

Texas Commission on Environmental Quality (TCEQ)  
Office of Air  
Tax Relief for Pollution Control Property Advisory Committee  
August 23, 2019  
10:00 A.M. – 11:53 A.M.

## **Minutes**

### ***Opening Remarks***

- a. Mr. Bob Adair called the meeting to order at 10:00 A.M.
- b. All committee members were present.
- c. Mr. Bob Adair re-stated the public comment policy. No action was taken.
- d. General comments from committee members and the public were solicited. No comments were received.

### ***TCEQ accepting applications until 5:00 p.m. on September 3<sup>rd</sup> to appoint or reappoint six of 13 advisory committee positions for staggered four-year terms that expire year-end 2019 (names are current committee members): three industry (Paul Coon, Greg Maxim, and Mike Nasi), one taxing unit (Don Lee), one school or junior college (Lloyd Graham), and one environmental group (Dr. Cyrus Reed)***

Mr. Guy Hoffman, Stationary Source Programs Acting Team Leader, stated that on August 2<sup>nd</sup>, notice was published in the *Texas Register* to solicit applications for six positions on the committee: three industry, one taxing unit, one school or junior college, and one environmental group. The terms for these positions will be January 1, 2020 through December 31, 2023. Applications were due by 5:00 PM on September 3<sup>rd</sup>. Recommended appointments are scheduled for the December 18<sup>th</sup> Commissioners' Agenda. At the time of the meeting, two applications had been received: Greg Maxim for an industry position and Adam Haynes for the taxing unit position.

### ***TCEQ rulemaking plans to revise 30 TAC 17 Tax Relief for Property Used for Environmental Protection***

Ms. Elizabeth Sartain with the TCEQ Tax Relief Program stated that staff is evaluating the committee's advice on revising the Tier I Table and have some suggested edits. The TCEQ originally intended to begin rulemaking to revise the Tier I Table shortly after the legislative session. In light of potential rulemaking to address the Supreme Court of Texas' ruling on heat recovery steam generators (HRSG), the plan is to wait to make changes to the Tier I Table so any rule changes to address the HRSG decisions can be included.

### ***Consideration of advice regarding how to determine use percentages for future use determinations for applications that include HRSGs***

- a. *July 19<sup>th</sup> written request for advice from TCEQ to Advisory Committee Chair*

Mr. Adair mentioned that by letter dated July 19, 2019, the TCEQ requested that the committee provide advice on how to determine use percentages for future HRSG use determination applications. The letter included three questions, but the request for advice allows the committee significant discretion on how to advise. The TCEQ has requested the committee's advice by Thanksgiving.

*b. Summary of Texas Supreme Court opinions (referenced in July 19th TCEQ letter)*

Mr. Don Redmond with TCEQ's Environmental Law Division provided a summary of the litigation involving appealed HRSG applications. After the Commission upheld the Executive Director's negative use determinations for HRSGs, they were appealed and consolidated then separated into two groups based on the tier level, Tier III or Tier IV, of the application.

On May 3, 2019, the Supreme Court of Texas issued decisions on both cases. The Court determined that the Commission abused its discretion in issuing negative use determinations and remanded the cases back to the TCEQ. The TCEQ did not move for rehearing and the Court's mandate was issued for the Tier III applications on July 10, 2019. The decision was more about statutory interpretation rather than technical aspects of HRSGs. The plain meaning of Section 11.31 of the Texas Tax Code is clear: property that qualifies in whole or in part as pollution control property is entitled to a tax exemption, and HRSGs qualify, at least in part, as pollution control property. The Court determined that the Legislature established that HRSGs meet the definition of pollution control property and provided the Commission with a rulemaking mechanism to remove property that does not provide pollution control benefits. For the Tier IV applications, the mandate was issued on July 22, 2019 and the Court relied on its decision on the Tier III applications saying the Commission abused its discretion in issuing negative use determinations.

The Court did not address how the Commission should have issued positive use determinations. According to the Court's opinions, as long as HRSGs remain on the list in the Commission rules, the Executive Director may not issue negative use determinations for HRSGs. The Executive Director's sole responsibility is to determine what proportion of the HRSG is used purely for production and what proportion is for pollution control. The Executive Director may not determine the pollution control proportion is negative or zero regardless of the formula the Commission uses or how it applies that formula. The Executive Director's discretion is limited to making a use determination that is greater than 0% and less than 100%.

Mr. Redmond clarified that the advice from the advisory committee is for *future* HRSG applications.

*c. Basic description of HRSGs*

Mr. Adair drew attention to [diagrams](#) of the simple cycle and combined cycle plants provided to the committee and asked other committee members to describe the diagrams. Mr. Michael Nasi stated the combined cycle diagram was included in the Court's opinion and the simple cycle diagram is a subsection of the same diagram. Mr. Paul Coon provided a brief overview the basic components of HRSGs and how they are used. Committee discussion followed.

*d. Discussion and consideration of advice to Commissioners*

Mr. Adair outlined some options for providing advice to the Commission. One is to refine the cost analysis procedure (CAP) formula, including changing CAP input variables. He also stated that multiple options for refining the CAP have been previously discussed by the committee. A second option is to have a separate calculation for HRSGs. A third option could be to assign a partial use determination for HRSGs on the Tier I Table.

Committee members supported data gathering and exploration of various methods to determine use percentages for HRSGs using generic or hypothetical data and assumptions. The committee requested that TCEQ staff gather data about NO<sub>x</sub> emission rates for air permits for simple cycle and combined cycle plants. The committee also requested TCEQ staff look at air permitting requirements, specifically the Best Available Control Technology (BACT) Guidance, "Turbine Table," and federal New Source Performance Standards (NSPS). The committee requested the data be supplied but not associated with individual facilities.

Melissa Davis with Thompson and Knight said that one of the appealed applications (Brazos Electric Power Cooperative, Johnson County) included use determination calculations using emissions avoidance calculations and CAP calculations and could be used for comparison.

The committee discussed an emissions avoidance approach and will look back at work the committee previously did on determining use determination percentage for HRSGs.

*e. Potential need for additional committee meetings*

Mr. Adair requested committee members who haven't responded to his email on potential meeting dates to please respond so additional meetings can be scheduled. The committee discussed scheduling the next meeting approximately three to five weeks following this meeting.

**Other**

*a. Old Business*

No old business.

*b. New Business*

No new business.

*c. Other General Comments from the Public*

None.

**Action Items**

TCEQ staff to provide NO<sub>x</sub> emission rates for simple cycle and combined cycle plants.

Mr. Adair to set a date for the next committee meeting.

**Adjourn**

The meeting adjourned at 11:53 A.M.