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November 18, 2010

Attn: Docket ID No. EPA-R06-OAR-2005-TX-0031
Mr. Rick Barrett, Air Permits Section (6PD-R)
Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Approval and Promulgation of Air Quality Implementation Plans; Texas;
Revisions to Rules and Regulations for Control of Air Pollution; Permitting of
Grandfathered and Electing Electric Generating Facilities "EGF SIP"
75 Fed. Reg. 64,235 (October 19, 2010)
Docket ID No. EPA-R06-OAR-2005-TX-0031

Dear Mr. Barrett:

The Association of Electric Companies of Texas (AECT) is a trade association representing electric companies in Texas. Our members serve over half the customer in the state and generate the majority of the electricity generated in Texas.

On October 19, 2010, EPA proposed to partially approve and partially disapprove revisions to Texas' SIP submitted by the Texas Commission on Environmental Quality ("TCEQ") on January 3, 2000, and July 31, 2002. *See* 75 Fed. Reg. 64,235 (Oct. 19, 2010). Below is a summary of AECT's comments on EPA's proposed partial approval and partial disapproval.

- EPA's proposed disapproval is not supported in light of EPA's acknowledgement that collateral CO emissions authorized by the Pollution Control Project ("PCP") Standard Permit ("SP") do not threaten attainment or maintenance of any national ambient air quality standards ("NAAQS").
- EPA should follow its established position that Pollution Control Project permits are acceptable under the Clean Air Act.
- EPA's disapproval of 30 TAC § 116.911(a)(2) would affect only electric generating facilities ("EGFs") that have already installed emissions controls and achieved emission reductions under the PCP SP and, therefore, would have only a retroactive effect.



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AECT is specifically concerned with EPA's proposed disapproval of 30 TAC §116.911(a)(2), which required that each grandfathered EGF that had proposed use of a new control method to meet the SB 7 emissions reduction requirements also had to include in the application that was required by §116.911(a) information to demonstrate that the new control method complied with the requirements of Texas' PCP SP in order to be granted an electric generating facility permit ("EGFP").

In 1999, the Texas State Legislature passed Senate Bill 7 ("SB 7") which amended the Texas Utilities Code ("TUC") and required the TCEQ to establish a program that required grandfathered EGFs that were still in existence on January 1, 1999 to apply for a EGFP to authorize continued emissions of NO_x, SO₂, and PM from the EGFs. Applications for EGFPs were due by September 1, 2000.

To implement the requirements of Senate Bill 7, TCEQ established a permitting program for regulating grandfathered EGFs. 75 Fed. Reg. at 64,237. On January 3, 2000, and July 31, 2002, TCEQ submitted its revisions to the Texas SIP to EPA which related to the applications and permitting procedures for grandfathered EGFs.

On October 19, 2010, EPA proposed to partially approve and partially disapprove revisions to portions of Texas' SIP implementing SB7 and the grandfathered EGF permitting program. In the proposed rule, EPA identifies two facilities where collateral increases in CO emissions as a result of installing new low-NO_x burner control methods were alleged to be above the PSD significance levels. We strongly disagree with EPA's assessment of these two facilities and also disagree with EPA's proposal to disapprove of these already issued permits

The effect of EPA's disapproval of 30 TAC §116.911(a)(2) would be to unfairly and arbitrarily apply permitting requirements *retroactively* on sources that legitimately relied on the EGFP process and installed new pollution control equipment to reduce emissions. EPA agrees that there would be no benefit to air quality in Texas resulting from their disapproval of this section. See 75 Fed. Reg. at 64,238 ("EPA believes that all of the resultant collateral CO increases across the State of Texas (including those from the two plants) do not interfere with attainment or maintenance of the NAAQS for CO, *et al.*, nor cause or contribute to increase in PSD increments, much less a violation of any NAAQS.").

The SB 7 program is an important part of a successful permitting scheme to require emission reductions of SO₂ and NO_x, and achieve air quality improvements in Texas. Moreover, any collateral increases in other pollutants resulting from the installation of pollution control equipment (such as increases in CO after the installation of low NO_x burners) are demonstrably not interfering



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with attainment of air quality standards, as EPA has concurred. (See 75 Fed. Reg. 64238)

EPA's proposal should be revised to approve all of the revisions to the Texas SIP submitted to EPA on January 3, 2000, and July 31, 2002. A decision by EPA to disapprove 30 TAC §116.911(a)(2) would be unsupported by the record, arbitrary and capricious, and contrary to law. At a minimum, EPA should clarify that its action applies prospectively only and does not affect the validity of any existing permit already issued under the SB7 program

As a practical matter, however, the Proposed Disapproval has a chilling effect on much-needed economic investment and makes it even more difficult for companies to create jobs and provide for economic growth. The SB 7 program has achieved substantial emission reductions while providing a fair and predictable regulatory framework that is protective of human health and the environment.

EPA's concerns about Texas' SB 7 permitting program are misplaced given the substantial improvements in air quality that have been achieved by Texas' SB 7 permitting program. Further, if the Agency believes that any SB 7 permits may need to be revised, then there must be a fair and predictable prospective process for making those revisions without causing undue harm to companies that relied, in good faith, on the only program in place to permit grandfathered EGFs – the SB 7 program that has been successfully implemented by TCEQ.

Please notify me directly of your decision on this request and do not hesitate to contact me if you have any questions.

Very truly yours,

John W. Fainter
President and CEO
Association of Electric Companies of Texas

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