

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §101.330, concerning Definitions; §101.331, concerning Applicability; §101.332, concerning General Provisions; §101.333, concerning Allocation of Allowances; §101.334, concerning Allowance Transfer; §101.335, concerning Allowance Banking; §101.336, concerning Emission Monitoring, Compliance Demonstration, and Reporting; and §101.337, concerning El Paso Region. The new sections would be placed into a new Division 2, concerning Emissions Banking and Trading of Allowances, of a new Subchapter H, concerning Emissions Banking and Trading. The proposed rules would also be submitted as a revision to the state implementation plan (SIP).

EXPLANATION OF PROPOSED RULES

Senate Bill (SB) 7, 76th Legislature, 1999, amended the Texas Utilities Code, Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Chapter 39, Restructuring of Electric Utility Industry. SB 7 requires the commission to implement the permitting and allowance requirements of new §39.264, concerning Emissions Reductions of “Grandfathered Facilities.” SB 7 requires the commission to develop a mass cap and trade system to distribute emission allowances for use by electric generating facilities (EGF). Under SB 7, two categories of EGFs are eligible to use the proposed trading system. The first category consists of EGFs in existence on January 1, 1999, which were not subject to the requirement to obtain a permit under Texas Clean Air Act (TCAA), §382.0518(g). These facilities are commonly referred to as grandfathered facilities. SB 7 also mandates that grandfathered EGFs apply for a permit on or before September 1, 2000, and obtain a permit by or cease operation after May 1, 2003. The second category of EGFs consists of permitted EGFs that are not subject to the permitting requirements of SB 7, yet elect to participate in the allowance trading system.

These new sections are proposed concurrently with new sections in Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. Proposed new Chapter 116, Subchapter I, concerning Electric Generating Facility Permits, will contain the requirements for permitting of EGFs. The amendments to Chapter 116 are published in a separate section of this edition of the *Texas Register*.

Texas Utilities Code, §39.264(g) and (h) requires the commission to allocate emission allowances to grandfathered EGFs in defined regions of the state. As stated in §39.264(c), the legislature intended that total annual emissions of nitrogen oxides (NO_x) would not exceed 50% of the emissions during 1997 as reported to the commission, and that for coal-fired grandfathered EGFs, total annual emissions of sulfur dioxide (SO₂) would not exceed 75% of the emissions during 1997 as reported to the commission. To further this goal, Texas Utilities Code, §39.264(h) provides emission rates to calculate specific allowances.

As previously stated, Texas Utilities Code, §39.264(c) provides that emission limitations may be met through an emissions allocation and allowance transfer system. An allowance trading program is a regulatory program which caps emissions over a designated region to a level consistent with regulatory goals. Each EGF must hold allowances equal to or greater than its emissions to be in compliance with the program. For example, if an EGF's emissions are 100 tons over the control period, then the allowance account for this EGF should reflect a balance equal to or greater than 100 tons of allowances. The program encourages EGFs to determine the methods of control which will allow the EGF to meet its allowances. Further, the program allows for trading of allowances between EGFs in the same

region, thereby creating alternatives for control. For example, if an EGF emitted 100 tons over the control period and has a balance of 150 allowances in its compliance account, the EGF may sell the unused portion—50 tons or allowances—to another EGF. This trading provision allows companies to determine the most economical method of meeting the regulation, either by purchasing surplus allowances created by another EGF's reductions or by making their own reductions.

Consistent with Texas Utilities Code, §39.264(i), currently permitted EGFs may elect to participate in the permitting program being proposed concurrently in Chapter 116, Subchapter I. Permitted facilities electing to participate in the permitting program under Chapter 116, Subchapter I are called electing EGFs. In the concurrently proposed changes to Chapter 116, the commission proposes that the existing New Source Review (NSR) permit would be consolidated with a permit issued under Chapter 116, Subchapter I. Participation in the permitting program will allow electing EGFs to obtain allowances under the Emissions Banking and Trading of Allowances (EBTA). It may be advantageous for a company to include all EGFs, regardless of permitting status, in the permitting program to allow maximum flexibility in control strategies. Under §39.264(i)(2) and (4), electing EGFs are given allowances equal to their actual emissions reported in the commission's 1997 emission inventory unless a federal or state standard otherwise limits the 1997 emission rate.

The proposed new §101.330 contains the definitions to be used in the EBTA. “Allowance” means the authorization to emit one ton of NO_x or SO₂ during the specified control period or any specified control period thereafter. An “authorized account representative” is the responsible person who is authorized, in writing, to transfer and otherwise manage allowances. A “banked allowance” means an allowance

which is not used to reconcile emissions in the designated year of allocation but which is carried forward into next year and noted in the compliance or broker account as “banked.” Consistent with Texas Utilities Code, §39.264(c), “control period” means the 12-month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

“Compliance account” means the account for an EGF or multiple EGFs in which allowances are held.

“Broker Account” means the account where allowances held by a person are recorded. A broker is one who is participating in the EBTA for the purposes of trading allowances and not to satisfy emission requirements at an EGF. Allowances held in a broker account may not be used to satisfy compliance requirements for this division. EGFs can purchase allowances from brokers, however, the allowances are not eligible to meet reduction requirements until the ownership of the allowances has been transferred and the allowances reside in the purchaser's compliance account.

“East Texas Region” means all counties traversed by or east of Interstate Highway 35 (IH-35) north of San Antonio, or traversed by or east of Interstate Highway 37 (IH-37) south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somerville, and Wise counties. The commission is proposing to modify the definition of “East Texas Region” from Texas Utilities Code, §39.264(g) to clarify that counties east of IH-35 and west of IH-37 are not included in this region. It is believed that had the legislature intended for the definition to include these counties, the definition would have simply referenced IH-35 and not IH-37 also. Additionally, these counties (between IH-35 and IH-37) have been excluded from commission plans involving statewide air control strategies, and the commission believes that the legislature was attempting to be consistent with current commission planning

structures. “El Paso Region” means all of El Paso County. “West Texas Region” means all counties not contained in the East Texas or El Paso Regions.

An “electric generating facility,” as defined in SB 7, is a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. The commission proposes to modify that definition to exclude a facility that generates electric energy primarily for internal use, but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity. This exclusion eliminates cogeneration facilities that were not intended to be included in this program. “Electing EGF” is an EGF that is not subject to the requirements of Texas Utilities Code, §39.264, that elects to comply with Chapter 116, Subchapter I. “Permitted EGF” is an EGF permitted under Chapter 116, Subchapter I, including electing EGFs. “Heat input” is the heat derived from the combustion of any fuel at an EGF. Heat input does not include the heat derived from reheated combustion air, recirculated flue gas, or exhaust from other sources. The commission proposes defining “NO_x allowance” as an authorization to emit NO_x, valid only for the purposes for meeting the requirements of this division; and Chapter 116, Subchapter I. “SO₂ allowance” is an authorization to emit SO₂, valid only for the purposes for meeting the requirements of this division and Chapter 116, Subchapter I.

The proposed new §101.331 establishes the applicability of banking and trading allowances. EGFs subject to the concurrently proposed Chapter 116, Subchapter I or electing EGFs would be required to comply with EBTA. The section also allows the opening of broker accounts for those not required to participate in the EBTA.

The proposed new §101.332 contains the general provisions for the EBTA. Compliance with the allowance system would begin with the control period beginning May 1, 2003. Allowances would only be valid for meeting the purposes of the EBTA. Allowances cannot be used to meet or exceed the limitations of a permit or applicable law, generate emission reduction credits, or satisfy emission offset requirements under federal NSR. Because allowances do not by themselves meet federal criteria as creditable emission reductions, they may not be used to satisfy other requirements of the Federal Clean Air Act (FCAA), such as netting for Prevention of Significant Deterioration (PSD), NSR, or offsets under a nonattainment NSR permit. Neither a NO_x allowance nor an SO₂ allowance constitutes a security or property right. To meet the requirements of Texas Utilities Code, §39.264(e), this section would require that on May 1 of each year, beginning in 2004, an EGF shall hold in its compliance account a quantity of allowances that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period. The commission proposes that allowances be allocated, transferred, or used as whole allowances. For simplicity, the number of allowances will be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater. This section also proposes allowing only one compliance account for use by multiple permitted EGFs located at the same property and under common ownership or control. These limitations on the number of compliance accounts will assist the commission in the allocation of allowances and tracking of allowance transfers. Proposed §101.332(j) incorporates Texas Utilities Code, §39.264(n), concerning the deduction of allowances from compliance accounts where the EGF exceeded its allowances.

The proposed new §101.333 contains the methods by which allowances for permitted EGFs are calculated and determined. As specified in Texas Utilities Code, §39.264(h), the allowances will be

calculated by multiplying total heat input measured in millions of British thermal units (MMBtu) during 1997 by an emission rate expressed in pounds per MMBtu divided by 2,000. To determine allowances, the commission proposes using information obtained from the United States Environmental Protection Agency's (EPA) Acid Rain Program's Emissions Scorecard 1997. This database is the only readily-available, consistently-reported, and comprehensive source of 1997 heat input data for EGFs. This database was the basis for determining the emission rates necessary to achieve the program's goals of a 50% reduction in NO_x emissions and 25% reduction in SO₂ emissions from 1997 levels. If information for an EGF concerning heat input is not reported to the acid rain database, the executive director may approve a method for calculating heat input for that EGF as long the method is consistent with the requirements of the acid rain database.

Texas Utilities Code, §39.264(h), specifies the emission rates for the El Paso, East Texas, and West Texas Regions. In the East Texas Region the emission rate is 0.14 pounds of NO_x per MMBtu and 1.38 pounds of SO₂ per MMBtu. The emission rate in the El Paso Region is 0.195 pounds of NO_x per MMBtu. The West Texas Region's emission rates are identical to those in the El Paso Region. Consistent with Texas Utilities Code, §39.264(i)(2), the allowances for electing EGFs are equal to the EGF's emission in tons in 1997. Should a permitted coal-fired EGF elect to participate in the permitting program under Chapter 116, Subchapter I, the annual emissions of SO₂ from 1997 would be used to establish its allowances.

In addition to the 50% reduction expected from grandfathered EGFs under SB 7 requirements, the commission anticipates adopting additional requirements for EGFs in nonattainment areas to meet the

ozone National Ambient Air Quality Standard (NAAQS). For each nonattainment area, the amount of reductions for the SIP will be consistent with the SIP modeling efforts for that area. At this time the point source reductions expected in the Dallas/Fort Worth (DFW) area are 88%. Reductions in the Beaumont/Port Arthur (BPA) area are expected to be 40-50%, and reductions in the Houston/Galveston (HGA) are expected to be 90%. The commission expects to propose the reductions for BPA and DFW areas in December of 1999. For the HGA area, proposal is expected in May of 2000. The commission expects to propose reductions in attainment counties of east and central Texas not later than December of 1999. Future rulemaking addressing these reductions will affect the EBTA and the allocation of future allowances. Since Texas Utilities Code, §39.264(s) recognizes the current authority of the commission to require additional reductions of NO_x or SO₂, as future SIP rules are developed allowances will be reduced accordingly.

