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January 25, 2010

Ms. Kathy Pendleton, PE
Texas Commission on Environmental Quality, MC 164
P.O. Box 13087
Austin, TX 78711-3087

RE: Comments to Rule Project Number 2009-009-101-EN

Dear Ms. Pendleton,

Calpine is a major North American power company with a generation capacity of 25,000 megawatts of clean, reliable and fuel-efficient electricity for customers and communities in fifteen states.

Calpine's Texas operations include twelve gas-fired power generation facilities with a total capacity of approximately 7,200 MW, representing almost ten percent of the state's installed capacity. Eight of Calpine's power generation facilities in Texas are located within the Houston-Galveston-Brazoria non-attainment area. These facilities include approximately 4,200 MW of cogeneration, which, in addition to electricity, produce process steam for industrial customers.

Calpine urges the Commission to incorporate the full range of flexibility afforded by EPA's recent guidance regarding 185 fee programs which it issued on January 5, 2010.

EPA's guidance provides for alternatives that demonstrate equivalency in emissions reduction and fee programs. Specifically, it allows consideration of a broader spectrum of options that are equivalent in emissions reductions or revenue collection which can be used to fund reductions that will further improve air quality. Due to the timing, EPA's guidance was not available during TCEQ's stakeholder process where participants could fully consider how to tailor a SIP approvable rule that reflects the unique characteristics of Texas' non-attainment areas.

If the Commission is concerned that this analysis may be lengthy, or that incorporation of this flexibility might create concerns as to notice under the Administrative Procedures Act, the Commission may wish to consider withdrawal of the proposed rule and republication of a revised version. It should be noted that the January 5th guidance document indicates that EPA does not intend to penalize states (i.e. collecting the fee directly) for a delay in rulemaking that is necessary to bring proposed rules into alignment with the recently issued guidance.

Although Calpine would prefer the Commission reconsider this rulemaking to incorporate some of the flexibility provided under the new EPA guidance, we appreciate the opportunity to provide comments during the TCEQ rulemaking process of implementing §185 of the Federal Clean Air Act. Calpine offers the following comments on the rule as proposed:



§101.102. New Source Exemption.

Calpine concurs with the exemption of new major sources from the fee requirements of this rulemaking. We believe this section should be expanded to define and exempt “Clean Units” as those with permitted emissions limits less than or equal to TCEQ’s defined BACT at the start of the baseline period as defined in proposed §101.103 through §101.107. To accommodate this expansion we recommend this section be re-titled to “Clean Unit Exemption”.

The exemption of BACT sources will ensure that owners of well controlled facilities that have been proactive and made substantial investments are not disadvantaged when compared to those sources which choose to postpone emissions reduction projects until after the attainment year. The change is consistent with the intent of Section 185 which is to incentivize emission reductions at locations which lack modern controls and where the most effective reductions can be made.

§101.103. Baseline Amount Calculation.

Calpine supports allowing sources to calculate an emissions baseline over multiple years. We believe this is consistent with the approach provided in the March 21, 2008 EPA guidance memorandum from William T. Harnett, Director, EPA Air Quality Policy Div. to EPA Regional Air Directors. This approach also recognizes early and substantial reductions that sources have made and ensures companies that have made these reductions do not bear a disproportionate burden under this fee program.

However, the language in this section limits the baseline to attainment year emissions, even in cases in which emissions during the attainment year were atypical due to limited utilization or production, or were otherwise not representative of historical operations. This approach removes the flexibility afforded by EPA’s guidance for businesses with cyclic emissions. We believe that the purpose of the baseline is to establish emissions reflective of the baseline year (not to exceed any authorized limit) or optionally a 24 month average in a historical period for facilities with emissions that vary significantly from year to year. We offer the following specific changes to implement a more-flexible baseline:

(a) For purposes of this subchapter, the baseline amount must be computed as ~~the lower of the following:~~

(1) total amount of baseline emissions in the attainment year, including emissions from maintenance, shutdown and startup activities, not to exceed any authorization applicable to the source; or

(2) total average baseline emissions as calculated under subsection (b) of this section. ~~total emissions allowed under authorizations, including emissions from maintenance, shutdown and startup activities, applicable to the source in the attainment year~~

§101.105. Multiple Site Aggregation Baseline Amount.

This approach is consistent with the existing “System Cap” under §30 TAC 117.320 applicable to electric generating units, as well as the Mass Emission Cap and Trade program under §30 TAC 101, Subchapter H, Division 3. The system cap imposes a lb/day limitation on aggregated NOx emissions



from electric generating units under common control within an ozone nonattainment area. In order to reduce overall NOx emissions under the cap, companies such as Calpine have been able to implement emission reduction projects at locations where controls were most effective. Calpine believes the aggregation of emissions among facilities under common control is consistent with the goal of Section 185 – reaching attainment with the ozone standards in a cost effective manner.

§101.116. Failure to Attain Fee Payment.

The fees under this rule have the potential to be substantial and subject entities must account for them in their financial budgeting and forecasting processes. Calpine requests that this section be expanded to allow for assessment of the fee in a prospective manner similar to the existing structure of the emission fee requirements under §101.27. This would allow for the non-attainment fee obligation to be incorporated into the normal business cycle.

§101.121 Equivalent Alternative Obligation.

Calpine supports this section which allows satisfaction of fee obligations with an equivalent reduction in offset instruments such as Emission Reduction Credits (ERCs) and allowances from the Mass Emission Cap and Trade program. We believe that the retirement of these types of instruments have a greater benefit to the region's air quality than a fee.

Offsets are real, permanent and surplus reductions in NOX or VOC created through a process change, installation of control equipment, or the curtailment or shutdown of equipment within a non-attainment area. Had the reductions not occurred, they would be included baseline emissions. Because of this, offsets applied during the baseline period or after should be allowed to satisfy all or part of a fee obligation.

In addition to offsets, the retirement of fungible emissions commodities would have the equivalent environmental benefit of a fee by further restricting emissions available to specific non-attainment areas.. Given the objective of continued progress toward attainment, the removal of available environmental commodities is consistent with the purpose of Section 185 as it will cause a reduction in emissions.

Calpine appreciates the considerable effort required to prepare this rulemaking package and the opportunity to provide comment. We look forward to continued work with the TCEQ on the development and implementation of measures that will improve our regional air quality. If you have any questions regarding these comments, please contact Patrick Blanchard directly at 713/830-8717.

Sincerely,
Calpine Corporation

A handwritten signature in black ink, appearing to read "Donald Neal".

Donald Neal
Vice President, Environmental Health and Safety