Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** March 22, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2012-0896-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 117, Control of Air Pollution from Nitrogen Compounds
Chapter 101, General Air Quality Rules
Chapter 117 Definition Update and Revisions to Chapter 101
Rule Project No. 2012-025-117-AI

Background and reason(s) for the rulemaking:
The Electric Reliability Council of Texas, Inc. (ERCOT) manages the electrical grid within the ERCOT region of Texas with oversight by the Public Utility Commission of Texas (PUCT). On March 22, 2012, the PUCT repealed Title 16 Texas Administrative Code (TAC) Chapter 25, Subchapter S, §25.507, to replace the Emergency Interruptible Load Service (EILS) program with the Emergency Response Service (ERS) program. Like the EILS program, the new ERS program is designed to help decrease the likelihood of requiring firm load shedding (i.e., rolling black-outs) during an ERCOT-declared energy emergency by decreasing the power demand on the electrical grid. Under the ERS program, participants commit to decrease their power consumption from the electrical grid during a declared energy emergency. ERS program participants might meet this commitment by decreasing overall power use, replacing power consumption from the grid with local generation by operating local emergency backup generators, or a combination of both. However, unlike the EILS program, the new ERS program allows qualified participants to provide power back into the electrical grid for sale during an ERCOT-declared energy emergency under limited circumstances.

Operating an emergency generator as part of ERCOT's former EILS program meets the existing definition of an emergency situation in 30 TAC Chapter 117, Subchapter A, §117.10. The existing definition of an emergency situation in §117.10 includes the period of time that an emergency notice issued by ERCOT is applicable to the serving electric power generating system and references the specific ERCOT protocols that detail the emergency notice. However, the Chapter 117 definition of an emergency situation also specifically excludes operation for purposes of supplying power for distribution to the electrical grid. Therefore, operation of an emergency generator that also provides power back to the electrical grid would not be considered an emergency situation under the current Chapter 117 definition even if the operation were at the directive of ERCOT under the ERS program.

While Chapter 117 would not prohibit companies from participating in the new ERS program, the Chapter 117 rules that apply in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 1997 eight-hour ozone nonattainment areas have specific

provisions that restrict the non-emergency operational hours of emergency generators. For these sources to qualify for an exemption from the rule control requirements, participants in the ERS program would have to count hours of operation during an ERCOT emergency as non-emergency use if power is sold to the grid and might risk losing exemption status under Chapter 117 if the operational hours exceed the exemption criteria.

The revised ERCOT protocols for emergency notice referenced in Chapter 117 are also referenced in 30 TAC Chapter 101. Currently, §101.379 provides an exemption from the discrete emissions reduction credit (DERC) flow control limit for DERCs used in response to ERCOT-declared emergencies. The exemption was put in place to ensure that should there be an ERCOT-declared emergency, a regulated entity would not be put into a situation of either non-compliance with agency rules or contributing to electrical grid instability by not responding to an ERCOT-declared emergency notice.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking amends Chapters 101 and 117 to update references to ERCOT protocols and reflect changes to ERCOT's new ERS program. The adopted rulemaking amends §101.379 and the definition of emergency situation in §117.10 to reference the version of the ERCOT nodal protocols effective June 1, 2012. The adopted rulemaking also amends the definition of emergency situation in §117.10 to reflect changes made by ERCOT to promote reliability during energy emergencies by allowing the operation of generators for purposes of selling power to the electric grid under limited circumstances. The amendments to Chapters 101 and 117 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

B.) Scope required by federal regulations or state statutes:

None

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

Statutory authority:

The amendments will be adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments will also be adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources consistent with the

protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments will also be adopted under Federal Clean Air Act, 42 United States Code, §§7401, *et seq*., which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

Effect on the:
A.) Regulated community: The adopted rulemaking will prevent ERS program participants from potentially losing exemption status under Chapter 117 if they provide power to the electrical grid during an ERCOT-declared energy emergency. Eliminating this potential disincentive may improve reliability of electric service in the ERCOT region while also promoting participation in the ERS program.