Allowances for grandfathered EGFs must be allocated by January 1, 2000, as required by Texas Utilities Code, §39.264(h). In order to meet this deadline, the commission intends to issue an order this fall to allocate these allowances. The commission is aware of the needs of owners or operators of EGFs to know as soon as possible the number of allowances that will be allocated to each EGF. A draft of proposed allowances is available from the commission on request and will be available on the commission's Web Site. To meet the statutory deadline to issue allowances by January 1, 2000, proposed §101.333(4) provides that a commission order will be issued by that date with the SB 7 allowances for the grandfathered EGFs. The allowances allocated for subsequent years will reflect the same values issued in the initial allocation, provided no subsequent state or federal regulations require additional reductions. To allow EGFs to identify potential sellers of allowances, the commission shall

maintain a publically available registry of the allowances in each compliance account. For each transfer, the registry shall include the price paid per allowance. The registry shall not contain proprietary information. The commission believes that public access to information regarding the price and transfer of allowances will promote an open trading system. Consistent with Texas Utilities Code, §39.264(s), 30 TAC §101.333(a)(3) permits the commission to reduce allowances for the purposes of satisfying the SIP or other federal, state, or local requirements.

Initial allowances for electing EGFs for the control period beginning May 1, 2003 would be allocated by January 1, 2001. Since the commission will not know which EGFs are electing to participate in the permitting program until September 1, 2000, it would be impossible to allocate those allowances on the same schedule as the grandfathered allocations. This later allocation schedule will allow companies to determine whether to participate in the programs and which programs best suit their individual business needs.

The proposed new §101.334 would establish requirements concerning the transfer of allowances. Allowances may be transferred at any time during a control period with documentation received by the commission no later than June 30 following the control period for which the allowances are used. The commission believes that 60 days to report all transfers will give owners or operators ample time to finalize transfers for that control period. In addition to the annual report, notification of transfer of allowance must occur within 30 days after the transfer of any allowances to another party. This requirement will ensure that the data kept on the commission's registry is accurate and current. Allowance transfers are prohibited prior to May 1, 2003. The commission believes it is appropriate to

set a beginning date for the receipt of transfer notification. This restriction will allow the commission to set up the appropriate tracking mechanisms prior to receipt of notifications. As required by Texas Utilities Code, §39.264(i)(3), allowances at electing EGFs resulting from reduced utilization or shutdowns cannot be transferred. Transferrable allowances for electing EGFs shall be calculated using the heat input from 1997, the heat input from the control period, and changed emission factors. The equations to determine transferable allowances from electing EGFs are in the rule text.

Consistent with Texas Utilities Code, §39.264(j), allowances may only be transferred within the same region. Transfers from broker accounts are restricted based on the location of the EGF where the allowance was originally allocated.

SB 7 allows EGFs the flexibility to decide when and where to make reductions or to add on controls. EGFs must consider local impacts of allowance transfers specifically on those counties which are nonattainment and near nonattainment. For example, most near-nonattainment areas have EGFs that are in close proximity to these areas. These EGFs emit significant amounts of NO_x , which has been shown to heavily influence local ozone levels. Other EGFs located a greater distance from these areas have regional impacts on background ozone levels but do not impact near-nonattainment areas to the extent the closer facilities can.

While the commission believes that the trading program will result in emission reductions throughout the East Texas Region, emission reductions, rather than allowance transfers, at the nearby facilities should be thoroughly considered before investments are made for emission control equipment at more

distant plants. In making these economic decisions, it is incumbent on businesses to weigh the environmental consequences of their actions. Prior to making an allowance transfer to a nonattainment or near-nonattainment area, EGFs must be aware that such transfers might jeopardize the status of a near-nonattainment area. For example, at this time the Tyler/Longview/Marshall area is operating under the terms of a Flexible Attainment Region (FAR). If numerous transfers occur into that area, the conditions of the FAR may be compromised. The FAR will expire in September 2001 and can be extended by the parties. During the term of the FAR agreement, EPA will treat the area under an approach similar to a maintenance plan area. However, EPA may designate the area as nonattainment, regardless of whether a FAR agreement is in place. Designation of nonattainment could result in additional reductions of NO_x from EGFs in the Northeast Texas FAR area. Furthermore, a nonattainment designation would require additional reductions from industry sources and potential restrictions on trade into the new nonattainment area. The commission encourages EGFs to consider the long-term consequences of decisions to utilize allowances rather than the installation of controls at EGFs located close to nonattainment areas and in near-nonattainment areas.

The proposed new §101.335 regulates the banking of allowances. As required by Texas Utilities Code, §39.264(i)(3), allowances at electing EGFs resulting from reduced utilization or shutdown cannot be banked. Allowances not used for compliance may be banked for use in subsequent years.

The proposed new §101.336 establishes compliance demonstration methods. All EGFs using the EBTA must comply with §116.914, concerning Emissions Monitoring and Reporting Requirements. By June 1 of each year, EGFs participating in the EBTA shall report to the commission the amount of emissions

of each allocated air contaminant during the preceding control period. Emission allowances equal to the amount of emissions during that control period would be deducted from the EGF's compliance account. Consistent with Texas Utilities Code, §39.264(n), if the amount of emissions exceeds the EGF's allowance, allowances in the amount of the excess shall be deducted from the allowances for the next year. The proposed new §101.336 requires that at the end of each control period, the owner or operator of an EGF report its emissions to balance the emissions with the allowances in its compliance account.

As authorized by Texas Utilities Code, §39.264(p), the proposed new §101.337 would allow facilities in the El Paso Region to meet emission allowances using credits from the City of Juarez, in the United States of Mexico. The reduction must be reviewed and approved by the executive director and must be permanent, quantifiable, enforceable by the commission, and not required by other rule or law. Under Texas Utilities Code, §39.264(q), 30 TAC §101.337 would also exempt the El Paso Region from the EBTA if either EPA or the commission determines that reductions of NO_x will increase ambient levels of ozone. Currently, NO_x reductions are not required for facilities in the El Paso nonattainment area because EPA has granted a waiver under FCAA, §182(f) concerning NO_x Requirements. Under this waiver, NO_x reductions are not required if the attainment demonstration for compliance with the ozone NAAQS can be made without a NO_x control strategy. The basis for this waiver does not satisfy §39.264(q) of the Texas Utilities Code because it has not been demonstrated, under the §182(f) waiver or otherwise, that NO_x reductions would increase ambient ozone in El Paso County. These EGFs would still be required to obtain a permit under Chapter 116, Subchapter I regardless of the determination that NO_x reductions are counterproductive in controlling ambient ozone levels in the El

Paso Region. The commission believes that this requirement is appropriate since Texas Utilities Code, §39.264(e) provides that EGFs without a permit may not operate after May 1, 2003, and Texas Utilities Code, §39.264(q) refers only to reduction requirements, not permitting requirements.

FISCAL NOTE

Bob Orozco, a technical specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the commission and other units of state and local government as a result of administration or enforcement of the proposed amendments. River authorities and units of local government that own and operate EGFs are affected by the proposed amendments. Although EGFs of 25 megawatts or less owned by units of state and local government may be excused from the permitting requirements, some EGFs will be required to obtain a permit and reduce emissions to continue operating. It is anticipated that the proposed amendments which allow emission allowance banking and trading for EGFs will provide flexibility and potential cost savings in planning and determining the most economical mix of the application of emission control technology with the purchase of other facilities' surplus allowances to meet emission reduction requirements.

The proposed amendments to Chapter 101, concerning General Rules, would develop and implement the EBTA system for grandfathered EGFs and other EGFs that elect to participate in EBTA requirements. The provisions to establish such a system are contained in:

Act of May 27, 1999, 76th Legislature, SB 7, Regular Session, 1999 (to be codified at Texas Utilities Code, §11.003-163.002).

SB 7 also requires grandfathered EGFs to apply for a permit on or before September 1, 2000. A grandfathered EGF is a facility that was exempt from permitting requirements by virtue of existing or beginning construction, alteration, or modification on or before August 31, 1971. An EGF that does not obtain a permit by May 1, 2003, may not operate unless the commission finds good cause for an extension.

The new sections in Chapter 101 are proposed concurrently with new sections in Chapter 116. The purpose of the rulemaking in these chapters is to implement permit and emission control requirements, including EBTA procedures for certain EGFs, and related permit application and public notice procedures.

The proposed amendments establish an emission allowance banking and trading program which caps emissions over a designated region to a level consistent with SB 7. SB 7 requires the commission to allocate allowances for grandfathered EGFs by January 1, 2000. Each participating EGF must hold allowances equal to or greater than its emissions to be in compliance with the program. The program encourages EGFs to determine the methods of emissions control which will allow the EGF to meet its emission allowances. The EBTA program allows for voluntary trading of allowances between EGFs in the same region to provide EGFs with the flexibility to determine the best mix of using control

technologies to reduce their own emissions and/or the purchase or trading of surplus allowances from other facilities.

SB 7 also allows non-grandfathered EGFs to elect to participate in the EBTA and permitting program. These electing facilities will be given allowances equal to their actual emissions reported in their 1997 emissions inventory unless a federal or state standard otherwise limits the 1997 emission rate.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 101 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be potentially increased efficiency in the reduction of air contaminants emitted from affected EGFs, and increased flexibility for affected EGFs in planning and determining the most economical mix of control technology alternatives and trading of emission allowances to meet SB 7 reduction requirements.

It is the intent of the legislature in SB 7 that, starting May 1, 2003, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the levels emitted during 1997 as reported to the commission. It is also required by SB 7 that emissions of SO₂ from coal-fired power plants not exceed 75% of the levels emitted in 1997. It is anticipated that these emission reductions may be met, in part or in whole, by the emissions trading and allowance system which is the subject of this rulemaking. Counties within Texas have been divided into three regions by SB 7—East Texas, West Texas, and El Paso—for the purpose of allocating emissions of NO_x and SO₂ and for the trading of emissions allowances, by region,

among the EGFs. The East Texas Region emission rate shall be 0.14 pounds of NO_x and 1.38 pounds of SO₂ per MMBtu. The El Paso Region and West Texas Region emission rate shall be 0.195 pounds of NO_x and 1.38 pounds of SO₂ per MMBtu.

The purpose of the proposed amendments is to create and implement an EBTA program which caps emissions over a designated area from grandfathered and other EGFs that elect to participate in the EBTA program. Each EGF participating in the EBTA program must hold allowances equal to or greater than its emissions to be in compliance with the program. The EBTA program allows for trading of allowances between EGFs in the same region to provide EGFs with flexibility in planning and determining the most economical mix of control technology alternatives to reduce its own emissions with the purchase or trading of another facility's surplus allowances to meet emission reduction requirements.

There are no significant additional costs anticipated to any person or business as a result of complying with the proposed amendments to Chapter 101. The proposed amendments are intended to provide increased flexibility in planning and determining the most economical alternatives to reducing emissions by either applying control technologies or purchasing or trading emission allowances with other EGFs.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

Based on the expected revenues from the smallest generators and the number of employees defined as a micro-business, there are no known small businesses and micro-businesses as defined in the Texas Government Code with EGFs which would be affected by these proposed amendments to Chapter 101.

