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June 26, 2009

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

RE: Comments Draft Failure to Attain (Section 185) Rule Language

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 twenty 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 appreciates the opportunity to provide comments during the TCEQ rulemaking process of implementing §185 of the Federal Clean Air Act and offers the following comments:

§101.100. Definitions. (5)Electrical utility steam generating units.

Calpine recommends that the definition be modified to mirror the language in 40 CFR Part 52, Section 21, Paragraph (b)(31)

Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

We believe this change will reinforce the continuity of this rulemaking with the guidance provided by the EPA in the guidance memorandum from William T. Harnett, Director, EPA Air Quality Policy Division to EPA Regional Air Directors, dated March 21, 2008. EPA’s guidance memorandum relied on the existing PSD structure in Part 52 in defining baseline period. A consistent definition of “utility steam generating units” with part 52 will clarify the intended distinction between generation for supply to a power distribution system and generation for use by a captive facility.

§101.115. New Source Exemption.

Calpine concurs with the concept of exempting well controlled major sources from the fee requirements of this rulemaking. This section should be expanded to include units with permitted emissions limits less



than or equal TCEQ's defined BACT as of the start of the baseline period as defined in proposed §101.120. To accommodate this expansion we recommend this section be re-titled to "Clean Unit Exemption".

This approach recognizes early and substantial emissions reductions achieved through the installation of modern controls by companies during the baseline period. These controls are essentially equivalent to those that would be required today to meet the reductions sought under Section 185. The exemption of BACT sources will ensure that owners of well controlled facilities that have made proactive and substantial investments entities are not penalized for their investments. 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.

§101.120. Baseline Amount Calculation.

Calpine supports this structure which allows 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, dated March 21, 2008. This approach 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.

§101.127. Multiple Site Aggregation Baseline Amount.

This approach is also 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.

§101.150. Failure to Attain Fee Payment.

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

§101.210. Equivalent Alternative Obligation.

Calpine supports this structure which allows for a fee to be satisfied with a substitution of an equivalent reduction in emissions instruments such as allowances from the Mass Emission Cap and Trade program. We believe that the retirement of emissions instruments such as allowances have a greater benefit to the regions air quality than solely an assessment of a fee.



The retirement of fungible emissions commodities would have a comparable economic impact to a fee. Additionally, retirements provide the benefit of reducing actual emissions from programs specific to 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 standard, the retirement of environmental commodities from upwind sources is consistent with the purpose 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 Patrick Blanchard directly at 713/830-8717.

Sincerely,
Calpine Corporation

A handwritten signature in cursive script, appearing to read "Patrick Blanchard".

DN Donald Neal
Vice President, Environmental Health and Safety