entry are the subject of pending litigation. Appendix 117B, Table 117B (Supp. 8), lists leasehold interests for mineral rights and related tracts. Exhibit 136-1 (Supp. 11) is intended to depict gas wells, pipelines, and powerlines within the permit area. Staff noted, as reflected on the exhibit, that only two powerlines were mapped and were not labeled, and no telephone lines were mapped. Staff recommends a new permit provision to require that within 30 days of permit approval, JMLCC must provide a replacement map for Exhibit 136-1, depicting current information, and that on the exhibit, JMLLC must also identify its sources queried for the information depicted and the date the query was made. With the adoption of new Permit Provision No. 5 contained in Appendix II, this section of the application will meet the requirements of the Regulations.
10. The permit area does not contain areas that have been declared unsuitable for mining. JMLLC will not operate within 300 feet of an occupied dwelling other than as allowed by §§12.118 and 12.72(b) for activities within 100 feet of the rights of way of public roads. The approved permit contains Table 152-1 and Exhibit 152-1 identifying these areas (Supplement A of the Permit No. 47 Renewal application, Docket No. C5-0032-SC-47-C). JMLLC meets the requirements of §12.118 of the Regulations (Supp. 1).

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11. JMLLC initially filed evidence that public liability insurance is provided in the amounts required by §12.311 of the Regulations of \$500,000 (each occurrence) for bodily injury and \$500,000 (each occurrence) for property damage, and \$1,500,000 (aggregate) for bodily injury and \$1,000,000 (aggregate) for property damage by ACE American Insurance Company, Policy Number HDO G71231033, an insurance company licensed in Texas in the amount of \$2,000,000 per occurrence and \$2,000,000 aggregate. An additional excess policy #XL5045009P was also been provided by Associated Electric & Gas Insurance Services Limited (AEGIS) in the amount of \$9,000,000 per occurrence and \$9,000,000 aggregate. JMLLC provided a certificate of insurance in its previous name Texas Westmoreland Coal Company LLC on the Commission's form signed by a person authorized to sign for the insurers. The policy period was from 4/1/2020 to 4/1/2021 (Supp. 10). Due to the expiration of the policy period during the pendency of the application, JMLLC provided a replacement updated certificate with a policy period of April 2, 2021 – April 1, 2022, for Ace American Insurance Company Policy Number HDO G72486547, and a policy period of April 1, 2021 - April 1, 2022 for the excess policy issued by Associated Electric & Gas Services Limited (AEGIS) Policy No. XL5045010P, each with the same policy limits as the previous policies, respectively. The minimum limits for each occurrence and for aggregate coverage have been met by these updated policies.

12. JMLLC provided a list of all other licenses and permits required to conduct its proposed activities (Table 121-1, Supp. 10). These include licenses, permits, or authorizations from the Commission for Permit No. 47A, the Texas Commission on Environmental Quality Texas Pollutant Discharge Elimination System (TPDES) permit WQ0002653000 expiring February 11, 2025, Registration of Public Water supply System, Solid Waste Registration No. 38502, Operation Permit (Air Quality, No. 9407), expired March 17, 2021, and Water Rights Permit No. WRPERM 12292 (Trinity River Basin), the Department of the Army U.S. Army Corps of Engineers Nationwide Permit 21 and Individual Permit, the U.S. Environmental Protection Agency (Administrative Order on Consent), the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) mine identification, and the U.S. Fish and Wildlife Service (USFWS) Federal Fish and Wildlife Permit No. TE037780-3 (endangered species recovery permit) that expired October 31, 2020. Because of the lack of copies of USACE permit authorizations, Staff recommended a permit provision requiring that Jewett Mine LLC (JMLLC) timely file with the Commission copies of its USACE's permit authorizations (including permits, pre-construction notifications, and administrative order of consent), along with any amendments or revisions to its existing permits or orders. This is a current permit provision that

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Staff recommends revising and retaining. Staff also recommends, because the application, as supplemented, indicates that the USFWS permit has expired, that within 30 days of the permit approval, JMLLC shall provide for review and approval documentation that it has submitted a renewal application to the USFWS, a copy of the renewed USFWS application, or correspondence from the USFWS releasing JMLLC from the need for additional permit renewals. The Commission approves these provisions as Permit Provision No. 1 (USACE permits) and No. 7 (USFWS documentation) to ensure that updated permit information is provided to the Commission (Appendix II to this Order, Permit Provisions). With adoption of these permit provisions, the requirements of §12.121 are met.