There are no significant additional costs anticipated to any person or business as a result of complying with the proposed amendments to Chapter 101.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and specifies how and when emission allowances can be banked and traded; makes the trading and/or banking of emission allowances voluntary; and allows the EGFs the flexibility to decide the extent of banking and trading of allowances, the rulemaking does not meet the definition of a “major environmental rule.” The proposed amendments would only apply to grandfathered EGFs and electing EGFs. Finally, the proposed amendments do not meet any of the four applicability requirements of a “major environmental rule.” The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. In addition, the proposed amendments are made specifically to comply with SB 7.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact analysis under Texas Government Code, §2007.043. The following is a summary of that analysis. While these amendments may result in capital costs for some EGFs, the amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). These amendments implement the requirements of Texas Utilities Code, §39.264. EGFs are required to reduce emissions of NO_x by 50% and, if applicable, SO₂, by 25%. Although EGFs are required to make specific emission reductions, these facilities have alternatives available under the proposed banking program that may allow the EGF to avoid installing add on controls. Further, allowances can be transferred under the proposed banking program so that EGFs have opportunities to buy and sell allowances in order to respond to business needs. This action is intended to reduce emissions of NO_x and SO₂. The action significantly advances this purpose by requiring substantial reductions in the emission of NO_x and SO₂ through a system of emission allowances. While requiring these reductions, this rule allows the trading of emission allowances so that EGFs may transfer allowances providing flexibility for compliance with emission limits. This action is taken in response to a real and substantial threat to public health and safety and significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed new sections relating to the authorization of emission allowances and the banking and trading of allowances, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This proposal is intended to reduce overall emissions of NO_x and SO₂ from EGFs. This action is consistent with Title 40 Code of Federal Regulations because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with the CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in El Paso on October 1, 1999, at 9:00 a.m. in the City of El Paso Council Chambers, located at 2 Civic Center Plaza, 2nd Floor. Additional

hearings will be held in Lubbock on October 1 at 6:00 p.m. in the City of Lubbock Council Chambers, located at 1625 13th Street; in Austin on October 4 at 9:00 a.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle; in Irving on October 5 at 1:00 p.m. in the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard; in Houston on October 7 at 9:00 a.m. in the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard; and in Beaumont on October 7 at 6:00 p.m. in the John Gray Institute, located at 855 Florida Avenue. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99033-116-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

These new sections are proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules for the allocation of emission allowances to EGFs and to make rules concerning the banking and trading of those allowances. The new sections are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.023, which authorizes the commission to issue orders; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new sections implement Texas Utilities Code, §39.264, concerning Emissions Reductions of "Grandfathered Facilities"; and Texas Health and Safety Code, §382.011, concerning General Powers and Duties; §382.012, concerning State Air Control Plan; §382.017, concerning Rules; §382.023, concerning Orders; and §382.061, concerning Delegation of Powers and Duties; and Texas Water Code, §5.122, concerning Delegation of Uncontested Matters to Executive Director.

SUBCHAPTER H : EMISSIONS BANKING AND TRADING

DIVISION 2 : EMISSIONS BANKING AND TRADING OF ALLOWANCES

§§101.330-101.337

§101.330. Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Allowance** - The authorization to emit one ton of nitrogen oxide (NO_x) or sulfur dioxide (SO₂) during a control period.

(2) **Authorized account representative** - The responsible person who is authorized, in writing, to transfer and otherwise manage allowances.

(3) **Banked allowance** - An allowance which is not used to reconcile emissions in the designated year of allocation but which is carried forward into future years and noted in the compliance or broker account as “banked.”

(4) **Broker account** - The account where allowances held by a person are recorded.
Allowances held in a broker account may not be used to satisfy compliance requirements for this division.

(5) **Compliance account** - The account for an electric generating facility (EGF) or multiple EGFs in which allowances are held.

(6) **Control period** - The 12 month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

(7) **East Texas Region** - All counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio, and also including Bexar, Bosque, Coryell, Hood, Parker, Somerville, and Wise Counties.

(8) **Electing EGF** - An electric generating facility permitted under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) which is not subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(9) **Electric generating facility** - A facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority. An EGF does not include a facility that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity.

(10) **El Paso Region** - All of El Paso County.

(11) **Heat input** - The heat derived from the combustion of any fuel at an EGF. Heat input does not include the heat derived from reheated combustion air, recirculated flue gas, or exhaust from other sources.

(12) **NO_x allowance** - An authorization to emit NO_x. A NO_x allowance is valid only for the purposes of meeting the requirements of:

(A) this division; or

(B) Chapter 116, Subchapter I of this title.

(13) **Permitted EGF** - An electric generating facility permitted under Chapter 116, Subchapter I of this title, including electing facilities.

(14) **SO₂ Allowance** - An authorization to emit SO₂, valid only for the purposes for meeting the requirements of this division and Chapter 116, Subchapter I of this title.

(15) **West Texas Region** - All counties not contained in the East Texas Region or El Paso region.

§101.331. Applicability.

This division applies only to the following:

(1) Electric generating facilities permitted under Chapter 116, Subchapter I of this title, (relating to Electric Generating Facility Permits).

(2) A person not required to participate in the requirements of this division may open a broker account under this division for the purposes of banking and trading emissions allowances.

§101.332. General Provisions.

(a) Allowances are valid only for the purposes of meeting the requirements of this division and cannot be used to meet or exceed the limitations of a permit or any applicable rule or law.

(b) On May 1 of each year, beginning in 2004, an electric generating facility (EGF) shall hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period. Compliance with the allowance system will begin with the control period beginning May 1, 2003.

(c) Emission reductions used to satisfy the requirements of the Emissions Banking and Trading of Allowances (EBTA) cannot be used to generate emission reduction credits or discrete emission reduction credits.

(d) Allowances cannot be used for netting requirements to avoid the applicability of federal and state new source review (NSR) requirements.

(e) Allowances cannot be used to satisfy offset requirements for new or modified sources subject to federal nonattainment NSR requirements.

(f) An allowance does not constitute a security or a property right.

(g) All allowances will be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances will be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(h) One compliance account shall be used for multiple permitted EGFs located at the same property and under common ownership or control.

(i) If emissions of nitrogen oxides or, if applicable, sulfur dioxide, exceed the amount of allowances for a given control period, allowances for the next control period will be reduced in an amount equal to the emissions exceeding the allowances in the compliance account.

§101.333. Allocation of Allowances.

Allowances will be allocated according to the requirements of this section.

(1) Except as provided in paragraphs (2) and (3) of this section, allowances will be calculated using the following equation:

$$A = \frac{ER * HI}{2000 \text{ lb / allowance}}$$

Where:

A ≡ Number of allowances
HI ≡ Total heat input (million British thermal units (MMBtu)) during 1997, determined by subparagraphs (A) or (B) of this paragraph.
ER ≡ Emission rate, as defined in subparagraphs (C) - (E) of this paragraph;

(A) the acid rain database of the EPA; or

(B) an method approved by the executive director, consistent with the emission reduction requirements of this division, if the information is unavailable from the EPA acid rain database.

(C) In the East Texas region,

(i) 0.14 pound nitrogen oxides (NO_x) per MMBtu; and

(ii) 1.38 pounds sulfur dioxide (SO₂) per MMBtu;

(D) In the West Texas and El Paso Regions, 0.195 pound NO_x per MMBtu;

(2) For electing electric generating facilities (EGF), the amount of allowances is equal to the EGF's actual emissions in tons in 1997 and shall not exceed any of the following:

(A) the emission inventory reported for calendar year 1997;

(B) the allowable emission rate in an existing permit; and

(C) an applicable state or federal requirement.

(3) The commission may increase or decrease the amount of allowances for any control period in order to satisfy requirements under a state implementation plan or other federal, state, or local air quality requirement.

(4) Allowances will be allocated:

(A) initially, by:

(i) January 1, 2000, for grandfathered EGFs;

(ii) January 1, 2001, for electing EGFs; and

(B) subsequently, by May 1 of each year, beginning in 2004.

(C) Allowances will be allocated by commission order.

(5) The commission shall maintain a registry of the allowances in each compliance account. For each transfer, the registry shall include the price paid per allowance. The registry shall not contain proprietary information.

§101.334. Allowance Transfer.

(a) Allowances may be transferred at any time during the control period.

(b) Documentation of all final transfers must be received by the commission on or before June 30 following the control period for which the allowances are to be used.

(c) Only authorized account representatives may transfer allowances.

(d) Notification of transfer of allowance must occur within 30 days after the transfer of any allowances to another party. Allowance transfers are prohibited prior to May 1, 2003.

(e) Allowances at electing electric generating facilities (EGF) that result from reduced utilization or shutdowns are ineligible for transfer. The amount of allowances eligible for transfer from an electing EGF will be calculated using the heat input from 1997 and the changed emission factors as follows:

(1) If the heat input for the control period exceeds the heat input for 1997, the following equation will be used to calculate the amount of transferrable allowances.

$$\frac{HI_{1997} * EF_{1997} - HI_{CP} * EF_{CP}}{2000 \text{ lbs / allowance}}$$

Where:

HI_{1997}	\equiv	<u>Heat input from 1997.</u>
EF_{1997}	\equiv	<u>The emission factor for 1997 in terms of pounds per million British thermal units (lbs/MMBtu).</u>
HI_{CP}	\equiv	<u>Heat input for the control period.</u>
EF_{CP}	\equiv	<u>The emission factor for the control period in terms of lbs/MMBtu.</u>

(2) If the heat input for the control period is less than the heat input for 1997, the following equation will be used to calculate the amount of transferrable allowances.

$$\frac{HI_{1997} * EF_{1997} - HI_{1997} * EF_{CP}}{2000 \text{ lbs / allowance}}$$

Where:

HI_{1997}	\equiv	<u>Heat input from 1997</u>
EF_{1997}	\equiv	<u>The emission factor for 1997 in terms of lbs/MMBtu.</u>

$EF_{CP} \equiv \underline{\text{The emission factor for the control period in terms of lbs/MMBtu.}}$

(f) Allowances may be transferred within the same region, but not between regions.

(g) Trading to and from a broker account must meet the trading restrictions regarding the origin of the allowances and eligible transfers in this division.

§101.335. Allowance Banking.

(a) Allowances at electing facilities that result from reduced utilization or shutdown are ineligible for banking.

(b) Allowances not used for compliance may be banked for use in subsequent years.

§101.336. Emission Monitoring, Compliance Demonstration, and Reporting.

(a) Emission monitoring and reporting shall be conducted in accordance with §116.914 of this title, (relating to Emissions Monitoring and Reporting Requirements).

(b) For each control period, electric generating facilities (EGFs), must submit a report to the commission detailing the amount of emissions of each allocated air contaminant during the preceding

control period. This report must be submitted by June 1 of each year. Emission allowances equaling the total emissions will be deducted from the EGF's compliance account.

§101.337. El Paso Region.

(a) An electric generating facility (EGF) in the El Paso Region may meet the emissions allowances by using credits from emissions reductions achieved in the City of Juarez, United States of Mexico. Emission reductions under this section must meet the following criteria.

(1) The emission reduction must be:

(A) enforceable by the commission;

(B) permanent, meaning that the emission reduction is unchanging for the remaining life of the source;

(C) quantifiable, so that the emission reduction can be measured or estimated with confidence using replicable techniques;

(D) surplus, such that the emission reduction is not otherwise required of a facility by a state or federal law, regulation or agreed order, and;

(E) a real reduction in which actual emissions are reduced.

(2) The emission reduction must be reviewed and approved by the executive director prior to converting the credits into allowances under this program.

