



VIA EMAIL AND CERTIFIED U.S. MAIL

Ms. Kathy Pendleton, P.E.  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
kpendlet@tceq.state.tx.us

RE: Comments of NRG Texas Power LLC on proposed Rule Project No. 2009-009-101-EN  
Severe Ozone Nonattainment Failure to Attain Fee Rule

Dear Ms. Pendleton:

NRG Texas Power LLC (NRG Texas) appreciates the opportunity to provide comments on the Texas Commission on Environmental Quality's (TCEQ's) proposed "Severe Nonattainment Area Failure to Attain Fee" rule. The proposed rule would establish a program pursuant to Section 185 of the Clean Air Act that would impose fees on emissions of NO<sub>x</sub> and VOCs from stationary sources in certain ozone nonattainment areas, including the Houston/Galveston/Brazoria (HGB) area. As described below, NRG Texas believes that the TCEQ should not adopt such a fee program at this time. NRG Texas is also a member of the Section 185 Working Group and we support the more detailed comments filed by that organization.

NRG Texas is based in Houston and is a subsidiary of NRG Energy, Inc., one of the largest wholesale electric power generating companies in the United States. NRG Texas sells electric generation capacity, energy and ancillary services in the ERCOT market, which is the largest power market in Texas. NRG Texas owns approximately 11,000 MW of net generation capacity from 8 electric generating stations in Southeast Texas. NRG Texas' retail business, Reliant Energy, serves more than 1.6 million residential, commercial and industrial customers in Texas.

NRG Texas has a long history of emission reduction programs, dating back to the early 1970s. More recently, NO<sub>x</sub> controls were installed on NRG Texas generating units in the HGB ozone nonattainment area at a cost of approximately \$600 million. These controls and other operational changes have enabled NRG Texas to reduce its overall NO<sub>x</sub> emissions by nearly 90% in the HGB area. We have installed selective catalytic reduction (SCR) systems on eight electric generating units in the HGB area, and NRG Texas' W.A. Parish Units 5-8 are among the lowest NO<sub>x</sub> emitting coal-fired units in the country. The significant investments made by NRG Texas and other large stationary sources have resulted in significant air quality improvements in Texas.

As a result of the significant emission reductions made and resulting air quality improvements, the HGB area has now attained the current 84 ppb 8-hour ozone standard. Therefore, the subject rule is unnecessary at this time. On January 10<sup>th</sup>, 2010 (75 Fed. Reg. 232) EPA issued guidance confirming a Section 185 fee program is unnecessary for areas that have attained either the revoked 1-hour ozone standard or the current 8-hour standard. However, if TCEQ ultimately decides to adopt a fee program, it should incorporate the flexibility provided in EPA guidance. NRG Texas' suggestions for improvements to the proposed rule are, as follows:

**Application of the Rule should be Prospective Only**—Retroactive application of fees is problematic because it is clearly too late for facilities to affect their 2008 or 2009 emission rates. Facilities need time to develop emission control strategies to meet program requirements, set budgets, and then install the appropriate controls or implement

operational changes. If the TCEQ decides to promulgate a Section 185 fee program, we urge the Commission to only consider application of the fees to future year emissions. The appropriate year to assess fees is the first full calendar year following the effective date of the rule.

**A Multi-Year Baseline should be Available for Affected Sources**—A fee program, if adopted, should allow baseline emissions to be computed using a multi-year baseline, consistent with EPA rules and guidance. A case-by-case demonstration of business “cyclical” is unnecessary given past regulatory and legal precedent.

**The Fee Program should allow Additional Equivalent Fee Alternatives**—We support provisions of the proposed rule that allow the use of fee alternatives such as the retirement of emission credits to satisfy fee obligations. In addition, we support the proposal to allow the aggregation of NOx and VOC emissions and the aggregation of multiple sites within the nonattainment area. However, the proposed rules should not include a prohibition on the combined use of precursor and site aggregation. Similarly, there should not be a prohibition on the combined use of fee alternatives and precursor and/or site aggregation. Finally, with respect to multiple site aggregation for ozone precursors, this alternative should be applicable to all sources of VOC in the HGB area, not just HRVOC sources in Harris County.

**Exemption for New Sources**—We support an exemption from fees for new major sources that were not in operation on or before the designated attainment date. These sources would have installed BACT or LAER technology as part of the permit process and should not be subject to fee obligations. Similarly, this exemption should be made available for facilities newly permitted and constructed at existing major sources.

NRG Texas appreciates the opportunity to provide input on the proposed nonattainment fee rule. If you have any questions, please give me a call at (713) 795-6024 or email me at [ben.carmin@nrgenergy.com](mailto:ben.carmin@nrgenergy.com).

Sincerely,



Ben C. Carmine, P.E.  
Director, Environmental Operations  
NRG Texas