13. Any person seeking to succeed by transfer, assignment, or sale of rights granted by a permit issued by the Commission shall, prior to the date of such transfer, assignment or sale, obtain the performance bond coverage by the original permittee by obtaining transfer of the original bond [Regulation §12.232(1)(A)], by obtaining a written agreement with the original permittee and all successors in interest that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required [§12.232(1)(B)], providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations [§12.232(1)(C)], or such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee [§12.232(1)(D)]. JMLLC has submitted the required documentation of bonding in accordance with §12.232(1)(A). The permit area is currently bonded with two bonds, a surety bond in the amount of \$18,654,123 by Aspen American Insurance Company approved June 19, 2018 in Docket No. C16-0012-SC-47-E, and a surety bond in the amount of \$18,000,000 by Liberty Mutual Insurance Company approved June 12, 2012 in Docket No. C12-0025-SC-47-E, for a total of \$36,654,123 in total bonding for the permit accepted by the Commission by Order dated June 19, 2018. JMLLC has requested acceptance of riders for the currently accepted bonds for Permit No. 47A. JMLLC provided riders effective September 16, 2020 to its two surety bonds for Permit No. 47A (Supp. 10). The riders incorporate the approved bonds and mutual agreements contained between the Principal and the Surety and specifically state that nothing contained in the rider shall vary, alter, or extend any provision or condition of the bond except as expressly stated in the rider(s). The original bonds set out in subparagraphs (b) and (c) of this Finding of Fact each contain text stating that the Principal and Surety “bind ourselves, our heirs, executors, administrators, successors, and assigns

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jointly and severally, firmly by these presents” [Bond No. SU48303, page 2 of 3, signed by representatives of the permittee, the guarantor NRG Texas Power LLC, and the insurance company; and Bond No. 016049149, page 1 of 3). JM LLC has met the requirement of §12.232(c)(3). Bond coverage pursuant to the bond accepted by the Commission has been continuous and will continue uninterrupted upon acceptance of the riders by this Order.

- (a). Staff determined that the currently approved bonds are sufficient to cover the cost of reclamation for Permit No. 47A. The last approved cost estimate for reclamation costs was \$34,777,372; this is \$1,876,751 less than the approved total bond amount.
- (b). The rider to the surety bond for Liberty Mutual Insurance Company (Liberty Mutual) is signed by representatives of both the applicant, JM LLC, and Liberty Mutual. The rider provides that it is to be attached to and a part of Bond No. 016049149. This bond is a surety bond in the amount of \$18,000,000 accepted by Commission Order dated June 12, 2012, executed by TWCC and Liberty Mutual. The rider provides that the bond, executed by Liberty Mutual in favor of the Commission in consideration of the mutual agreements contained in the bond and rider that TWCC as principal and Liberty Mutual as Surety consent to changing the Principal/Permittee name as listed on the bond to Jewett Mine LLC. The rider is dated September 16, 2020 and effective the same date. The rider was accompanied by a power of attorney for the signing representative, Jeffrey M. Wilson as Attorney-in-Fact, with authorization that he could execute undertakings for Liberty Mutual including bonds. The power of attorney was certified as in full force and effect on September 16, 2020. The bond rider is also signed by James Tharp, Vice President, JM LLC as well as by Robert Patrick, Vice President of NRG Texas Power LLC, the guarantor. Authorization certificates for JM LLC and NRG Texas Power LLC were submitted dated September 16, 2020. A certificate from the State Board of Insurance was submitted providing proof that Liberty Mutual is licensed as a surety in Texas.
- (c). The rider to the surety bond for Aspen American Insurance Company states that it is part of Bond No. SU48308. This bond is a surety bond in the amount of \$18,654,123 accepted by Commission Order dated June 19, 2018 executed by TWCC and Aspen American Insurance Company (Aspen American). The bond rider is signed by representatives of both the