(b) EGFs in the El Paso Region are exempt from the requirements of this division if either EPA or the commission determines that reductions of nitrogen oxide in the El Paso Region that would otherwise be required under this division would result in an increased ambient ozone level in El Paso County.

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §116.18, concerning Electric Generating Facility Permits Definitions; §116.910, concerning Applicability; §116.911, concerning Electric Generating Facility Permit Application; §116.912, concerning Electric Generating Facility Permit Application for Electing Electric Generating Facilities; §116.913, concerning General and Special Conditions; §116.914, concerning Emissions Monitoring and Reporting Requirements; §116.915, concerning Emission Control Changes; §116.916, concerning Permits for Electric Generating Facilities in El Paso County; §116.920, concerning Public Participation for Initial Issuance; §116.921, concerning Notice and Comment Hearings for Initial Issuance; §116.922, concerning Notice of Final Action; §116.930, concerning Modifications; and §116.931, concerning Renewal. Sections 116.910-116.931 would be placed in a new Subchapter I, concerning Electric Generating Facility Permits. These new sections are also proposed as amendments to the state implementation plan (SIP).

EXPLANATION OF PROPOSED RULES

Senate Bill (SB) 7, 76th Legislature, 1999, amended Texas Utilities Code, Title 2, concerning Public Utility Regulatory Act, Subtitle B, concerning Electric Utilities, and created a new Chapter 39, concerning Restructuring of Electric Utility Industry. SB 7 requires the commission to implement the permitting and allowance requirements of new §39.264, concerning Emissions Reductions of “Grandfathered Facilities.” SB 7 requires electric generating facilities (EGFs) existing on January 1, 1999, that were not subject to the requirement to obtain a permit under Texas Clean Air Act (TCAA), §382.0518(g) to obtain a permit from the commission. These facilities are commonly referred to as

grandfathered EGFs. A grandfathered facility is one that existed at the time the legislature amended the TCAA in 1971. These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants.

These new sections are proposed concurrently with amendments and new sections in Chapter 101 of this title, concerning General Rules. The proposed new Division 2, concerning Emission Banking and Trading of Allowances, in the new Subchapter H, concerning Emissions Banking and Trading, in Chapter 101 sets out the allowance system to be used to assist EGFs in meeting the emission reduction requirements of SB 7. The purpose of the rulemaking in these chapters is to implement permit and emission control requirements, including emission banking and trading of allowances (EBTA), for certain EGFs and related permit application and public notice procedures. The permit application and public notice procedures are the subject of these proposed amendments to Chapter 116. The amendments to Chapters 101 and 117 are published in a separate section of this edition of the *Texas Register*.

SB 7 requires owners or operators of grandfathered EGFs to apply for a permit to emit nitrogen oxide (NO_x) and, for coal-fired EGFs, sulfur dioxide (SO₂). These applications are due on or before September 1, 2000. An EGF that does not obtain a permit may not operate after May 1, 2003, unless the commission finds good cause for an extension. It is the intent of SB 7 that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_x from

grandfathered EGFs not exceed 50% of the NO_x emissions reported to the commission for 1997.

Furthermore, it is the intent of the legislation that emissions of SO₂ from coal-fired EGFs not exceed 75% of the SO₂ emissions reported to the commission in 1997. The described emission limitations may be satisfied by using control technology or by participating in the banking and trading of allowances.

Persons, municipal corporations, electric cooperatives, and river authorities owning EGFs that are not grandfathered may elect to become subject to the permitting requirements and emission reductions. A municipal corporation, electric cooperative, or river authority may exclude any grandfathered EGF with a nameplate capacity of 25 megawatts or less from permitting and emission reduction requirements. Texas Utilities Code, §39.264(d) requires notice of the intent to exclude these EGFs by January 1, 2000. The commission will make available a form for this purpose, and requests that the form be returned to the commission by November 1, 1999.

The proposed new §116.18 contains the following definitions. An “electric generating facility,” as defined in SB 7, is a facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

The commission proposes to modify that definition to exclude a facility that generates electric energy primarily for internal use, but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity. This exclusion eliminates cogeneration facilities that were not intended to be included in this program. An “electing electric generating facility” is an EGF permitted under Chapter 116, Subchapter B, concerning New Source Review Permits, which is not

subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I. An “allowance” is the authorization to emit one ton of NO_x or, if applicable, SO₂, during a specified control period or any specified control period thereafter. “Coal” is all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 “Standard Classification of Coals by Rank” (as incorporated by reference in Title 40 Code of Federal Regulations (CFR) §72.13). This definition of coal is consistent with the definition found in 40 CFR Part 72, concerning Acid Rain Program. The commission is defining coal to clearly include lignite as coal, since these two fuels are sometimes referenced separately.

“Combined permit” is a permit that consolidates the existing new source review (NSR) authorization with the requirements of an EGF permit. A “compliance account” is an account for an EGF or multiple EGFs in which allowances are held. Consistent with Texas Utilities Code, §39.264(c), a “control period” is the 12-month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin on May 1, 2003. “Nameplate Capacity” means the maximum electrical output (expressed in megawatts) that an EGF can sustain over a specified period of time when not restricted by seasonal or other deratings. This definition is consistent with the definition used under the Federal Clean Air Act (FCAA) Amendments of 1990, Acid Rain Program. The commission believes that using this definition will reduce any confusion for EGFs potentially subject to both the Acid Rain Program and the EBTA program proposed under Chapter 101, Subchapter H, Division 2. A “peaking unit” is an EGF that has: 1) an average capacity factor of no more than 10% during the past three calendar years, and 2) a capacity factor of no more than 20% in each of those calendar years.

“Capacity factor” is either: 1) the ratio of an EGF's actual annual electric output (expressed in

megawatt-hours) to the EGF's nameplate capacity times 8,760 hours or 2) the ratio of an EGF's annual heat input (in millions of British thermal units (MMBtu)) to the EGF's maximum design heat input (in MMBtu) times 8,760 hours. Both terms, capacity factor and peaking unit, are consistent with the same terms in the FCAA Acid Rain Program.

Section 116.910 states that a permit under this new subchapter would authorize emissions of NO_x for any EGF and emissions of SO_2 for coal-fired EGFs. Section 116.910 specifies that the EGF owner or operator authorized to act for the owner is responsible for complying with this subchapter. Consistent with Texas Utilities Code, §39.264(d), a municipal corporation, electric cooperative, or river authority may exclude any EGF with a nameplate capacity of 25 megawatts or less from this subchapter. The municipal corporation, electric cooperative, or river authority must notify the commission by January 1, 2000, of its intent to exclude those EGFs. The commission will make available a form for this purpose and requests that the form be returned to the commission by November 1, 1999.

SB 7 requires grandfathered EGFs to obtain a permit from the commission that authorizes the emission of NO_x and, for coal-fired EGFs, SO_2 . Other than NO_x and SO_2 , EGFs also emit products of combustion such as carbon monoxide, particulate matter, and volatile organic compounds. At a coal-fired EGF, the emissions may include mercury as well. The commission believes that the SB 7 authorization was only intended to authorize NO_x and SO_2 (for coal-fired EGFs). The commission also believes that the intent of SB 7 was to eliminate the grandfathered status of EGFs. However, it is unclear how SB 7 authorizes or requires the permitting of anything other than NO_x and SO_2 (for coal-

fired EGFs). Furthermore, if the commission were to permit these other air contaminants in an electric generating facility permit (EGFP), it is unclear what standards these air contaminants should be held to. Therefore, the commission proposes to incorporate these emissions using the emission control standards of the Voluntary Emissions Reduction Permits (VERP) proposed concurrently in this edition of the *Texas Register* under Chapter 116, Subchapter H, concerning Voluntary Emission Reduction Permits. These other air contaminants from the EGFs would be reviewed under the requirements of the VERP program but would only go through the public notice process one time.

The commission believes that it is appropriate to rely on the control methods and health effects requirements of the VERP program for air contaminants other than NO_x and, if applicable, SO₂. The VERP program provides control method options depending on the location of a grandfathered facility. The VERP proposal also describes the suggested methods for a health effects review for grandfathered facilities. This proposal to rely on the VERP control methods and health effects review will provide a consistent basis of review for emissions besides NO_x and SO₂ from all grandfathered facilities. The commission does not think it is appropriate to merely include other emissions in a grandfathered EGF's permit without a review of control methods and, if necessary, impacts. This is consistent with the longstanding policy to not treat certain facilities as being "permitted" simply because the facilities are consolidated into an existing permit. For example, a facility that was originally authorized by an exemption will continue to be authorized under the exemption even though the exemption is consolidated with an NSR permit during an amendment or at renewal. The proposal does not require applicants to permit these other air contaminants from EGFs.

Many power plants may have other grandfathered support facilities such as fuel storage tanks or coal handling facilities that are not electric generating facilities. Because SB 7 addresses only those facilities which generate electricity, these support facilities are not explicitly required to obtain a permit under SB 7. To encourage the permitting of grandfathered support facilities, the commission proposes that these facilities could apply for a VERP which would be consolidated with the EGFP. This would enable all the grandfathered facilities and EGFs at a site to go through a combined permitting process. Thus, all grandfathered facilities and EGFs would only go through the public notice process one time.

SB 7 does not provide procedures for the modification of an EGFP. Therefore, the commission believes that the requirements of the TCAA concerning modifications of existing facilities still apply. Any modifications to any facility in an EGFP remain subject to the permitting requirements of the TCAA and the existing modification requirements in Chapter 116, Subchapter B.

To address electing EGFs, the commission proposes that the existing NSR permit be consolidated with a permit under this subchapter. The combined permit would continue to authorize emissions of all air contaminants and would incorporate the requirements of this subchapter into a single permit. This permit would contain the general and special conditions for electing EGFs. The unchanged, existing NSR permit conditions would not be subject to public notice for the combined permit; only the conditions specific to the EGFs for NO_x and, if applicable, SO₂, would be subject to the public notice required by §116.920.

Consistent with existing application procedures of the commission, the proposed new §116.911 contains application procedures to obtain an EGFP. As specified by amended Texas Utilities Code, §39.264(e), the proposed new §116.911 would require that owners or operators of grandfathered and electing EGFs apply for a permit on or before September 1, 2000. The section also contains information concerning general content of the permit application. An EGFP will include provisions for measurement of emissions and a requirement to use control technology sufficient to ensure that emissions do not exceed an EGF's allowance. Although control technology is not explicitly required under SB 7, the control method language was included in the proposal to ensure that control technology, if appropriate, used by these EGFs would be sufficient to meet the limitations of the allowances. The removal of control technology could also trigger federal NSR requirements, since this change could constitute a modification under federal regulations. EGFs in nonattainment areas must comply with nonattainment review and, if applicable, Prevention of Significant Deterioration (PSD) review. Allowances cannot be used to avoid federal permitting requirements because the allowances do not constitute a permanent, enforceable emission limit. EGFs that are affected sources under FCAA, §112(g), concerning Modifications, must comply with those requirements. Since grandfathered EGFs must comply with federal requirements, if applicable, the commission believes that it is appropriate to ensure that these EGFs are in compliance with those requirements. The applicant must demonstrate how it will meet the requirements of §116.914. Texas Utilities Code, §39.264(e) requires coal-fired EGFs to comply with the opacity limits specified in commission rules. Applicants must submit an application for an EGFP under the seal of a Texas licensed professional engineer, consistent with §116.110(e), concerning Applicability.

