# TCEQ LogoNational Comments

# Executive Review Summary

**TCEQ Proposed Comments On:** Advance Notice of Proposed Rulemaking: State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; EPA Docket ID No. EPA-HQ-OAR-2017-0545

**Overview of Proposal:**

On December 28, 2017, the United States Environmental Protection Agency (EPA) issued an advance notice of proposed rulemaking (ANPR) in the *Federal Register* concerning establishing state guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGU) under Federal Clean Air Act (FCAA), §111(d). While the EPA has not committed to initiate such a rulemaking, the rulemaking would serve as a replacement to the Clean Power Plan (CPP) rule, finalized October 23, 2015. The EPA has also proposed a repeal of the CPP rule, which was published in the *Federal Register* on October 16, 2017. The ANPR solicits comment on a wide variety of topics related to establishing GHG emission guidelines for existing EGUs. Examples of major topics that the EPA has solicited comment include:

* **What are the roles and responsibilities of the EPA and the states?**
* **Should the EPA set presumptively approvable standards?**
* **Can the states establish standards and could those standards be less stringent that EPA-established standards, if set?**
* **Should standards be set on a unit-by-unit basis and what would be the burden to states with a unit-by-unit approach?**
* **Should the EPA’s implementation regulations in 40 Code of Federal Regulations (CFR) Part 60 for state plans be revised?**
* **What are the potential interactions with the New Source Review (NSR) Permitting Program?**
* **What are the potential interactions between a FCAA, §111(d) and §111(b) for existing EGUs that undergo modification or reconstruction and trigger applicability under the §111(b)?**

**Summary of Comments:**

### *A. General Comments*

1. The Public Utility Commission of Texas (PUCT), Railroad Commission of Texas (RRC), and Texas Commission on Environmental Quality (TCEQ) support the proposed repeal of the CPP rule but do not support replacement of the rule.

2. Given the significant legal issues surrounding the EPA’s authority to regulate GHG emissions from EGUs under §111, the PUCT, RRC, and TCEQ urge the EPA to carefully consider the timing of any future proposed action to replace the CPP rule under §111(d).

3. The PUCT, RRC, and TCEQ support the EPA’s proposed interpretation of best system of emission reduction (BSER) issued with the proposed repeal of the CPP rule because that interpretation is consistent with other requirements of §111(d).

4. Carbon capture and storage (CCS) should not be considered as BSER.

### *B. State Plan Process*

1. The FCAA requires the EPA to allow states to consider the remaining useful life of existing sources. States should be given wide flexibility to evaluate the remaining useful life of sources when developing state plans.

2. States should have longer than the nine months prescribed in the implementation regulations in 40 CFR §60.23(a)(1) for the development and submittal of a state plan under FCAA, §111(d). At a minimum, states should have three years for the development and submittal of such a plan, as is given under the statutory and regulatory framework of FCAA, §110 for a state implementation plan (SIP).

3. The EPA should establish clear and specific criteria for how state plans will be evaluated and provide for automatic approval if the EPA fails to act timely on submitted state plans.

4. The EPA should consider revising the progress report requirements under 40 CFR §60.25(f) to make them less burdensome for states.

5. The EPA should not assume the state’s authority to set performance standards. Rather, §111(d) requires the EPA to prescribe regulations establishing a procedure under which states submit plans that establish standards of performance for existing sources and that provide for the implementation and enforcement of such standards.

6. The provision in 40 CFR §60.24(f)(3) allowing states to apply a less stringent standard than would otherwise be required by a presumptively approvable emission guideline is subjective and left open to interpretation.

7. Emission guidelines should be based on gross generation to demonstrate compliance with the standards established by the state.

8. While there may be no simple way for the EPA to identify heat rate improvements or set presumptively approvable standards, the approach used in the final CPP rule of averaging data from the three electric power grid interconnections was inappropriate and flawed.

### *C. Interactions with New Source Review (NSR) Permitting*

1. Changes to an EGU based on improving the unit’s heat rate may require a change to the NSR review permit.

2. The EPA has limited options regarding rule and policy changes to the NSR program to address issues that will result from a §111(d) GHG emission guidelines regulation for EGUs that targets heat rate improvements.

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**Deadline (Submittal Due Date):** February 26, 2018