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FRIDAY, DECEMBER 2, 2005

Ms. Karen Hill
Texas Commission on Environmental Quality
Air Quality Planning and Implementation Division
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Re: TCEQ East Texas EGF Rulemaking Concept

Dear Ms. Hill:

Please accept the following comments on behalf of clients of the firm of Birch & Becker, LLP, regarding the East Texas Electric Generating Facility ("EGF") rulemaking concept, as discussed during the first Stakeholders meeting on November 18, 2005. The firm's clients are electric generating facilities and affiliates that would likely be impacted by the conceptual approach of mandating severe reductions in nitrogen oxide ("NOx") emissions from EGFs located in the eastern part of Texas in efforts to reduce ozone levels in the Dallas-Fort Worth ("DFW") area.

Our brief summary comments are as follows:

1. TCEQ has determined that the ozone problem in the DFW area is primarily due to high NOx levels. TCEQ inventories of emissions in the DFW area reveals that over eighty percent of the NOx emissions are generated by on-road and off-road mobile sources. Only thirteen percent of the NOx emissions in the DFW area are generated by point sources, and electric utilities represent a smaller subset of this amount. It appears to be a futile effort to regulate power plants, regardless of where they are located, when the data shows the real problem to be mobile sources in the DFW area.
2. Electric generating facilities within the DFW area, in the East Texas area, and in the Houston area, have all undergone serious reductions in NOx emissions over the past several years. Even though EGFs have already made significant emission reductions, the DFW ozone problem still persists. Making additional reductions from these stationary source facilities will impact the DFW attainment status little, if at all.
3. Although the benefit of requiring additional reductions from EGF's will be minor, the cost will be staggering. During the stakeholders meeting several representatives of

electric generating facilities commented on the cost of installing the types of control technology that would be required to achieve the reductions anticipated by TCEQ. The true costs cannot be known until the actual TCEQ control strategy is identified, however, it is likely the costs could be even higher than estimated during the meeting. For example, some electric generating facilities only run occasionally because they are peaking units that have been identified as reliability must-run units. The significant cost required to lower the emissions from these units, which only run a small portion of the year, must be factored into the economic cost as compared to any benefits to the DFW area that that might result from this proposed strategy.

4. Although TCEQ discussed its conceptual plans for imposing additional emission limitations on East Texas EGFs, TCEQ has not yet identified any specific control strategy. Since there are no specific TCEQ rules or strategy on which to comment, these comments are only preliminary responses to the presentations made by the TCEQ staff during the Stakeholders meeting. Additional comments will be provided as TCEQ provides more information on this rulemaking concept.

Thank you for the opportunity to provide these comments. Please include Birch & Becker, LLP, on all future correspondence and notices of meetings regarding this TCEQ rulemaking concept.

Sincerely,

A handwritten signature in black ink that reads "Erich M. Birch" followed by a stylized monogram "JRK".

Erich M. Birch