EGFs that are currently authorized under Chapter 116 may elect to participate in the EBTA under Chapter 101, Subchapter H, Division 2 by consolidating their existing NSR permit with an EGFP. The proposed new §116.912 contains application requirements for electing EGFs that are in addition to those contained in the proposed §116.911. Since an existing NSR permit may authorize multiple facilities, the permit application submitted under this subchapter should identify which EGFs are to be included in the EGFP. Applications must contain documentation of actual emissions as well as fuel consumption, fuel heating values, and heat input in MMBtu for calendar year 1997. This information will be used to calculate allowances for these EGFs and provide the data needed to meet the requirements of Texas Utilities Code, §39.264(i)(3), which restricts the banking and trading of allowances that result from reduced utilization and shutdown. Conditions may be added to the combined permit where appropriate to ensure compliance with state and federal law. An electing EGF may opt out of the requirements of this subchapter under certain conditions. The electing EGF must notify the commission of its intent to opt out prior to the beginning of the next control period and may not opt out during a control period. This requirement would prevent an EGF from opting out in order to avoid being out of compliance with the requirement to not exceed their allowances. All allowances for the electing EGF will be voided by the commission and may not be banked for subsequent use. Since the EGF would no longer be subject to the restrictions of the EBTA, it would be inappropriate to use those allowances at other EGFs, and no allowances will be allocated for subsequent control periods. Once an EGF has opted out, the EGF may not participate in the EBTA at any future date. Since SB 7 states that EGFs must elect to participate prior to September 1, 2000, there is not a subsequent opportunity for those EGFs to re-elect. The commission believes that a one-time election and a one-

time opt out provide sufficient flexibility without undermining the program. The owner or operator shall request an alteration to the combined permit to remove the conditions pertaining to the EGFP and restore any conditions that existed prior to the consolidation. This alteration would restore the NSR permit to its prior status.

The proposed new §116.913 contains general conditions applicable to every EGFP unless specified differently in the permit, and authorizes the commission to include special conditions in the permit. An EGFP would authorize NO_x emissions from EGFs, and SO₂ emissions from coal-fired EGFs. The EGF must comply with the EBTA in Chapter 101, Subchapter H, Division 2. The proposed provisions for the EBTA require EGFs to maintain allowances in a compliance account. The EBTA in Chapter 101 contains all provisions for managing allowances. For emissions of NO_x and, where applicable, SO₂, the EGF shall hold in its account, on May 1 of each year, a quantity of allowances equal to or greater than the amount of that air contaminant emitted since May 1 of the previous year. Holders of EGFPs shall comply with this requirement beginning May 1, 2004. Beginning May 1, 2004, holders of EGFPs must report annual actual emissions of NO_x and, if applicable, SO₂, since the previous May 1. This report must be submitted by June 1 of each year. This report will be used to determine compliance with the requirement that the EGF hold allowances equal to or greater than the emissions over a given control period. The proposed section implements the requirement of Texas Utilities Code, §39.264(e) that requires coal-fired EGFs comply with the opacity limits specified in commission rules. Section 116.913 states that the removal of or failure to operate existing control technology is not permissible under this subchapter. The commission believes that it is not the intent of the EGFP to authorize

removal or backsliding of control technology. Also under §116.913, proposed language would state that applicable requirements of New Source Performance Standards (NSPS), under 40 CFR Part 60, concerning Standards of Performance for New Stationary Sources; 40 CFR Part 61, concerning National Emission Standards for Hazardous Air Pollutants; and 40 CFR Part 63, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, are also conditions of the permit. The issuance of an EGFP does not modify or limit the applicability of these federal programs.

The proposed new §116.914 specifies monitoring and reporting requirements for EGFPs. The commission is required by Texas Utilities Code, §39.264(k) to provide methods for use in determining compliance with permits and methods for monitoring and reporting actual emissions of NO_x and, if applicable, SO₂. Title 40 CFR Part 75, concerning Continuous Emission Monitoring Under the Acid Rain Program (Acid Rain Program), contains monitoring requirements for SO₂ for affected units under that program. Since the acid rain program already requires extensive monitoring, the commission proposes to use that monitoring for EGFs that are subject to the acid rain program for compliance with this subchapter. EGFs not subject to the Acid Rain Program would have three choices in monitoring. The EGF may choose to meet either Part 75 monitoring requirements, or the requirements of Title 40 CFR Part 60, or the EGF may provide an alternative monitoring plan that would be incorporated into the permit conditions. Part 60 requirements are proposed as an alternative to Part 75 in order to be consistent with current NSR practices. Since Part 60 monitoring is less accurate than Part 75 monitoring, the proposal requires Part 60 monitored data to have a relative accuracy of greater than 10% (i.e., measured values within 90-100% of the correct value). To account for this inaccuracy, the

monitored value must be multiplied by a factor of 1.1. This factor has been included to account for the inequity between the monitoring accuracy of Parts 75 and 60. The commission believes that this factor, proposed in the Ozone Transport Commission's (OTC) Model Rule, is appropriate for the EBTA as well, based on the similarity of the OTC requirements and the goals of Texas Utilities Code, §39.264. The OTC Model Rule implements a NO_x emission budget program to reduce ambient ozone concentrations. Although Texas is not required to participate in the OTC budget program, the commission believes that it is appropriate to model this budget rule after the OTC model rule. Additionally, EGFs with a heat input of less than 100 MMBtu/hr could use Appendix E of 40 CFR Part 75 to estimate NO_x emissions. Appendix E relies on stack testing of the facility to develop a relationship between the emission rate and heat input. The commission proposes to structure the monitoring requirements of this subchapter on these existing requirements because many EGFs are currently using Part 75 and Part 60 monitoring methods. Data collected from these monitoring requirements would be used to calculate annual emissions reported to the commission for the purpose of demonstrating compliance with allowances. Proposed §116.914 also specifies that data collected from the monitoring of EGFs shall be detailed in an annual report as required under §116.913. The commission will develop a form, AR-1, specifying the requirements of the report, which would be due on June 1 of each year.

The proposed new §116.915 would permit emission control changes to EGFs as a result of pollution control projects initiated under the EGFP program that reduce emissions of NO_x or, if applicable, SO₂. This section allows emission control changes to EGFs provided the control change follows the criteria

in this section which is similar to §116.617, concerning Standard Permits for Pollution Control Projects. Any emission increases must be a result of the emission control change only. For changes that are not pollution control projects, if nonattainment NSR (NNSR), PSD, or FCAA, §112(g) is applicable, then the emission control change must be authorized under NSR. For any significant increase in emissions of a air contaminant for which a National Ambient Air Quality Standard (NAAQS) exists, the applicant must demonstrate that the project will not lead to a violation of the NAAQS or cause or contribute to a violation of a PSD increment or PSD visibility limitation. Netting is not required when determining whether this demonstration must be made for the proposed project; however, increases or decreases in emissions must be included in any future netting. This section references 30 TAC §116.12, concerning Nonattainment Review Definitions, or Title 40 CFR §52.21(b)(23), concerning Prevention of significant deterioration of air quality, to determine what constitutes a significant increase in an air contaminant. Consistent with existing standard permit registration requirements under Chapter 116, Subchapter F, concerning Standard Permits, permit holders must submit a PI-1UR registration for emission control changes. The emission control change may be implemented any time after receipt of written notification from the executive director that there are no objections, or 45 days after receipt by the executive director of the registration, whichever occurs first.

Consistent with the current review process for registrations for standard permits for pollution control projects, the emission control change will not be authorized by the executive director if there are significant health effects concerning the increase in emissions of any air contaminant other than those

for which a NAAQS has been established. Until those concerns are addressed by the applicant to the satisfaction of the executive director, the registration will not be approved. Excluding changes authorized under §116.915(a), increased emissions of any air contaminant, including NO_x or, if applicable, SO₂, must obtain preconstruction authorization under Subchapter B of this chapter if nonattainment, PSD, or FCAA, §112(g) are applicable. Since SB 7 does not authorize emissions which trigger federal permitting requirements, the commission believes that an EGF is still subject to preconstruction requirements for federal permits. Likewise, modifications that would trigger state NSR would need appropriate authorization under Chapter 116, Subchapter B.

Consistent with Texas Utilities Code, §39.264(q), the proposed new §116.915 would exempt EGFs in El Paso County from NO_x allowance requirements if the commission or United States Environmental Protection Agency (EPA) determines that reductions in NO_x emissions would lead to increased ambient levels of ozone. Currently, NO_x reductions are not required for facilities in the El Paso nonattainment area because EPA has granted a waiver under FCAA, §182(f). Under this waiver, NO_x reductions are not required if the attainment demonstration for compliance with the ozone NAAQS can be made without a NO_x control strategy. The existence of this waiver is not consistent with the provisions of Texas Utilities Code, §39.264(q) because it has not been demonstrated, under the §182(f) waiver or otherwise, that NO_x reductions would increase ambient ozone in El Paso County. These EGFs would still be required to obtain a permit under Chapter 116, Subchapter I regardless of the determination that NO_x reductions are counterproductive in controlling ambient ozone levels in the El Paso Region. The commission believes that this requirement is appropriate, since Texas Utilities Code, §39.264(e)

provides that EGFs without a permit may not operate after May 1, 2003, and Texas Utilities Code, §39.264(q) refers only to reduction requirements, not permitting requirements. Regardless of this determination, grandfathered EGFs in El Paso County would still be required to obtain a permit under this subchapter.

The proposed new §116.920 would require applicants for initial issuance of an EGFP to publish notice of intent to obtain a permit in accordance with Chapter 39, concerning Public Notice, Subchapter K of this title, concerning Public Notice of Air Quality Applications. Subchapter K implements the new requirements of TCAA, §382.056, as amended by the 76th Legislature by House Bill 801, an act relating to Public Participation in Certain Environmental Permitting Procedures of the TNRCC. SB 7 provides that public participation for initial issuance of an EGFP will be done in the manner of §382.0561, concerning Federal Operating Permit; Hearing; and §382.0562, concerning Notice of Decision. These sections allow for notice and comment hearings instead of contested case hearings under Texas Government Code, Chapter 2001, concerning Administrative Procedure, and require the commission to send notice of final action to persons who comment during the comment period or during a hearing. The proposed requirements of §§116.920, 116.921, and 116.922 are based on the sections in 30 TAC Chapter 122, concerning Federal Operating Permits, that implement the requirements of TCAA, §382.0561 and §382.0562. Section 116.920 provides that any person who may be affected by emissions from the EGF may request a notice and comment hearing on an EGFP application within 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, relating to Notice of Receipt of Application and Intent to Obtain Permit.

Grandfathered support facilities that elect to obtain a VERP and have it consolidated with an EGFP may publish a combined notice. The unchanged, existing NSR permit conditions would not be subject to public notice for the combined permit; only the conditions specific to the EGFs for NO_x and, if applicable, SO₂, would be subject to the public notice required by §116.920. Persons affected by a decision of the commission to issue or deny an EGFP will be entitled to petition for a rehearing under 30 TAC §50.119 of this title, concerning Notice of Commission Action, Motion for Rehearing, and may seek judicial review under TCAA, §382.032, concerning Appeal of Commission Action.

