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Via Electronic Submission & First-Class Mail

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
Comments of the Gulf Coast Lignite Coalition

Dear Sir or Madam:

On behalf of the Gulf Coast Lignite Coalition (“GCLC”), we thank you for the opportunity to submit comments on the EGF SIP partial approval and disapproval. The GCLC is a coalition of entities that own or operate lignite and coal-fired power plants in Texas, Louisiana, and Mississippi. In Texas alone, these industries represent over 10 billion dollars in annual expenditures and over 33,000 permanent jobs.

GCLC is providing comment on the partial approval and partial disapproval of the SIP revision to Title 30 of the Texas Administrative Code (“30 TAC”), Chapter 116, regarding Senate Bill 7 (“SB 7”) EGFs. The partial disapproval has the potential to impact several of GCLC’s members in a significant manner.

EPA published the proposed EGF SIP approval and disapproval on October 19th, 2010, with an expected final action on the SB7 SIP by December 31, 2010.¹ EPA proposes approval of the majority of the SIP revision pertaining to SB7 EGFs, noting that “overall, these provisions serve to improve the existing SIP.”² EPA proposes to disapprove only “the severable reference in 30 TAC Section (§)116.911(a)(2) pertaining to Texas’ use of Pollution Control Property (“PCP”) Standard Permits (“SPs”).

¹ The expedited timeline to finalize the SIP partial approval and disapproval comes from the January 21, 2010 Consent Decree from the case, *BCCA Appeal Group v. EPA*, Case No. 3:08-cv-01491-N (N.D. Tex).

² 75 Fed. Reg. 64235, at 64237.

EPA's Partial SIP Disapproval Ten Years Later Greatly Disadvantages EGFs Seeking to Reduce Emissions Through Beneficial Pollution Control Projects.

1. Texas Submitted the SB 7 EGF SIP Revision on January 3, 2000.

Texas submitted the EGF SIP revision on January 3, 2000, and another SIP revision on the SB7 EGFs on July 31, 2002. The 2000 SIP revision included §116.911(a)(2), referencing the use of PCP SP to authorize pollution control projects at the grandfathered facilities, as well as authorizing any collateral increases in carbon monoxide ("CO"). EPA responded to Texas' SIP revision in October of 2010, over ten and a half years after the SIP was first revised and submitted to the EPA. In the meantime, SB7 EGFs limited their emissions for nitrogen oxide ("NO_x") and sulfur dioxide ("SO₂") as set out by SB7 and promulgated rules in Chapter 116, Subchapter I. In order to meet these new limits, facilities added beneficial pollution control projects.

2. Texas SB7 EGFs Identified by the EPA have "Grandfathered" PCP Authorizations.

The PCP SP authorization is for a ten-year period, unless "rolled in" to the New Source Review ("NSR") permit at the next amendment or renewal phase. For this reason, it is possible that grandfathered facilities exist under the SB7 program with PCP SPs authorized and in place prior to any federal action on the PCP program.

The EPA identifies two plants in Texas where collateral CO increases occurred at PCP SP facilities and the authorization was through a SP instead of a Major NSR SIP permit. EPA recognizes that these two plants have PCP SP authorizations in place *before* the 2005 decision in *New York v. EPA*, the case that EPA now cites as the reason for its proposed disapproval here.³ In response to EPA's request that the decision **not** be applied retroactively, the Court of Appeals in *New York v. EPA* determined that such retroactive application was not before the Court and declined to rule on this issue. In its Technical Support Document for this proposed disapproval, however, EPA unjustifiably declares that the disapproval would have retroactive effect. GCLC believes that declaration is unnecessary and incorrect, and respectfully requests that EPA expressly state that any disapproval, if finalized, would apply only prospectively and not retroactively to existing PCP SP authorizations.

3. PCP Pollutant Increases Do Not Interfere with Attainment of the NAAQS.

The CO increases at the crux of EPA's concern do not, as EPA acknowledges, interfere with the attainment or maintenance of the National Ambient Air Quality Standards ("NAAQS") and the entire state of Texas is in attainment for CO.⁴ It would be one thing if the PCP authorizations

³ *New York v. EPA*, No. 02-1387 (June 24, 2005). The D.C. Circuit Court of Appeals vacated portions of the 2002 NSR Reform rule that provided an exemption from NSR for pollution control projects. *See also* 75 Fed. Reg. 64238.

⁴ *See* 75 Fed. Reg. 64238.

resulted in the increase of a pollutant that interfered with the NAAQS, but this is clearly not the case. Instead, what EPA proposes is to invalidate the authorizations that *decrease* the type of pollutant (e.g., NO_x), the increase of which, would interfere with the NAAQS. EPA's reasoning does **not** support disapproval of this portion of the Texas SIP, especially not ten years after-the-fact.

4. EPA States that the Disapproved 30 TAC §116.911(a)(2) Meets Federal Requirements.

In Technical Support Document, Attachment A, EPA conducts an analysis of all of the EGF SIP revisions proposed in 2000 in a table which includes the state requirement, the federal requirement, and whether the federal requirement is met.⁵ On page 9 of Technical Support Document, Attachment A, EPA examines the section referencing PCP SP authorizations for SB7 EGFs.⁶ The EPA states that this section “**Meets Federal requirement.**” GCLC agrees and believes that EPA should approve, not disapprove, that portion of the Texas SIP submittal.

Conclusion:

EPA should apply common sense and the law and approve, not disapprove, Section 116.911(a)(2). As EPA has acknowledged, the emissions authorized under the requirements of the Texas Standard Permit for Pollution Control Projects do **not** threaten attainment or maintenance of the NAAQS. Further, the window for applying for a permit that would make use of §116.911(a)(2) has long since closed, so EPA's proposed disapproval will not serve to avoid any future harms, since there can be none.

Additionally, the *New York v. EPA* decision does **not** compel EPA to reject this Texas SIP submittal, since that case dealt with an exemption from NSR, while the Texas SIP submittal provides for a permitting process that results in an emissions limit and includes public participation. Thus, the Texas SIP situation is clearly distinguishable from the *New York v. EPA* situation.

Finally, GCLC contends that if EPA finalizes its unjustified disapproval, any such disapproval of §116.911(a)(2) should apply only prospectively, particularly given the SIP review delay and the fact that the SIP revision EPA is proposing to disapprove, is a beneficial element that reduces pollutants. Providing such common-sense accommodation to facilities relying on a SIP revision is not novel and is supported by case law.⁷

Thank you for your consideration of GCLC's comments on the EGF SIP partial approval and disapproval. If you have any questions, please do not hesitate to contact me.

⁵ See Attachment A, Technical Support Document for EPA SIP Actions on Revisions to the [EGF SIP], Docket No. R06-OAR-2005-TX-0031 available at www.regulations.gov.

⁶ 30 TAC §116.911(a)(2)

⁷ *United States v. General Motors*, 876 F. 2d 1060, (1st Cir. 1989). “...the court may consider the reasonableness of the [EPA's] delay and the prejudice, if any, suffered by the company as a result.”

Respectfully,

A handwritten signature in dark ink, appearing to read "M. Nasi", written in a cursive style.

Michael J. Nasi
Counsel for the Gulf Coast Lignite Coalition

cc: American Electric Power
Luminant
Optim Energy LP
San Miguel Electric Cooperative, Inc.
The North American Coal Corporation