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applicant, JMLLC, and Aspen American. The rider provides that the bond, executed by Aspen American in favor of the Commission in consideration of the mutual agreements contained in the bond and rider that TWCC as principal and Liberty Mutual as Surety consent to changing the Principal/Permittee name as listed on the bond to Jewett Mine LLC. The rider is dated September 16, 2020 and effective the same date. The rider was accompanied by a power of attorney for the signing representative for Aspen American, Jeffrey M. Wilson as Attorney-in-Fact, with authorization that he could execute undertakings for Aspen American including bonds. The power of attorney was certified as in full force and effect on September 16, 2020. The bond rider is also signed by James Tharp, Vice President, JMLLC, as well as by Robert Patrick, Vice President of NRG Texas Power LLC, the guarantor. Authorization certificates for JMLLC and NRG Texas Power LLC were submitted dated September 16, 2020. A certificate from the State Board of Insurance was submitted providing proof that Aspen American is licensed as a surety in Texas.

12. JMLLC will be the operator of the permit area as allowed by the Act and Regulations and will continue to conduct all operations within the permit area in accordance with the terms and conditions of the permit as operator.
13. JMLLC has submitted information showing eligibility to receive a permit in accordance with the "Coal Mining Regulations." All compliance information has been provided. JMLLC has paid all reclamation fees. Staff conducted an Applicant Violator System review. The AVS database, operated by the Office of Surface Mining Reclamation and Enforcement (OSM) indicates whether violations have been issued and the process of abatement and termination. The report indicates that no pending violations remain uncorrected (TAA3, pp. 15 and 18 and AVS report, Appendix III to TAA3); neither JMLLC nor its owners or controllers have violations that have not been corrected in accordance with §12.215 of the Regulations. Neither JMLLC nor its owners or controllers have controlled mining operations with a demonstrated pattern of willful violations or intent not to comply with the Act and Regulations. There are no outstanding violations for any of these entities.
14. JMLLC will conduct the operations covered by the permit in accordance with the criteria specified in §§12.200-12.205, 12.216 and 12.217 of the Regulations [relating to Requirements for Permits for Special Categories of Mining (not applicable), to Criteria for Permit Approval or Denial, and to Criteria for Permit

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Approval or Denial: Existing Structures] as set out in the application, as supplemented, and as approved in current Permit No. 47A and the requirements of the Act and Regulations. With the adoption of the permit provisions, as indexed in Appendix II of TAA3, including Permit Provision Nos. 1 and 2 as set out herein, JMLLC will have demonstrated that surface coal mining and reclamation operations, as required by the Act and this Chapter, can be feasibly accomplished under the mining and reclamation plan contained in the approved application, as supplemented. The current permit includes four permit provisions. One permit provision related to documenting details regarding an NOV is no longer applicable with the change in permittee. Staff recommended two new permit provisions related to providing USACE and USFWS permitting information (Finding of Fact No. 12). Staff recommends that two approved permit provisions, the first related to postmine soil monitoring, and a second related to long-term stream monitoring stations, be retained but revised to change the name of the permittee. These two permit provisions are in Appendix II of this Order renumbered and revised as Permit Provision Nos. 2 and 3. These provisions are adopted for clarity and correctness.

15. The applicant has, in accordance with §12.232(a)(1) of this title (relating to Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval), submitted a performance bond or other guarantee as required by Subchapter J of Chapter 12 of the TEX. ADMIN. CODE (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations), and at least equivalent to the bond or other guarantee of the original permittee.
16. Pursuant to §12.232(c) of the Regulations, when the elements listed below in subparagraphs (a) - (d) are met, the Commission may grant written approval for the transfer of a permit. JMLLC has met the requirements set out below.
 - (a) JMLLC has shown it is eligible to receive a permit in accordance with the Regulations [§12.232(c)(1)]. The approved operations are exclusive to reclamation of the permit area. JMLLC is not required to submit an application to renew the permit unless it proposes to recommence mining operations within the permit area [§12.100]. Surety bond riders have been submitted in proper form and are signed by authorized persons.
 - (b). JMLLC will conduct the operations covered by the permit in accordance with the criteria specified in §§12.216 and 12.217 of the Regulations [relating to

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Criteria for Permit Approval or Denial, and to Criteria for Permit Approval or Denial: Existing Structures] as set out in the Application, as supplemented, and as approved in Permit No. 47A and the requirements of the Act and Regulations. Currently, no operations are approved under the permit for which the criteria specified in §§12.200-12.205 [relating to Requirements for Permits for Special Categories of Mining] are applicable [§12.232(c)(2)].