The proposed new §116.921 contains the hearing requirements for the initial issuance of EGFPs. The proposed rule would allow the commission to decide whether to hold a hearing based on the reasonableness of a request. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from the facility is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from the EGF, and that request is reasonable, the commission will hold a hearing. The section would require that notice of hearing on a draft permit be published in the public notice section of one issue of a newspaper of general circulation in the municipality or the nearest municipality where the EGF is located. The notice must be published at least 30 days prior to a hearing. The notice is published at the applicant's expense and the rule specifies the content of the notice. The proposed rule provides the procedures for the submittal of comments at a hearing and specifically states that the period for submitting written comments extends to the close of the hearing and may be extended beyond the close of the hearing. Any person, including the applicant, may submit comments on whether the draft permit contains

inappropriate conditions or whether the preliminary decision to issue or deny the EGFP is inappropriate. Commenters shall raise all issues and submit all comments supporting their position by the end of the public comment period. This requirement will assist the commission in developing its response to comments as required by new §116.922. To ensure a complete record of the comments, the rule proposes prohibiting the incorporation by reference of supporting materials for comments unless the materials meet the criteria in §116.921(g). The commission is required to keep a record of all comments submitted or raised at a hearing and to have an audio recording or written transcript of the hearing. The record is available to the public. Draft permits may be revised based on comments pertaining to whether the permit provides for compliance with the requirements for an EGFP.

The proposed new §116.922 would require the commission to individually notify persons who commented, either during the public comment period or at a permit hearing, of the final action of the commission. The notice must be sent by first-class mail to the commenters and to the applicant. The notice must include the response to comments, the identification of any changes in the permit, and a statement that any person affected by the decision of the commission may petition for rehearing under 30 TAC §50.119, and for judicial review under TCAA, §382.032.

The EGFP establishes the conditions under which emissions of NO_x and SO₂ are regulated. Emissions of air contaminants other than NO_x and if applicable, SO₂, may be permitted under the VERP proposed in a concurrent rulemaking in other sections of this edition of the *Texas Register*. Additionally, the public notice requirements of the VERP and EGFP may be combined under §116.920.

Consistent with Texas Utilities Code, §39.264(r), the proposed new §116.931 would require EGFPs to be renewed under the requirements of Chapter 116, Subchapter D, concerning Permit Renewals.

FISCAL NOTE

Bob Orozco, a technical specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for the commission and most units of state and local government as a result of administration or enforcement of the proposed amendments. River authorities and units of local government that own and operate EGFs having a capacity of greater than 25 megawatts will be required to obtain a permit from the commission to continue operating. The fiscal implications for units of state and local government with EGFs will be addressed in the Public Benefit portion of this preamble.

The proposed amendments to Chapter 116 would implement the permit requirements for grandfathered EGF provisions contained in:

Act of May 27, 1999, SB 7, 76th Legislature, 1999, (to be codified in part at Texas Utilities Code, §§11.003-163.002).

In addition, the proposed amendments refer to public notice and public participation provisions incorporated in proposed changes to Chapter 39, Public Notice and specified in:

Act of May 13, 1999, HB 801, 76th Legislature, HB 801, 1999, (to be codified in Texas Water Code, Chapter 5, Subchapter M, and Texas Health and Safety Code, §361.088 and §382.056).

The proposed amendments require grandfathered EGFs to apply for a permit before September 1, 2000. A grandfathered EGF is an EGF that was exempt from permitting requirements by virtue of existing or beginning construction, alteration, or modification on or before August 31, 1971. An EGF that does not obtain a permit by May 1, 2003, may not operate unless the commission finds good cause for an extension.

The proposed amendments would establish requirements, procedures, deadlines, and responsibilities for electric generating facility permit (EGFP) applications for facilities that were formerly exempt from the agency's permit requirements.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 116 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a reduction of air contaminants emitted from affected electric generating facilities, and the opportunity for public participation and comment in the permitting procedures for formerly grandfathered EGFs and other participating EGFs.

The purpose of the proposed amendments is to create and implement a permit and emission control program, including an EBTA program for certain EGFs, and to implement related permit application and public notice procedures. EGF applicants must apply for a permit to emit air contaminants on or before September 1, 2000. An EGF that does not obtain a permit may not operate after May 1, 2003, unless the commission finds good cause for an extension.

The EGFP will also require measurement of emissions, prohibition of removal or failure to operate control technology, and a requirement to use control technology sufficient to ensure that emissions do not exceed an EGF's allowance. Emissions of air contaminants other than NO_x or SO₂ from EGFs may be included in the EGFP. If included, these emissions would be reviewed under the requirements of the concurrently proposed Voluntary Emissions Reduction Permit (VERP) in Chapter 116, Subchapter H. Support facilities for EGFs may be concurrently permitted under the VERP and the permit may be consolidated with an EGFP.

It is the intent of the legislature in SB 7 that, starting May 1, 2003, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the levels emitted during 1997 as reported to the commission. SB 7 also requires that emissions of SO₂ from coal-fired power plants not exceed 75% of the levels emitted in 1997 as reported to the commission. These reductions may be met by the emissions trading and allowance system which is the subject of related and concurrent rulemaking in Chapter 101. Counties within Texas have been divided into three regions by SB 7—East Texas, West Texas, and El Paso—for the purpose of allocating emissions of NO_x and SO₂ and for the trading of emissions

allowances, by region, among the EGFs. The East Texas Region emission rate shall be 0.14 lb of NO_x and 1.38 lbs of SO₂ per MMBtu. The El Paso and West Texas Regions emission rates shall be 0.195 lb of NO_x. The allowance calculation is specified in the concurrently proposed Chapter 101, Subchapter H, Division 2, concerning Emissions Banking and Trading of Allowances. The permit under this chapter would require compliance with the allowance system calculated under the EBTA.

For the purposes of this fiscal note, the estimated total annualized cost to EGFs of implementing the provisions of the proposed amendments consists of the cost of publishing notice of intent to obtain an air permit, and the cost of installing and operating the control technology sufficient to ensure that emission allowances are not exceeded. Each of these costs are addressed in turn.

SB 7 requires that applicants publish notice of intent to obtain a permit in accordance with TCAA, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing. The public notice requirements for these permits are contained in Chapter 39, concerning Public Notice. The cost of publishing notice is estimated to be in the range of \$380 to \$3,600, inclusive of one display notice, one legal notice, and one alternative language notice. Costs vary significantly depending on the location of the EGF and its proximity to large metropolitan areas. The alternative language notice is not always required. Small town/city newspapers generally charge much less for publication of a public notice.

In February 1999, the Public Utility Commission of Texas (PUCT) and the commission published a report entitled, "Electric Restructuring and Air Quality: A Preliminary Analysis of Reductions and

Costs of Nitrogen Oxides Controls from Electric Utility Boilers in Texas.” The PUCT and the commission used information collected from generation-owning utilities in Texas to assess the potential costs of NO_x emission reductions that could be required from existing utility power plants. Costs were estimated at an emission rate of 0.15 lb MMBtu which is close to the 0.14 lb MMBtu specified in the proposed amendments to Chapter 101. The average annual cost estimated by the utilities of applying a control technology to attain this level of reductions was approximately \$4,000 per ton of emissions reduced. This average annual cost per ton of emissions reduced includes annualized capital costs plus the additional annual operating costs associated with the applied technology. The study states that the “NO_x control costs developed in this analysis are only estimates, and that a change in any one of a number of critical assumptions will cause these cost estimates to change significantly.” Generic reduction and cost factors were used in the study but individual companies and specific units will most likely have different costs. This variability in cost depends on the types of emissions reduced, the amount of emission reductions, the specific processes involved, the size of the facility, and control methodologies employed for emission reductions. The data also indicates that EGFs with the largest required emission reductions have the lowest cost per ton of emission reduced. In general, the annualized cost for emission reductions is inversely proportional to the amount of emissions required because when larger emission reductions are required, the average cost is spread over more tons reduced.

The data also indicates that it would be more economical for some of the affected EGFs which require small reductions and large capital costs to use the banking and trading provisions to offset some or all

of the costs of reducing emissions to the required level. It is anticipated that emission reduction requirements will be met as the economics of emission allowances, emission reduction costs, the emission banking and trading system, and other factors of individual facilities dictate. It is also anticipated that costs for using the EBTA system will be less than the cost of actual emission reduction in most cases. The PUCT/commission study states that “a subcommittee of the Ozone Transport Assessment Group (OTAG) has analyzed market-based emission trading options, estimating potential savings of as much as 50 percent, compared to the costs of unit-by-unit compliance.” The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available for reduction is such that costs of emission reduction for the EGFP program are impossible to predict with certainty. However, an average annual cost of approximately \$4,000 per ton of emissions reduced would appear to be an acceptable industry-wide estimate of the cost of installing and operating the control technology sufficient to ensure that emission allowances are not exceeded. For EGFs requiring an emission reduction of 100 to 1,000 tons annually, the total annualized costs are estimated to be in the range of \$400,000 to \$4,000,000. These estimated costs are inclusive of annualized capital costs and annual operating costs averaging approximately \$4,000 per ton of emissions reduced plus the public notice costs.

Costs associated with authorizing emissions other than NO_x or, if applicable, SO₂, using the review process of the VERP are detailed in the concurrent proposed Chapter 116, Subchapter H. The VERP fee would not apply to these emissions and the public notice requirements would be satisfied under the EGFP. Costs associated with permitting support facilities under the VERP include the permit

application fee as detailed in the concurrently proposed Chapter 116, Subchapter H. The public notice requirements for the VERP and the EGFP may be combined into one notice process.

A municipal corporation, electric cooperative, or river authority may exclude any electric generating facilities of 25 megawatts or less from the requirements to obtain an EGFP. These entities must inform the commission by January 1, 2000, of their intent to exclude facilities from permitting requirements. River authorities and units of local government that own and operate EGFs having a capacity greater than 25 megawatts will be required to obtain a permit from the commission to continue operating. These entities include the cities of Austin, Brownsville, Bryan, Denton, Garland, Greenville, Lubbock, San Antonio, the Texas Municipal Power Agency, Brazos Electric Power Cooperative, San Miguel Electric Cooperative, and the Lower Colorado River Authority. It is anticipated that the total annualized cost of emission reductions will be similar to those of the industry at large for similar sizes and types of facilities, and types of emissions. It is also anticipated that emission reductions will be made as the economics of emission allowances, the banking and trading system, and other factors of individual facilities dictate. The scope of the variability in the amounts and types of emission reductions that are possible and the methodologies available for reduction is such that costs of emission reduction for the EGFP program are impossible to predict with certainty for this segment of the industry. However, the estimated annualized cost that was used for the industry at large for installing and operating the control technology of approximately \$4,000 per ton of emissions reduced would appear to be an acceptable estimate for municipal corporations, electric cooperatives, and river authorities. The cost of publishing notice will also be similar to those for the industry at large.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

Based on the expected revenues from the smallest generators and the number of employees defined as a micro-business, there are no known small businesses or micro-businesses as defined in the Texas Government Code with EGFs which would be affected by these proposed amendments to Chapter 116. If there are affected small businesses or micro-businesses, the estimated annualized cost that was used for the industry at large for installing and operating the control technology of approximately \$4,000 per ton of emissions reduced would appear to be an acceptable estimate. The cost of publishing notice will also be similar to those for the industry at large.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking meets the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. However, the proposed amendments to Chapter 116 are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse effects on grandfathered and electing EGFs which could be considered a sector of the economy. However, the analysis required by §2001.0225(c) does not apply because the proposed amendments do not meet any of the four applicability requirements of a major environmental rule. The proposed

amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement, and they are not proposed solely under the general powers of the agency. The amendments to Chapter 116 are proposed specifically to comply with SB 7. SB 7 requires grandfathered EGFs apply for a permit by September 1, 2000, and obtain a permit by May 1, 2003, or cease operating, absent a showing of good cause to continue operating. The proposed amendments allow the permitting of air contaminants other than NO_x or SO₂ for EGFs using the VERP process. Support facilities may be permitted under a VERP which will be consolidated with an EGFP. There is no federal law or delegation agreement with a federal agency that requires the permitting of grandfathered EGFs.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the proposed rules. The following is a summary of that assessment. These amendments implement the requirements of Texas Utilities Code, §39.264. This section requires owners or operators of grandfathered EGFs to apply for a permit on or before September 1, 2000, and obtain a permit or cease operation by May 1, 2003. It is the intent of SB 7 that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_x from grandfathered EGFs not exceed 50% of the NO_x emissions reported to the commission for 1997. Furthermore, it is the intent of the legislation that emissions of SO₂ from coal-fired EGFs not exceed 75% of the SO₂ emissions reported to the commission in 1997. NO_x and SO₂ allowances will be allocated to EGFs by January 1, 2000. To assist EGFs in meeting the reduction requirements, a banking and trading program is proposed concurrently in Chapter 101 of this title.

