

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners **Date:** September 28, 2012

**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 Proposed Rulemaking  
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 On March 22, 2012, the PUCT repealed Title 16 Texas Administrative Code (TAC) Chapter 25, Subchapter S, §25.507, to replace the Emergency Interruptible Load Service (EILS) program with the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 was 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 and Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment areas have specific provisions

Re: Docket No. 2012-0896-RUL

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 emission reduction credit (DERC) flow control limit for DERs 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 proposed rulemaking would revise Chapters 101 and 117 to update references to ERCOT protocols and reflect changes to ERCOT's new ERS program. The proposed rulemaking would revise §101.379 and the definition of emergency situation in §117.10 to reference the most recent version of the ERCOT protocols. The proposed rulemaking would also revise 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. If adopted, the proposed changes 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 would be proposed 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 would also be proposed under THSC, §382.002, concerning Policy and Purpose, that establishes

Re: Docket No. 2012-0896-RUL

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 would also be proposed 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 proposed rulemaking would 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 proposed rulemaking would prevent ERS program participants from potentially 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 proposed rulemaking will have no impact on agency programs.

**Stakeholder meetings:**

No stakeholder meetings were held for this rulemaking project.

**Potential controversial concerns and legislative interest:**

If the definition of emergency situation in Chapter 117 is not revised to include limited operation for purposes of supplying power to the electric grid during an ERCOT emergency, the current definition could prove to be a potential disincentive for ERCOT's ERS program. Participants would not be able to consider the operation as emergency use when they are supplying power back to the grid.

The definition section of Chapter 117 and the associated divisions that reference the definition of emergency situation are included in the SIP. If the proposed rulemaking is adopted, the revised §117.10 would be submitted to the EPA as a SIP revision. Because the proposed revisions to the definition of emergency situation would be limited to ERCOT-declared emergencies, the revision would not expand the use of emergency backup generation and should not be considered as backsliding under the Federal Clean Air Act. However, the revised definition would still be subject to EPA review and approval as a SIP revision.

Re: Docket No. 2012-0896-RUL

**Will 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 revising 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 revised, 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 proposal rulemaking schedule:**

**Anticipated proposal date:** October 17, 2012

**Anticipated *Texas Register* publication date:** November 2, 2012

**Public hearing date:** November 28, 2012

**Public comment period:** November 2, 2012 - December 5, 2012

**Anticipated adoption date:** April 10, 2013

**Agency contacts:**

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**Attachments:**

None

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