- (c). The applicant has, in accordance with §12.232(a)(1) of this title [relating to Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval], submitted a performance bond or other guarantee as required by Subchapter J of Chapter 12 of the Tex. Admin. Code [relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations], and at least equivalent to the bond or other guarantee of the original permittee.
 - (d). JMLLC does not propose changes to reclamation operations currently approved under Permit No. 47A and will continue to conduct the operations in full compliance with the terms and conditions of Permit No. 47A [§12.232(c)(4)]. Upon Commission approval of the Application, JMLLC may continue operations according to the approved reclamation plan for the permit [§12.233(a)]. JMLLC will be required to submit an application for a new permit or for a revised permit should it propose changes to the approved permit [§12.233(b)].
- 17. The proposed order in this docket was circulated to the parties for comment and/or exceptions and replies. No exceptions were filed.
 - 18. The currently accepted surety bond with rider is sufficient to ensure completion of reclamation for the permit.
 - 19. JMLLC has submitted information to address all requirements set out in the Regulations for approval of the application with adoption of the permit provisions contained in Appendix II. Issuance of a transferred permit may occur upon Commission approval and issuance of this Order.

CONCLUSIONS OF LAW

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

1. JM LLC and the Commission provided required notice of application in accordance with §12.232. The Commission provided required notice of hearing in accordance with §12.212. The Commission has provided open meeting notice required by the Administrative Procedure Act, TEX. GOV'T CODE 551.041.
2. JM LLC provided the required application, including the name and address of the existing permittee and the proposed transferee and the information required by §12.116, 12.117, 12.118(c), 12.120, and 12.121 of the Regulations.
3. The application by JM LLC for transfer of Permit No. 47A from TWCC for the Jewett E/F Area Mine complies with the Texas Surface Coal Mining and Reclamation Act, Chapter 134, TEX. NAT. RES. CODE (Vernon Supp. 2020) (Act), and §§12.232-233 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN CODE Ch. 12 (West 2020) (Regulations).
4. JM LLC will conduct the operations covered by Permit No. 47A renamed Permit No. 47B as have been addressed and approved in the existing Permit No. 47A, including compliance with §§12.200-12.205, 12.216, and 12.217 of the Regulations. JM LLC has submitted riders to its surety bonds for reclamation performance that are together "at least equivalent" [§12.232(c)(3)] to the current bond; neither the type of bond nor the amount of bond changed, and the bond amount is greater in amount than the most recently calculated reclamation costs. JM LLC as operator will continue the approved operations in accordance with this order. Prior to a change in operator, formal Commission approval must be obtained.

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the application for transfer of Permit No. 47A, Jewett E/F Area Mine in Leon and Freestone Counties, Texas, is approved in accordance with the above Findings of Fact and Conclusions of Law and the permit is hereby renumbered as Permit No. 47B;

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Jewett Mine LLC, Application for
Transfer of Permit No. 47A

IT IS FURTHER ORDERED that JMLLC shall continue as the operator of the Jewett E/F Area Mine until otherwise ordered by the Commission; and

IT IS FURTHER ORDERED that the currently accepted surety bonds as modified and extended by the riders to the surety bonds supply required performance bonding for Permit No. 47B; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED on April 27, 2021.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Christi Craddick
15494B7DF4CC424

CHAIRMAN CHRISTI CRADDICK

DocuSigned by:
Wayne Christian
61674694F448432

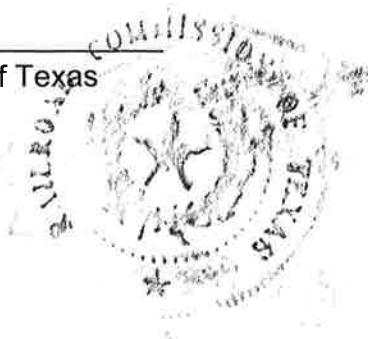
COMMISSIONER WAYNE CHRISTIAN

DocuSigned by:
Jim Wright
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COMMISSIONER JIM WRIGHT