Although EGFs are required to make specific emission reductions, these facilities have alternatives available under the proposed banking program that may allow the EGF to avoid installing add-on controls. Further, allowances can be transferred under the proposed banking program so that EGFs have opportunities to buy and sell allowances in order to respond to business needs. The amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). The reductions obtained from the issuance of EGFPs will assist in the efforts of the commission to attain the NAAQS. This action is taken in response to a real and substantial threat to public health and safety and significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, relating to Consistency with Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the

proposed new sections related to the authorization of EGFPs, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This proposal is intended to reduce overall emissions of NO_x and SO₂ from EGFs. This action is consistent with 40 CFR because it does not authorize an emission rate in excess of that specified by federal requirements. Interested persons may submit comments during the public comment period on the consistency of the proposed rule with CMP goals and policies.

PUBLIC HEARING

The commission will hold a public hearing on this proposal in El Paso on October 1, 1999, at 9:00 a.m. in the City of El Paso Council Chambers, located at 2 Civic Center Plaza, 2nd Floor. Additional hearings will be held in Lubbock on October 1 at 6:00 p.m. in the City of Lubbock Council Chambers, located at 1625 13th Street; in Austin on October 4 at 9:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle; in Irving on October 5 at 1:00 p.m. in the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard; in Houston on October 7 at 9:00 a.m. in the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard; and in Beaumont on October 7 at 6:00 p.m. in the John Gray Institute, located at 855 Florida Avenue. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, an agency staff

member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99033-116-AI. Comments must be received by 5:00 p.m., October 11, 1999. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules for the permitting of electric generating facilities; and Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue permits; §382.0513, which

authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.0515, which requires applicants to provide information that assures compliance with state and federal laws and regulations; §382.0518, which authorizes the commission to issue permits for new construction and modifications; §382.0519, which authorizes the commission to issue voluntary emission reduction permits, §382.05191, which authorizes public notice for voluntary emission reduction permits; §382.05193, which authorizes permits through emissions reductions, §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new section implements Texas Utilities Code, §39.264, relating to Emissions Reductions of “Grandfathered Facilities”; Texas Health and Safety Code, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; §382.051, relating to Permitting Authority of Board; Rules; §382.0513, relating to Permit Conditions; §382.0515, relating to Application for Permit; §382.0519, relating to Voluntary Emissions Reduction Permit, §382.05191, relating to Voluntary Emissions Reduction Permit: Notice and Hearing; §382.05193, relating to Emissions Permits through Emissions Reductions; §382.0518, relating to Preconstruction

Permit; §382.055, relating to Review and Renewal of Preconstruction Permit; §382.056, relating to Notice of Intent to Obtain Permit or Permit Review; Hearing; §382.0561, relating to Federal Operating Permit: Hearing; §382.0562, relating to Notice of Decision; and §382.061, relating to Delegation of Powers and Duties; and Texas Water Code, §5.122, relating to Delegation of Uncontested Matters to Executive Director.

SUBCHAPTER A : DEFINITIONS

§116.18

§116.18. Electric Generating Facility Permits Definitions.

The following words and terms, when used in Subchapter I of this chapter (relating to Electric Generating Facility Permits) shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Allowance** - The authorization to emit one ton of nitrogen oxide (NO_x) or sulfur dioxide (SO₂) during a control period.

(2) **Capacity factor** - Either:

(A) the ratio of an electric generating facility's (EGF) actual annual electric output (expressed in megawatt-hours) to the EGF's nameplate capacity times 8,760 hours; or

(B) the ratio of an EGF's annual heat input (in millions of British thermal units (MMBtu)) to the EGF's maximum design heat input (in MMBtu) times 8,760 hours.

(3) **Coal** - All solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 “Standard Classification of Coals by Rank” (as incorporated by reference in Title 40 Code of Federal Regulations, §72.13 (effective June 25, 1999)).

(4) **Combined permit** - A permit that consolidates the existing new source review authorizations with the requirements of an EGF permit.

(5) **Compliance account** - The account for an EGF or multiple EGFs in which allowances are held.

(6) **Control period** - The 12 month period beginning May 1 of each year and ending April 30 of the following year. Control periods begin May 1, 2003.

(7) **Electing electric generating facility (EGF)** - An EGF permitted under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) which is not subject to the requirements of Texas Utilities Code, §39.264 and elects to comply with Chapter 116, Subchapter I of this title (relating to Electric Generating Facility Permits).

(8) **Electric generating facility (EGF)** - A facility that generates electric energy for compensation and is owned or operated by a person in this state, including a municipal corporation,

electric cooperative, or river authority. An EGF does not include a facility that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity.

(9) **Nameplate Capacity** - The maximum electrical output (expressed in megawatts) that an EGF can sustain over a specified period of time when not restricted by seasonal or other deratings.

(10) **Peaking unit** - An EGF that has:

(A) An average capacity factor of no more than 10% during the past three calendar years; and

(B) A capacity factor of no more than 20% in each of those calendar years.

SUBCHAPTER I : ELECTRIC GENERATING FACILITY PERMITS

§§116.910-116.916, 116.920-116.922, 116.930, 116.931

STATUTORY AUTHORITY

The new section is proposed under Texas Utilities Code, §39.264, which authorizes the commission to develop rules for the permitting of electric generating facilities; and Texas Health and Safety Code, TCAA, §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; §382.051, which authorizes the commission to issue permits; §382.0518, which authorizes the commission to issue permits for new construction and modifications; §382.0519, which authorizes the commission to issue voluntary emission reduction permits, §382.05191, which authorizes public notice for voluntary emission reduction permits; §382.05193, which authorizes permits through emissions reductions, §382.055, which authorizes the commission to establish procedures for review or renewal of a permit; §382.056, which authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments; §382.0561, which authorizes hearing procedures for federal operating permits; §382.0562, which requires notices of decision; and §382.061, which authorizes the commission to delegate permitting authority to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

The proposed new section implements Texas Utilities Code, §39.264, relating to Emissions Reductions of “Grandfathered Facilities”; Texas Health and Safety Code, §382.012, relating to State Air Control Plan; §382.017, relating to Rules; §382.0513, relating to Permit Conditions; §382.051, relating to Permitting Authority of Board; Rules; §382.0519, relating to Voluntary Emissions Reduction Permit, §382.05191, relating to Voluntary Emissions Reduction Permit: Notice and Hearing; §382.05193, relating to Emissions Permits through Emissions Reductions; §382.0518, relating to Preconstruction Permit; §382.055, relating to Review and Renewal of Preconstruction Permit; §382.0561, relating to Federal Operating Permit: Hearing; §382.0562, relating to Notice of Decision; and §382.061, relating to Delegation of Powers and Duties; and Texas Water Code, §5.122, relating to Delegation of Uncontested Matters to Executive Director.

§116.910. Applicability.

(a) The owner or operator of a grandfathered electric generating facility (EGF) shall apply for a permit to operate that facility under this subchapter.

(b) Electing EGFs opting to obtain a permit under this subchapter shall submit a permit application to consolidate existing New Source Review (NSR) authorizations with a permit to authorize nitrogen oxide (NO_x) emissions and, if applicable, sulfur dioxide (SO₂) emissions under this subchapter.

(c) The owner, or the operator who is authorized to act for the owner, of an EGF is responsible for complying with this subchapter.

(d) A municipal corporation, electric cooperative, or river authority may exclude any EGF with a nameplate capacity of 25 megawatts or less from this subchapter. The municipal corporation, electric cooperative, or river authority must notify the commission by January 1, 2000, of its intent to exclude those EGFs.

(e) Emissions of NO_x shall be permitted under this subchapter for any EGF. Emissions of SO₂ shall be permitted under this subchapter only for coal-fired EGFs. Emissions of other air contaminants from EGFs may be permitted under this subchapter provided the grandfathered facilities meet the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits).

(f) Owners or operators of grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with EGFs subject to this subchapter may include those grandfathered facilities in a permit issued under this subchapter, provided the grandfathered facilities meet the requirements of Chapter 116, Subchapter H of this title.

§116.911. Electric Generating Facility Permit Application.

(a) Any application for an electric generating facility permit (EGFP) must include a completed Form PI-1-U, General Application. The Form PI-1-U must be signed by an authorized representative of the applicant. The Form PI-1-U specifies additional support information which must be provided before the application is deemed complete. In order to be granted an EGFP, the owner or operator of the electric generating facility (EGF) shall submit information to the commission which demonstrates that all of the following are met:

(1) Measurement of emissions and performance demonstration. Measurement of emissions and demonstration of performance shall be conducted consistent with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(2) Control method. EGFs shall use control technology sufficient to ensure that actual emissions from the facility do not exceed the amount of allowances in an EGF's compliance account.

(3) Nonattainment review. If the EGF is located in a nonattainment area, the owner or operator of the EGF shall comply with all applicable requirements under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review).

(4) Prevention of Significant Deterioration (PSD) review. If the EGF is located in an attainment area, the owner or operator of the EGF shall comply with all applicable requirements under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review).

(5) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the EGF is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), the affected source shall comply with all applicable requirements under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(6) Air dispersion modeling or ambient monitoring for pollution control projects under §116.915(b)(2) of this title (relating to Emission Control Changes). Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's New Source Review Permits Section where there is an increase in emissions to determine the air quality impacts from the EGF.

(7) Opacity Limitations for coal-fired EGFs. The coal-fired EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(b) Applications must be submitted on or before September 1, 2000.

(c) All applications for an EGFP shall be submitted under the seal of a Texas licensed professional engineer in compliance with §116.110(e) of this title (relating to Applicability).

§116.912. Electric Generating Facility Permit Application for Electing Electric Generating Facilities.