B.) Public: The adopted rulemaking will prevent ERS program participants from losing exemption status under Chapter 117 if they provide power to the electrical grid during an ERCOT-declared emergency. Eliminating this potential disincentive may help promote participation in the ERS program and improve reliability of electric service in the ERCOT region.

C.) Agency programs: The adopted rulemaking will have no impact on agency programs.

Stakeholder meetings:
No stakeholder meetings were held for this rulemaking project.

Public comment:
The commission scheduled a public hearing in Austin on November 28, 2012. However, the commission did not officially open the hearing because no one registered to provide comments. The public comment period closed December 5, 2012. The commission received comments from the Association of Electric Companies of Texas (AECT), Blue Sky Environmental LLC (Blue Sky), Calpine Corporation (Calpine), EnerNOC, Inc. (EnerNOC), EPA, Electric Reliability Council of Texas (ERCOT), Exelon Corporation (Exelon), and NRG Texas Power LLC, (NRG). AECT submitted comments on behalf of AEP Texas, CenterPoint Energy, El Paso Electric, Entergy, GDF SUEZ, Nextera Energy, Lone Star Transmission, Oncor, TXU Energy, Luminant, NRG, Reliant, TNMP, and Xcel Energy. AECT, Blue Sky, EnerNOC, EPA, ERCOT, and NRG expressed support for the proposed revisions; Calpine and Exelon objected to the proposed revisions. Significant public comments are summarized as follows.

- ERCOT recommended the commission amend §117.10(15)(A)(ii) and §101.379(c)(2)(D) to refer ERCOT's dispatch of ERS rather than on ERCOT's

issuance of an emergency notice. *To ensure that these rules continue to apply to sources that are not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency, the commission is retaining the reference to emergency notice. However, in response to ERCOT's comments the commission is revising the definition of emergency situation to also include operations in response to an ERCOT energy emergency alert. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an energy emergency alert and subsequently deploying ERS.*

- ERCOT and NRG recommended the commission avoid references to ERCOT's nodal protocols since these protocols are frequently revised. ERCOT recommended the commission revise §117.10(15)(A)(ii) and §101.379(c)(2)(D) to instead reference the PUCT's ERS rule in 16 TAC §25.507. NRG suggested language describing the circumstances under which ERCOT would issue an emergency notice. *Although the commission is aware that the ERCOT Nodal Protocols are frequently revised, the commission needs to be certain of the specific circumstances under which ERCOT will deploy ERS resources to help ensure that the rule amendments can be approved by the EPA as part of the SIP. The commission respectfully declines to make the suggested changes.*

- AECT and NRG supported revising §117.10(15) to operations that are part of ERCOT's ERS program. To account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions, Blue Sky and EnerNOC recommended the commission revise §117.10(15) and §101.379(c)(2)(D) to also include operation in response to a utility-declared emergency and recommended the commission not revise §117.10(15)(A)(vii) to specify an ERCOT energy emergency alert (EEA) level. *The commission agrees that the definition of emergency situation should include operations during the period of an ERCOT-declared emergency but does not agree that §117.10(15) and §101.379(c)(2)(D) should include operations that occur in response to a utility-declared emergency. The commission makes no change in response to these comments.*

- Blue Sky and EnerNOC recommended the commission provide guidance regarding the SIP process and confirm that proposed changes to §101.379 and §117.10 will not be fully implemented until the EPA approves the SIP revision. *The adopted rule becomes effective 20 calendar days after it is filed with the Secretary of State for publication in the Texas Register and is fully enforceable by the commission from that time on irrespective of EPA approval of the rule revision as part of the SIP. The commission makes no change in response to these comments.*