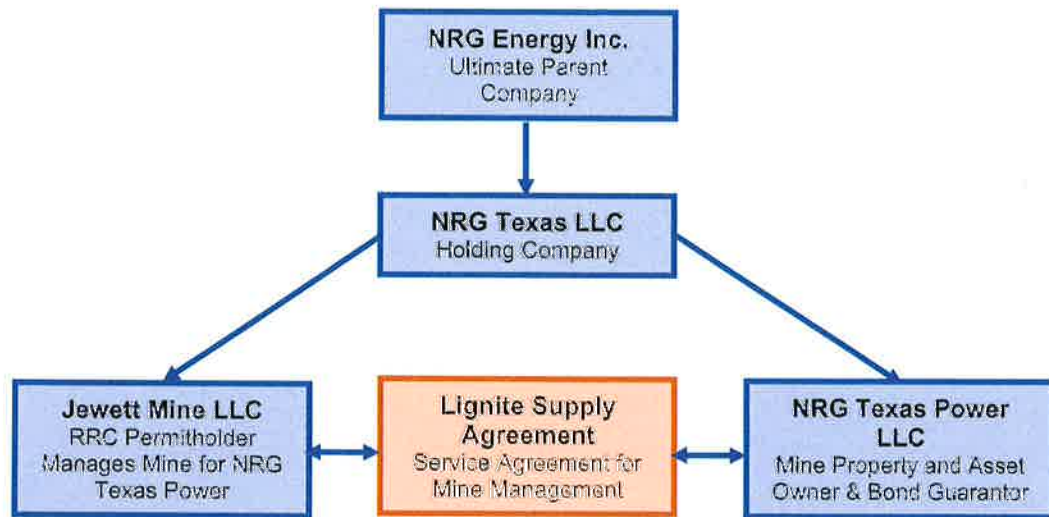
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ATTEST:
Callie Farrar
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Secretary, Railroad Commission of Texas



APPENDIX I

**Figure 116-1
Organizational Chart**



APPENDIX II PERMIT PROVISIONS

1. Jewett Mine LLC (JMLLC) shall timely file with the Commission copies of its USACE's permit authorizations (including permits, pre-construction notifications, and administrative order of consent), along with any amendments or revisions to its existing permits or orders.
2. In the event that the postmine soil-monitoring program identifies chemical or physical problems or soils-related problems in the field, the alternative soil-testing plan (STP) will be implemented. Samples will be collected from the affected area at an average of one sample per acre at one-foot depth increments. The samples will be analyzed for the parameters in question or probable cause for the in-situ identified issue in order to assess the extent of the problem. Once the problem has been identified, JMLLC will develop a remediation plan and submit it to the Commission for approval. Upon approval of a remediation plan, JMLLC will remediate the area to resolve the problem, resample and reanalyze the area in accordance with the approved soil testing plan as outlined in section .145(b)(5)(G) of the Permit No. 47A. Analysis results and a map identifying the affected area will then be submitted to the Commission to verify successful correction of the problem.
3. Following each 10-year/24-hour storm event or greater, JMLLC must provide revised channel cross-sections and rating curves for its long-term surface-water stream-monitoring stations. This information shall be submitted with the quarterly surface-water monitoring reports.
4. Within 30 days of permit approval, JMLLC must provide for review and approval the following replacement exhibit and page:
 - (a) Exhibit 116-1, on which the only changes are the removal of the label "E1" and a revised date reflecting provision response date and permit action.
 - (b) Table 116-3, page 116A-38, on which the only changes are the removal of the entire entry of Tract 396, and a revised footer reflecting the provision response date and permit action.
5. Within 30 days of permit approval, JMLLC must provide for review and approval a replacement map for Exhibit 136-1, *Powerline, Pipeline, and Gas Well Map*, depicting current information for the missing transmission powerline information and other utility structures and labels for the various structures. On the exhibit, JMLLC must also identify its sources queried for the information depicted.
6. Within 30 days of the permit approval, JMLLC shall provide for review and approval documentation that it has submitted a renewal application to the USFWS, a copy of the renewed USFWS application, or correspondence from the USFWS releasing JMLLC from the need for additional permit renewals.