

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** March 30, 2020

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Erin E. Chancellor, Deputy Director  
Office of Legal Services

Tonya Baer, Deputy Director  
Office of Air

**Docket No.:** 2020-0076-SIP

The attached document contains revisions in highlight/strikeout format. Back-up material for this project was filed on March 6, 2020.

### CHANGES TO THE EXECUTIVE SUMMARY

- On page 3, under the heading " Key points in the proposed SIP" the milestone dates are modified to read as follows:

**Anticipated proposal date:** April 8, 2020

**Anticipated public hearing date (if any):** May 18, 2020 in Austin, Texas

**Anticipated public comment period:** April 10 through May 26, 2020

### Attachments:

Revised Executive Summary

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
John Minter  
Patricia Durón  
Laurie Barker  
Steven Hagood

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**Docket No.:** 2020-0076-SIP

**Subject:** Commission Approval for Proposal of an Agreed Order with Luminant Generation Company, LLC, Martin Lake Steam Electric Station in Rusk County, Non-Rule Project No. 2020-023-SIP-NR

Accompanying project: SIP Revision and FCAA, §110(l) Demonstration Regarding Planned Startup and Shutdown Emissions for Certain Electric Generating Units (2020-028-SIP-NR)

### **Background and reason(s) for the Voluntary Agreed Order:**

On October 30, 2014, the Environmental Integrity Project (EIP) filed a public petition (“Pirkey Petition”) seeking United States Environmental Protection Agency (EPA) objection to Southwestern Electric Power Company’s (SWEPCO) Title V permit for the H.W. Pirkey power plant. Further, on May 27, 2015 the EIP, Air Alliance Houston, Environment Texas, Texas Campaign for the Environment, Downwinders at Risk, Neighbors for Neighbors, Public Citizen’s Texas Office, and Sustainable Energy and Economic Development Coalition filed a citizen petition (“Citizen Petition”) raising broader SIP and Title V issues regarding planned maintenance, startup and shutdown (MSS) emission limits SIP compliance at certain coal-fired electric generating units (EGUs).

The Citizen Petition poses several arguments supporting the petitioners' position that preconstruction New Source Review (NSR) permit amendment applications to authorize planned MSS activities resulted in TCEQ's "exempting" certain coal-fired EGUs from emissions limits during these activities. EIP argues such exemptions violate the Federal Clean Air Act (FCAA) requirement that SIPs contain continuous emission limits, including limits in NSR permits; and violate federal rules that Title V permits must include all applicable requirements including SIP limits and NSR permit limits. The Citizen Petition requests the EPA find that TCEQ is violating the SIP and the approved Title V program, establish a Federal Implementation Plan (FIP) to address MSS if TCEQ fails to comply within two years, and reopen Title V permits for the identified EGUs. On December 2, 2015, TCEQ provided an interpretive letter (attached) to EPA in response to the Citizen Petition explaining the history and factual basis supporting TCEQ's interpretation that 30 TAC §111.111 and §111.153 opacity and particulate matter (PM) limits are not applicable to the startup or shut down of coal-fired EGUs equipped with electrostatic precipitator (ESP) control devices.

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On February 3, 2016, the EPA Administrator issued an Order granting the Pirkey Petition's claim that the Title V permit incorporates an NSR permit that improperly exempts planned MSS activities from Chapter 111 opacity and PM limits. In addition, the EPA directed TCEQ to reopen SWEPCO's Title V permit and permit record to ensure PM and opacity limits apply at all times including periods of planned MSS.

The TCEQ responded to the EPA Order on the Pirkey Petition in a February 26, 2016 letter, and attached the December 2, 2015 interpretive letter as part of the response. Consistent with TCEQ's interpretation of its rules, TCEQ does not believe that it was subject to any additional procedural requirements that would have been necessary for SIP revisions. However, EPA interprets the FCAA to require SIP rules to include emission limitations covering all periods of operation, including startup and shutdown.

