



CALPINE®

717 TEXAS AVENUE
SUITE 1000
HOUSTON, TEXAS 77002
713.830.2000
713.830.2001 (FAX)

March 17, 2009

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

RE: Comments potential considerations to FCAA, § 185 fee requirement

Dear Ms. Pendleton,

Calpine Corporation (Calpine) is a major North American power company, with a generation capacity of 26,000 megawatts of clean, reliable and fuel-efficient electricity to customers and communities in 20 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. Installation of these new, clean facilities has allowed our steam customers to permanently retire older, less efficient sources of steam.

Calpine appreciates the opportunity to provide early input to the TCEQ rulemaking process relating implementation of §185 of the Federal Clean Air Act. We encourage the agency to consider rule measures which are harmonized with the existing regulatory control strategies and include the following:

Allow offsets applied through completion of a Non-Attainment New Source Review (NNSR) permitting action to be included in establishing an emissions baseline under section 185. The 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 LAER technology in addition to offsetting new emissions at a greater than 1:1 ratio. An ERC 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. Because of this, offsets applied in a timeframe consistent with consistent with a baseline period and as part of a NNSR action, should be included in the calculation of a facility's baseline.

Allow sources to calculate the emissions baseline over multiple years. Consistent with the approach provided in the EPA guidance memorandum from William T. Harnett, Director, EPA Air Quality Policy Div. to EPA Regional Air Directors, dated March 21, 2008, The TCEQ should establish multiyear baselines. We would recommend, however, that TCEQ permit power generators to use a ten year period as opposed to a five year period. This approach would recognize sources that already have made early and substantial reductions in advance of and in addition to the requirements of 30TAC 117 and would ensure that implementation of Section 185 does not reward companies for delaying the installation of emissions control equipment at the expense of improved air quality.

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) in 2005; and (2) the facility made the same reduction in 2008. A single-year 2007 baseline is assumed for both scenarios.

Scenario	Section 185 baseline (tons) *	80% of Baseline (tons)	2008 NOx emissions (tons)	Section 185 fee at \$8040/ton
1. Early Reduction	100	80	100	\$160,800.00
2. Delayed Reduction	200	160	100	\$0.00

* In this example, the Section 185 baseline is equal to 2007 actual emissions.

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, and 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 non-attainment area.

Allow facilities under common control to calculate fees based on the emissions of all of such facilities within the same non-attainment 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 lb/day limitation on aggregated NOx emissions from electric generating units under common control within an ozone non-attainment area. In order to reduce overall NOx emissions under the cap, companies such as Calpine have been able to implement emission reduction projects at older facilities where controls were most effective. This is a more economical and effective approach than forcing newer, low-emitting facilities that have already implemented LAER requirements to attempt to further reduce NOx emissions. 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 would ensure that implementation of Section 185 does not effectively penalize companies for the installation of emissions control consistent with current system cap strategy.

Assess fees in tons in addition to a monetary value. The TCEQ should include the option for satisfying fee obligations in equivalent tons of emission as opposed to a monetary value. The TCEQ should allow sources subject to Section 185 to reduce emissions from other sources within the non-attainment area or retire environmental commodities (e.g., NOx allowances or discrete emissions reductions credits (DERCs)) in an amount equal to the NOx and/or VOC emissions by a source in a given year above 80 percent of the source's baseline.

This option would qualify 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% of the source's baseline. We recognize that certain environmental commodities may come from sources outside of the non-attainment area, but we believe that the retirement of environmental commodities from upwind sources may have equal or greater benefit to the regions air quality than solely an assessment of a fee.

TCEQ

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The TCEQ and EPA have recognized the efficiency in reductions achieved through emissions commodity programs as well as the impact of emissions transports 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 non-attainment area, or from programs having the potential to impact the area from upwind sources. Given that the purpose of Section 185 is to ensure that the non-attainment area continue to progress toward attainment of the ozone standards, the retirement of environmental commodities from upwind sources would be consistent with the purpose of Section 185.

Use of Proceeds. Finally, it is our hope that a mechanism is developed to direct proceeds from the Section 185 fee program to projects that result in improved air quality within the HGB non-attainment area. For example, the Texas Emissions Reduction Plan (TERP) is a voluntary incentive program designed to reduce NOx emissions. TERP includes a number of financial incentive and assistance programs, including grants to reduce NOx from both on road and off road diesel sources. Section 185 fees could be used to supplement TERP or future programs with an equivalent benefit within the non-attainment area.

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 Health and Safety