



November 30, 2010

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Sunset Advisory Commission  
PO Box 13066  
Austin, Texas 78711

Re: Comments on Sunset Advisory Commission Staff Report on the Texas Commission on Environmental Quality (TCEQ)

Dear Ladies and Gentleman:

The Association of Electric Companies of Texas (AECT) appreciates the opportunity to submit these comments regarding the Sunset Advisory Commission's Staff Report on the Texas Commission on Environmental Quality (TCEQ) ("Sunset Report").

Member Companies

AEP SWEPCO

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CenterPoint Energy

El Paso Electric Company

Entergy Texas

Exelon Generation

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NRG Texas

Oncor

PNM Resources

Reliant Energy

TXU Energy

Xcel Energy

In general, AECT supports the current structure for regulating environmental impacts of electric generation in the state, and we believe Texas leaders should support policies that maintain and do not discourage investment in the electric generation needed to meet our state's growing electricity demand. Below are AECT comments on three of the Sunset Staff's recommendations.

**Regarding Sunset Staff Issue 1: "Texas Has a Continuing Need for the Texas Commission on Environmental Quality"**

AECT supports the continuation of the TCEQ for 12 years, and hopes TCEQ will utilize policies that will not discourage the needed investment to meet future growth and ensure continued availability of reliable and affordable electricity in the state.

TCEQ's mission is to strive "to protect the state's human and natural resources consistent with sustainable economic development." Its goal is "clean air, clean water, and the safe management of waste." AECT believes the state does an excellent job in executing this mission.

Since 1997, electric generators in the Houston and Dallas areas have seen reductions of NOx emissions of 86 percent and 88 percent, respectively, and other areas have seen reductions of 45-51 percent. To achieve these notable results, since the year 2000, electric generating companies in Texas spent more than \$1 billion on NOx emissions reductions alone. Moreover, Texas' rate of emissions from electric generating facilities of SO2 is 33 percent lower than the national average.

In addition, the state has seen investment of over \$36.5 billion in new generation over the past 11 years. These new power plants produce more electricity per unit of fuel and employ modern environmental emissions controls. Meanwhile, companies have invested billions in retrofits to existing generation to help meet the state's environmental goals.

In short, AECT believes the TCEQ's regulation of Texas' environment is appropriate to protect human health and natural resources, and that TCEQ discharges its regulatory duties effectively and with diligence.

**Regarding Sunset Staff Issue 4: "TCEQ's Enforcement Process Lacks Public Visibility and Statutory Authority"**

AECT understands Recommendation 4.1 to provide that the TCEQ penalty policy would remain as guidance and would not be adopted into the TCEQ rules. If that understanding is correct, AECT strongly supports that aspect of Recommendation 4.1. The flexibility that is provided by the penalty policy when it is in the form of guidance is critical – one reason is that it gives the Commission the necessary discretion to avoid harming small businesses that would be impacted by one-size-fits-all penalty rules. However, as currently written, parts of the discussion regarding Recommendation 4.1 could be interpreted to indicate that the recommendation is that the penalty policy should be adopted as TCEQ rules. AECT requests that such discussion be revised to more clearly state that the TCEQ penalty policy would remain as guidance and would not be adopted into the TCEQ rules.

Recommendation 4.2 recommends that the current administrative penalty caps be increased to be the same as the civil penalty caps. For the main TCEQ programs, such a recommendation would result in a massive increase of 150% in the current administrative penalty caps (from \$10,000/day to \$25,000/day). AECT believes that the existing administrative penalty caps are adequate, and that the Sunset Report does not provide adequate support for the recommended massive increases in those caps. Any increase in those caps should only apply to the types of enforcement matters for which those caps are inadequate.

The numbers of enforcement cases for which the discussion relating to this recommendation state that the current administrative penalty caps were inadequate were a very small percentage of the total number of enforcement cases. For example, the discussion relating to this recommendation states that there were 50 cases in FY 2009 for which the current administrative penalty caps were inadequate. Those 50 cases constitute only 0.56% of the 8,854 notices of violation that were issued in FY

2009, which is much too small of a percentage to demonstrate that the current administrative penalty caps are too low and should be increased by as much as 150% so they equal the civil penalty caps.

At most, the information presented in the discussion relating to this recommendation might support a limited increase of the current administrative penalty caps to only address the very small number of enforcement cases that are of the type for which the current administrative penalty caps might be considered to be inadequate. For example, the discussion relating to this recommendation claims that the current administrative penalty caps are inadequate in some enforcement involving sites whose compliance history has been designated as being “poor”. AECT requests that if there is felt to be a compelling need, then any increase in the current administrative penalty caps be limited so they apply only to enforcement involving sites with poor compliance history.

**Regarding Sunset Staff Issue 8: “The Statutory Cap on Emissions Limits TCEQ’s Ability to Adequately Fund the Title V Air Permit Program”**

AECT opposes Recommendation 8.1, which would give TCEQ the authority to increase the 4000 ton Title V emissions fees cap. The purpose for the recommendation is to allow TCEQ to increase the Title V emissions fees to ensure there are enough funds in the future for TCEQ to implement the Title V permitting program. The recommendation is based on a belief that increasing the Title V emissions fees cap is the most equitable way to increase the Title V fees that are collected. AECT disagrees. The suggestion stated in the discussion associated with this recommendation that increasing the Title V emissions fees cap is the most equitable way to increase the Title V fees that are collected is based on the presumption that the purpose of such fees is to be a surcharge or penalty for sites’ emissions. That is not the purpose of Title V emissions fees. If it was, Congress would not have established the provision in the Federal Clean Air Act that provides for a 4,000 ton Title V emissions fees cap. Instead, the sole purpose of Title V emissions fees is to fund the TCEQ’s Title V permitting program. The existence of the Title V emissions fees cap is a recognition that it does not cost proportionally more for the TCEQ to implement the Title V permitting program for a site that emits more than the 4,000 tons cap than it does for a site that emits less than 4,000 tons.

If TCEQ has the need for more air program funds in the future, TCEQ should address that need by reviewing carefully where the expenditures are being made in comparison with corresponding sources of fee revenue. For

example, in addition to Title V emission fees, TCEQ also collects air inspection fees and fees for permit programs other than the Title V program.

It is critical to remember that any surplus of Title emissions fee funds would be useless for addressing any funding deficiencies that might exist in other TCEQ programs or elsewhere in state government. That is because both the Federal Clean Air Act and the Texas Clean Air Act specifically prohibit the use of excess Title V emissions fees for any purpose other than for the reasonable direct or indirect costs of developing and administering the Title V permitting program.

For these reasons, AECT believes that increasing the 4,000 ton Title V emissions fees cap is not necessary or appropriate. Moreover, AECT does not see any indication that TCEQ believes that the cap needs to be increased since, in its Sunset Self-evaluation Report, TCEQ did not suggest the cap needs to be increased.

AECT appreciates the opportunity to submit these comments. Please contact our office at (512) 474-6725 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Fainter, Jr.", written in a cursive style.

John W. Fainter, Jr.  
Association of Electric Companies of Texas, Inc.