In an effort to resolve the Citizen Petition and fully respond to the Order granting the Pirkey Petition, the EPA agreed to consider a revision to the Texas SIP. The revision would incorporate into the SIP voluntary Agreed Orders (AO) with certain coal-fired electric EGUs equipped with ESPs. The AOs incorporate conditions pertaining to opacity and PM operational limits and work practices during periods of startup and shutdown activities.

#### **Scope of the Voluntary Agreed Order:**

##### **A.) Summary of what the Voluntary Agreed Order would do:**

The proposed AO, entered into voluntarily by the owner(s) and operator(s) of the Martin Lake Steam Electric Station, would establish certain operational limits and work practices for periods of planned maintenance, startup, and shutdown at the EGU so that emission limitations apply on a continuous basis.

The AO would be submitted to EPA for approval with the accompanying SIP revision project (2020-028-SIP-NR) that provides a narrative and demonstration that the AO will meet the requirements of FCAA, §110(l) (42 United States Code, §7410(l)) to ensure noninterference with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the Act.

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

The proposed AO would make certain operational limits and work practices for periods of planned MSS at the Martin Lake Steam Electric Station federally enforceable as part of the approved SIP so that emission limitations apply on a continuous basis (at all times of operation) (*see* FCAA, §110(a)(2)(A) – SIP must contain emission limits, measures, etc. and §302(k) – emission limits apply on a continuous basis to assure continuous emission reduction). The SIP revision, through the AOs, creates a SIP limit for those periods when the SIP limits for PM and opacity in §111.111 and §111.153 do not apply due to the technical limitations of the ESPs at the power plants that will be subject to the AOs. Once approved into the SIP by EPA as enforceable emission limits, the AOs will be incorporated into Title V permits as applicable requirements in accordance with FCAA, §504(a) and 40 Code of Federal Regulations §70.7.

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

None.

**Statutory authority:**

The authority to propose and adopt the Voluntary Agreed Order is derived from FCAA, 42 United States Code, §7410, which requires states to submit SIP revisions that contain enforceable measures to achieve the NAAQS and other general and specific authority in Texas Water Code, Chapters 5 and 7 and Texas Health and Safety Code, Chapter 382.

**Effect on the:**

**A.) Regulated community:**

The proposal would affect the Martin Lake Steam Electric Station that is subject to this voluntary agreed order.

**B.) Public:**

There is no impact.

**C.) Agency programs:**

There is no impact to agency programs.

**Stakeholder meetings:**

TCEQ staff met with representatives of the power plants that have ESPs and with EPA several times to discuss the issue and the voluntary AO SIP revision process as a path forward.

**Potential controversial concerns and legislative interest:**

EPA may choose not to approve the AO into the SIP. Therefore, the SIP limit exemption issue raised by EIP and others could still be raised in subsequent Title V permit actions.

**Does the Voluntary Agreed Order affect any current policies or require development of new policies?**

None.

**What are the consequences if the Voluntary Agreed Order does not go forward? Are there alternatives to the Voluntary Agreed Order?**

The TCEQ could choose not to proceed with the voluntary AO SIP revision, which could result in EPA granting the Citizen Petition request and finding that TCEQ is violating the SIP and the approved Title V program. Further, EPA could establish a FIP to address MSS if TCEQ fails to comply within two years; and reopen Title V permits for the identified EGUs.

**Key points in the proposed SIP:**

**Anticipated proposal date:** April 8 ~~March 25~~, 2020

**Anticipated public hearing date (if any):** May 18~~4~~, 2020 in Austin, Texas

**Anticipated public comment period:** April 10 through May 26~~11~~, 2020

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**Anticipated adoption date:** July 29, 2020

**Agency contacts:**

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Patricia Durón, Agenda Coordinator, (512) 239-6087

**Attachments:**

Draft Voluntary Agreed Order

cc: Chief Clerk, 2 copies  
Executive Director's Office  
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Morgan Johnson  
Brody Burks  
Office of General Counsel  
John Minter  
Patricia Durón  
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