



# CALPINE CORPORATION

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Via Electronic Submittal

Ms. Charlotte Horn  
Texas Commission on Environmental Quality  
Office of Legal Services  
MC 205  
P.O. Box 13087  
Austin, TX 78711-3087

RE: Docket Number 2009-009-101-AI

Dear Ms. Horn,

Calpine is a major North American power company with a generation capacity of over 28,000 megawatts of clean, reliable and fuel-efficient generation serving customers and communities in twenty-one states. Calpine's Texas operations include twelve combined cycle gas-fired power generation facilities with a generation capacity of approximately 8,000 MW, representing approximately ten percent of the state's installed capacity.

Calpine recognizes the importance of Texas having an approvable fee program to satisfy the requirements of Section 185. Calpine therefore supports TCEQ's efforts to develop a proposal that balances the state's need for approval, while incorporating any flexibility that may be available under the federal Clean Air Act and U.S. Environmental Protection Agency guidance. The proposed rules achieve this balance, and Calpine supports their adoptions. However, we have several limited suggestions that we believe are consistent with TCEQ's goals and EPA guidance, and would improve the proposal further.

Calpine appreciates the opportunity to provide comments to the proposed rules implementing §185 of the Federal Clean Air Act and offers the following comments:

## **§101.107. Aggregated Baseline Amount.**

Calpine supports allowing facilities under common control to calculate fees based on the emissions of all of such facilities within the nonattainment area. 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 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 implemented emission reduction projects at facilities where controls are most effective. This is a more economical and effective approach than requiring low-emitting individual facilities to attempt to further reduce NOx emissions and has resulted in greater overall emissions reductions. We believe 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. This approach will ensure that implementation of Section 185 does not effectively penalize companies for the installation of emissions controls consistent with the regional SIP control strategy.

**§101.108 Alternate Baseline Amount:**

Calpine supports the proposal which allows for sources to calculate the emissions baseline over multiple years. An alternate baseline recognizes sources that made early and substantial reductions in advance of and in addition to the requirements under 30TAC 117 and ensures that implementation of Section 185 does not penalize source for the proactive installation of emissions control equipment.

The following example is provided as an illustration of why we believe a multi-year baseline period would be appropriate for all source categories, including electric utility steam generating units. The data for this analysis are based on a hypothetical facility using two scenarios: (1) the facility made a 50% reduction in NOx emissions (from 200 tn/yr to 100 tn/yr) prior to the attainment year; and (2) the facility made the same reduction in following the attainment year. A single-year baseline is assumed for both scenarios.

Scenario	Baseline (tons)	80% of Baseline	Future Annual NOx (tons)	Section 185 fee at \$8,967/ton
(1) Early Reduction	100	80	100	\$179,340
(2) Delayed Reduction	200	160	100	\$0

As demonstrated by the example above, the use of an attainment-year baseline rewards those facilities that postponed NOx reductions until after the attainment year, thereby penalizing facilities that have made emission reductions in good faith prior to the baseline year. The multi-year baseline would avoid the penalization of early contributions toward reducing overall NOx in the nonattainment area.

**§101.110. Baseline Amount for New Major Stationary Sources, New Construction at Major Stationary Sources, or Major Stationary Sources with Less than 24 Months of Operation.**

Calpine supports the establishment of a permanent baseline amount based emissions offsets provided under a nonattainment new source review permitting action or the exemption of these units from fees outright. A baseline that does not recognize offsets applied facilities subjected to NNSR and employing the Lowest Achievable Emissions Rate (LAER) technology disincentives modernization of facilities that result in lower regional emissions.

The Nonattainment New Source Review (NNSR) process is a key element in improving regional air quality. It results in improving air quality through the modernization of industrial facilities to include Lowest Achievable Emission Reduction technology in addition to offsetting new emissions at a greater than 1:1 ratio. An Emission Reduction Credit is a real, permanent and surplus reduction in NOx or VOC emissions created through a process change, installation of control equipment, or the curtailment or shutdown of equipment within the nonattainment area. Had these types of reductions not occurred, those same emissions would be included in establishing baseline emissions for purposes. Calpine therefore recommends that §101.110 be modified to exempt these units from the fee program.

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Alternatively, the permanent baseline amount could be based emissions offsets provided under a NNSR permitting action. This would be consistent proposed §101.121 that specifically recognizes emissions reduction credits and other environmental commodities as an acceptable and equivalent alternative for fee purposes.

#### **§101.117 Compliance Schedule**

The fees under this rule have the potential to be substantial. Entities subject to these fees will require consideration of these fees in their financial budgeting and forecasting process. Calpine requests that this section be expanded to describe the timing and process for the issuance of invoices relative to the reporting and quality assurances activities surrounding the TCEQ's Emissions inventory process.

#### **§101.121 Equivalent Fee Obligation**

Calpine supports the proposal which allows all or a portion of a fee obligation to be met through emissions reductions including Mass Emissions Cap and Trade allowances or discrete emissions reductions credits (DERCs). This qualifies as "not less stringent" under Section 172(e) of the Clean Air Act because it would require the source subject to Section 185 to purchase the environmental commodity in an amount equal to the source's emissions above 80 percent of the source's baseline.

The TCEQ and EPA have recognized the efficiency in reductions achieved through emissions commodity programs as well as the impact of emissions transport on complying with ozone standards. The retirement of fungible emissions commodities would have a comparable economic impact to a fee. Additionally, it would provide the benefit of reducing actual emissions from within programs specific to the non-attainment area. Given that the purpose of Section 185 is to ensure that the nonattainment area continues to progress toward attainment of the ozone standards, the retirement of environmental commodities is consistent with the intent of Section 185.

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 me directly at 713/830-8717.

Sincerely,  
Calpine Corporation

Patrick Blanchard  
Director, Environmental Services Texas