- Calpine and Exelon requested the commission not revise the definition of emergency situation in §117.10(15) to allow ERS participants to sell power back to

the electrical grid and recommended the commission instead require all commercial generation to meet the commission's applicable air quality regulations. *The amendments to §117.10(15) ensure that the changes made to ERCOT's new ERS program, which allow participants to provide power for distribution to the electrical grid, do not narrow the scope of what the commission currently considers an emergency situation. The adopted rulemaking does not relieve affected sources from the obligation to meet any air quality regulation that currently applies. The commission makes no change in response to these comments.*

- Calpine and Exelon commented that exempting commercial backup generation from air quality regulations would negatively affect air quality by expanding the number of high-emitting diesel engines; discouraging investment in new, low-emitting generation; and providing an unnecessary subsidy to high-emitting sources. Calpine also commented that the proposed rule might not benefit electric reliability. *Operation of emergency generators during an ERCOT-declared emergency under the previous EILS program was considered an emergency situation under the existing Chapter 117 rules. The adopted revisions to §117.10(15) account that the changes made to ERCOT's new ERS program by allowing operation of an emergency generator for supplying power to the electrical grid to be considered an emergency situation if the operation is part of ERCOT's ERS program and in direct response to instruction by ERCOT during an EEA. The purpose of this rulemaking is to ensure that participants in the ERS program may still claim operational hours during such energy emergencies as an emergency situation under Chapter 117 rules. Therefore, the commission does not consider the rulemaking as expanding the number of stationary diesel engines in operation or as providing a subsidy for diesel engines. Additionally, to qualify for an exemption, owners and operators of emergency generators must meet all applicable exemption criteria, which include emission standards for specific exempt diesel engines in the DFW and HGB areas. While the adopted revisions to §117.10(15) do not directly promote reliability, the rulemaking helps ensure that Chapter 117 rules will not be a disincentive to the ERS program by forcing participants to count emergency operation as non-emergency hours. The commission makes no changes in response to these comments.*

- EPA commented that the commission will need to review the technical basis for the DERC flow control in §101.379 and update as necessary to reflect the most current ozone standard as part of its attainment planning. *The commission may consider the DERC flow control requirements as part of its planning efforts for the 2008 ozone standard. The commission makes no change in response to this comment.*

Significant changes from proposal:
In response to ERCOT's comments, the commission is revising §117.10(15) and §101.379(c)(2)(D) to also include operations in response to an ERCOT energy emergency

alert. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an energy emergency alert and subsequently deploying ERS.

In response to ERCOT's comments on this rulemaking, the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. ERCOT only deploys ERS resources during an EEA, so it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

Potential controversial concerns and legislative interest:
The definition section of Chapter 117 and the associated divisions that reference the definition of emergency situation are included in the SIP. Because the adopted revisions to the definition of emergency situation is limited to ERCOT-declared emergencies, the amendment will not expand the use of emergency backup generation and should not be considered as backsliding under the Federal Clean Air Act. However, the amended definition is still subject to EPA review and approval as a SIP revision.

Does this rulemaking affect any current policies or require development of new policies?
No

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The commission could decide not to revise Chapters 101 and 117 to update references to ERCOT protocols and reflect changes to ERCOT's new ERS program. Not amending Chapters 101 and 117 to reference the new ERCOT protocols could potentially cause confusion for regulated entities and delay the processing of DERC usage requests. If the Chapter 117 definition is not adopted, ERS program participants could potentially lose exemption status under Chapter 117 if they provide power to the electrical grid during an ERCOT-declared emergency. The potential loss of exemption status under Chapter 117 may discourage participation in the ERS program and negatively impact reliability of electric service in the ERCOT region.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** November 2, 2012
Anticipated *Texas Register* publication date: April 26, 2013
Anticipated effective date: May 2, 2013
Six-month *Texas Register* filing deadline: May 2, 2013

Re: Docket No. 2012-0896-RUL

Agency contacts:
Ray Schubert, Rule Project Manager, 239-6615, Air Quality Division
Alexis Lorick, Staff Attorney, 239-0649
Bruce McAnally, *Texas Register* Coordinator, 239-2141

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Ray Schubert
Bruce McAnally