(a) Electing Electric Generating Facilities (EGF) seeking to consolidate existing New Source Review (NSR) authorizations with a permit under this subchapter shall submit an application to authorize nitrogen oxide (NO_x) emissions and, if applicable, sulfur dioxide (SO₂) emissions. The application shall meet the requirements of §116.911 of this title (relating to Electric Generating Facility Permit Application) as well as the following.

(1) The permit application shall contain the following information for the purposes for managing allowances:

(A) Documentation of the actual emissions of that EGF for calendar year 1997.

(B) Documentation of fuel consumption, fuel heating values, and heat input in MMBtu for calendar year 1997.

(2) The permit application shall identify which EGFs are to be included.

(3) Conditions in the electing EGF's NSR permit necessary to ensure compliance with state or federal law will be included in the combined permit.

(4) The combined permit shall include the conditions of the NSR authorization as well as the conditions of the EGFP.

(b) An electing EGF may opt out of the requirements of this subchapter under the following conditions:

(1) The electing EGF must notify the commission of its intent to opt out prior to the beginning of the next control period.

(2) The electing EGF may not opt out during a control period.

(3) All allowances for the electing EGF will be voided by the commission and may not be banked for subsequent use.

(4) No allowances will be allocated for subsequent control periods.

(5) Once an EGF has opted out, the EGF may not participate in the emissions banking and trading of allowances at any future date.

(6) The owner or operator shall request an alteration to the combined permit to remove the conditions pertaining to the EGFP and restore any conditions that existed prior to the consolidation.

§116.913. General and Special Conditions.

(a) The following general conditions shall be applicable to every electric generating facility permit (EGFP) unless otherwise specified in the permit.

(1) A permit issued under this subchapter authorizes the following.

(A) NO_x emissions from all electric generating facilities (EGF).

(B) SO₂ emissions from coal-fired EGFs.

(C) Emissions of all other air contaminants from EGFs meeting the requirements of Chapter 116, Subchapter H of this title (relating to Voluntary Emissions Reduction Permits).

(2) Owners or operators of grandfathered facilities may consolidate a permit issued under the requirements of Chapter 116, Subchapter H of this title.

(3) The EGF must comply with Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances) including the requirement to maintain allowances in a compliance account. Allowances may be transferred in accordance with §101.335 of this title (relating to Allowance Banking).

(4) Mass emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(5) On May 1 of each year after May 1, 2003, an EGF subject to this subchapter shall hold a quantity of allowances for emissions of NO_x and, where applicable, SO₂, in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period.

(6) Reports of annual actual emissions for NO_x and, where applicable, SO₂, during the control period shall be submitted to the New Source Review Permits Section by June 1 of each year.

(7) Coal-fired EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(8) Removal of or failure to operate existing control technology is not permissible under this subchapter.

(9) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the EPA under authority granted under FCAA, §111, as amended.

(10) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

(11) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(b) Special conditions may be included in the EGFP.

§116.914. Emissions Monitoring and Reporting Requirements.

(a) The EGF shall comply with the following requirements:

(1) For EGFs subject to the requirements of 40 Code of Federal Regulations (CFR) Part 75 (effective June 25, 1999), relating to Continuous Emission Monitoring, all monitoring systems must comply with the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75. EGFs not subject to 40 CFR Part 75 may choose to comply with the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75 or those same requirements in 40 CFR Part 60 (relating to New Source Performance Standards).

(2) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative default data in accordance with the provisions of 40 CFR Part 75, Subpart D, relating to Missing Data Substitution Procedures.

(b) For EGFs subject to 40 CFR Part 75, a certified monitoring system under 40 CFR Part 75 shall be used to demonstrate compliance with this subchapter.

(1) If the EGF has a flow monitor certified under 40 CFR Part 75, nitrogen oxide (NO_x) emissions in pounds per hour shall be determined using a NO_x continuous emission monitoring system (CEMS) and the flow monitor.

(2) If the EGF does not have a certified flow monitor, but does have a NO_x CEMS, NO_x emissions in pounds per hour shall be determined by multiplying pounds of NO_x per million British thermal units (lbs/MMBtu) times heat input in MMBtu per hour (MMBtu/hr). Procedures found in 40 CFR Part 75, Appendix F, concerning Conversion Procedures, Section 3, shall be used to convert the measured concentration of NO_x and a diluent (carbon dioxide (CO₂) or oxygen (O₂)) into an emission rate in lbs/MMBtu. Procedures found in 40 CFR Part 75, Appendix F, Section 5, shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr.

(3) The procedures in 40 CFR Part 75, Appendix E, relating to Optional NO_x Emissions Estimation Protocol for Gas-fired Peaking Units and Oil-fired Peaking Units, may be used to estimate the NO_x emission rate.

(c) For EGFs not subject to 40 CFR Part 75, a certified monitoring system under 40 CFR §60.13, Subpart A; Appendix B Performance Specifications 2 and 3; and Appendix F, §5.1 or 40 CFR Part 75 shall be used to demonstrate compliance with this subchapter. For all CEMS exceeding 10% relative accuracy, actual emissions must be determined by multiplying the CEMS data by 1.1.

(1) Emissions in pounds per hour shall be determined using the NO_x CEMS and one of the following methods:

(A) The owner or operator may elect to comply with subsection (b)(1) or (2) of this section.

(B) The EGF may use a flow monitor certified under 40 CFR Part 60 to determine emissions in pounds per hour.

(C) NO_x emissions in pounds per hour may be determined by multiplying the lbs/MMBtu times the heat input in MMBtu/hr. Procedures found in 40 CFR Part 60, Appendix A, Method 19 shall be used to convert the measured concentration of NO_x and a diluent (CO₂ or O₂) into emission rates in lbs/MMBtu. Procedures found in 40 CFR Part 75, Section 5, Appendix F shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr.

(2) For EGFs with a heat input of less than 100 MMBtu/hr and for peaking units emissions in pounds per hour may be determined using the procedures in Appendix E of 40 CFR Part 75 to estimate the NO_x emission rate.

(d) In lieu of the monitoring required by subsection (c) of this section, the EGFP may authorize alternative monitoring to calculate mass emissions under this section. The permit applicant must submit the following for review of an alternative monitoring proposal:

(1) a description of the monitoring approach to be used;

(2) a description of the major components of the monitoring system, including the manufacturer, serial number of the component, the measurement span of the component, and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values;

(3) an estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined;

(4) a description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy; and

(5) additional information may be requested before approving a request for alternative monitoring. Alternative monitoring shall be incorporated into the EGF permit.

(e) Data collected from monitoring of EGFs shall be used to calculate the actual emissions over a control period. For each control period, EGFs subject to this subchapter must submit a report to the commission detailing the amount of emissions of each allocated air contaminant during the preceding control period. This report must be submitted by June 1 of each year. At a minimum, the report shall contain the following information:

(1) A description of the monitoring protocol;

(2) A completed Form AR-1, Emissions Monitoring Data Form;

(3) Other information as needed.

§116.915. Emission Control Changes.

(a) Emission control changes resulting from pollution control projects designed to reduce emissions of nitrogen oxides (NO_x) or, if applicable, sulfur dioxide (SO₂), are authorized for EGFs provided that the following conditions are met.

(1) Any emission increase of an air contaminant must occur solely as a result of the installation of control equipment or implementation of a control technique authorized under the permit issued under this subchapter.

(2) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, the applicant shall submit information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) The net emission increase may not:

(i) considering the emission reductions that will result from the project, cause or contribute to a violation of any national ambient air quality standard (NAAQS);

(ii) cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) increment; or

(iii) cause or contribute to a violation of a PSD visibility limitation.

(B) For the purposes of this section, “significant net increase” means those emissions increases, resulting solely from the installation of control equipment or implementation of control techniques, that are equal to or greater than:

(i) the major modification threshold listed in §116.12 of this title (relating to Nonattainment Review Definitions), Table I, for air contaminants for which the area is designated as nonattainment, or for precursors to these air contaminants; or

(ii) significant as defined in 40 CFR §52.21(b)(23) (effective July 20, 1993) (relating to Prevention of Significant Deterioration of Air Quality) for air contaminants for which the area is designated attainment or unclassifiable, or for precursors for air contaminants.

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project must be included in any future netting calculation if they are determined to be otherwise creditable.

(b) Permit holders must submit a PI-1UR registration for emission control changes. The emission control change may be implemented any time after receipt of written notification from the executive director that there are no objections, or 45 days after receipt by the executive director of the registration, whichever occurs first.

(c) The emission control change will not be authorized by the executive director if there are significant health effects concerning the increase in emissions of any air contaminant other than those for which a NAAQS has been established until those concerns are addressed by the registrant to the satisfaction of the executive director.

(d) Increased emissions of any air contaminant, including NO_x or, if applicable, SO₂, other than increases authorized under subsection (a) of this section must obtain preconstruction authorization under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) if nonattainment, PSD, or FCAA, §112(g), relating to Modifications, are applicable.

§116.916. Permits for Electric Generating Facilities in El Paso County.

Electric generating facilities in El Paso County are not required to meet nitrogen oxide allowance requirements if the commission or EPA determines that reductions in nitrogen oxide emissions in the El Paso Region otherwise required by this subchapter would result in increased ambient ozone levels in El Paso County.

§116.920. Public Participation for Initial Issuance.

(a) An applicant for an electric generating facility permit (EGFP) shall publish notice of intent to obtain the permit in accordance with Chapter 39 of this title (relating to Public Notice).

(b) Public notice for an EGFP may be combined with the public notice for a voluntary emission reduction permit, under Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits.)

(c) Electing EGFs are subject to public notice for emissions of nitrogen oxides (NO_x) and, if applicable, sulfur dioxide (SO₂).

(d) Any person who may be affected by emissions from an EGF may request the commission to hold a notice and comment hearing on the EGFP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under

§39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(e) Any hearing regarding initial issuance of an EGFP shall be conducted under the procedures in §116.921 of this subchapter (relating to Notice and Comment Hearings for Initial Issuance) and not under the APA.

(f) Responses to public comments and the notice of the commission's decision to issue or deny an EGFP shall be conducted under the procedures in §116.922 of this title (relating to Notice of Final Action).

(g) A person affected by a decision of the commission to issue or deny an EGFP may move for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and is entitled to judicial review under TCAA, §382.032 (relating to Appeal of Commission Action).

§116.921. Notice and Comment Hearings for Initial Issuance.

(a) The notice and comment hearing requirements apply only to the initial issuance of a electric generating facility permit (EGFP).

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from an EGF is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from an EGF, and that request is reasonable, the commission shall hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the EGF is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(e) A tape recording or written transcript of the hearing must be made available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

(g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

(1) already part of the administrative record in the same proceedings;

(2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(h) The commission shall keep a record of all comments received and issues raised in the hearing. This record is available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission shall respond to comments consistent with §116.922 of this title (relating to Notice of Final Action).

§116.922. Notice of Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission shall send notice by first-class mail of the final action on the application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change;

(3) a statement that any person affected by the decision of the commission may petition for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and may seek judicial review under TCAA, §382.032 (relating to Appeal of Commission Action).

§116.930. Modifications.

The owner or operator planning a modification of a facility permitted under this subchapter must comply with Subchapter B of this Chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

§116.931. Renewal.

Electric generating facility permits (EGFP) shall be renewed in accordance with Chapter 116,

Subchapter D of this title (relating to Permit Renewals).