

SOAH DOCKET NO. 957-18-4985

IN RE THE APPLICATION	§	BEFORE THE STATE
OF ELECTRO PURIFICATION LLC	§	OFFICE OF
FOR AN HISTORIC PERMIT	§	ADMINISTRATIVE HEARINGS
	§	
	§	

**APPLICANT’S 3<sup>RD</sup> MONTHLY ABATEMENT STATUS REPORT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW Electro Purification, LLC (“EP” or “Applicant”) and provides this 3<sup>rd</sup> Monthly Abatement Status Report, and would show the Administrative Law Judges as follows:

**I.**  
**Status Report**

During June, EP and Kinder Morgan, Texas Pipeline LLC and Permian Highway Pipeline LLC (“KM/PHP”) continued negotiation of terms and conditions for settlement of disputed issues between the Parties, the resolution of which would facilitate EP’s ability to move forward with its pending Groundwater Production Permit Application pending in this SOAH Docket. At the “lawyer level,” EP believes that the terms and conditions of a settlement have been developed.

EP is pleased to advise that “draft language” has been prepared and a proposed Confidential Settlement Agreement is being circulated for review and approval by the Parties.

Assuming the proposed settlement is acceptable to the management of all affected Parties, the Confidential Settlement Agreement can be executed and, thereafter, be implemented. Timing of when review and approval can be accomplished is uncertain. While EP with its small size and consolidated management is able to review and act on matters relatively quickly, KM/PHP has a much more complicated and vertically staggered, ground-up management structure, which

requires approval from multiple layers including by the Company's senior officers. Further complicating the settlement process is the fact that KM/PHP's management continues to be distracted with matters of higher priority to it than the details of the dispute with EP.

Given the multiple central Texas issues associated with the PHP Pipeline, including alleged flooding, erosion and pollution issues in Blanco and Hays County, both KM/PHP management and their legal counsel (the same legal counsel with whom EP deals) have been focused on addressing these other matters. The most recent distraction is a lawsuit filed last week by TESPA related to alleged violations of the Federal Clean Water Act associated with an excursion of drilling fluid KM/PHP contractors experienced, while drilling under the Blanco River for a crossing of the KM/PHP Pipeline. EP has no knowledge of the details of any of these events which are occupying the time of KM/PHP beyond what EP management reads in the newspapers, and receives in comments from KM/PHP counsel in connection with reports on the status of the settlement review, and KM/PHP managements' efforts to find time to work on finalization of the EP Settlement.

Once the settlement documents are finally signed, assuming no further edits or modification of the terms and conditions are required by KM/PHP, the Confidential Settlement Agreement will trigger steps for implementation of the settlement. Those steps must be carried out within certain timetables or the settlement falls through.

Upon completion of those implementation steps to confirm that the settlement is fully in place, KM/PHP and EP counsel will file a joint motion to dismiss claims in the separate lawsuits EP filed in Hays County Courts at Law Nos. 1 and 2. As soon as the Courts issue Orders of Dismissal, EP will be in a position to move forward confidently and prosecute its pending Permit Application in this Docket.

Between the other distractions central Texas poses to the KM/PHP management personnel essential to the approval and execution of the EP Settlement Agreement, and the forthcoming 4<sup>th</sup> of July holiday weekend, EP does not expect to receive a fully executed Settlement Agreement for at least another week to 10 days.

**II.**  
**Modification of Abatement Schedule**

Based upon the foregoing, EP is optimistic about the ability to move forward with its permit application, but uncertain about the timing. The current abatement is scheduled to end July 17, 2020. In advance of that date, EP had anticipated the ability to coordinate with the Parties to develop an updated procedural schedule for these proceedings and filing the same with the ALJs in advance of the July 17, 2020, abatement deadline.

Due to the circumstances set forth above, EP believes that a one-month extension of the current abatement period from July 17, 2020, to August 17, 2020, will allow KM/PHP to approve and implement the settlement with EP, dismiss the Hays County lawsuits, and facilitate coordination of a new procedural schedule in these proceedings for presentation to the ALJs. During that period EP will prepare a draft updated procedural schedule and circulate to the Parties for comment and approval. EP hopes this process will allow the Parties to move forward on or shortly after August 17, 2020.

**III.**  
**Conclusion**

WHEREFORE, PREMISES CONSIDERED, EP concludes the Applicant's 3<sup>rd</sup> Monthly Status Report. EP will continue to apprise the ALJs and Parties of the developments in the Pipeline matter consistent with the ALJs' Order No. 12. In the meantime, EP requests the ALJs extend the Abatement Period to August 17, 2020.

Respectfully submitted,

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**ATTORNEYS FOR APPLICANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing 3<sup>rd</sup> Monthly Abatement Status Report has been e-filed with SOAH using the [www.efile.txcourts.gov](http://www.efile.txcourts.gov) filing service and sent to all parties of record or their Counsel via e-mail and/or U.S. Mail on this the 1<sup>st</sup> day of July, 2020, addressed as follows:

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