

**El Paso Electric Company (EPEC),  
Montana Power Station GHG PSD PERMIT (PSD-TX-1290-GHG)  
EPEC's Request to EPA for PSD Permit Rescission  
Basis of Decision  
October 2, 2015**

In a letter dated September 15, 2015, El Paso Electric Company, Montana Power Station (EPEC) requested that the U.S. Environmental Protection Agency, Region 6 rescind the EPA-issued Prevention of Significant Deterioration (PSD) greenhouse gas (GHG) permit issued on March 25, 2014. The rescission request was received by EPA, Region 6, Air Permitting Section on September 18, 2015. The permit was issued based on the applicability provisions described, at the time of permit issuance, at 40 CFR § 52.21(b)(49)(v)(a).

### **Background**

EPEC requested rescission of its GHG PSD permit because its Montana Power Station was classified as a Step 2 source. Generally speaking, Step 2 sources are sources that were classified as major, and required to obtain a PSD or title V permit, based solely on GHG emissions. Such sources are generally known as Step 2 sources because EPA deferred the requirements for such sources to obtain PSD and title V permits until Step 2 of its phase-in of permitting requirements for GHG under the PSD and title V GHG Tailoring Rule, 75 FR 31514, 35569-71 (June 3, 2010); 40 CFR § 52.21(b)(49)(v). In *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency*, 134 S. Ct. 2427 (2014), the Supreme Court held that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit and thus invalidated regulations implementing that approach. EPA issued a direct final rule to narrowly amend the permit rescission provisions in the federal PSD regulations and the rulemaking became effective on July 6, 2015.

The newly effective federal rescission rule allows for the rescission of EPA-issued Step 2 PSD Permits and generally applies to new and modified stationary sources that obtained an EPA-issued Step 2 PSD permit under the federal PSD regulations found at 40 CFR 52.21 solely because the source or a modification of the source was expected to emit or increase GHG emissions over the applicable thresholds. This includes (1) sources classified as major for PSD purposes solely on the basis of their potential GHG emissions; and (2) sources emitting major amounts of other pollutants that experienced a modification resulting in an increase of only GHG emissions above the applicable levels in the EPA regulations.

EPA expects GHG PSD permit-holders that are interested in qualifying for the rescission of an EPA-issued Step 2 PSD permit under 40 CFR 52.21(w) to provide information to demonstrate that either (1) the source did not, at the time the source obtained its EPA-issued Step 2 PSD permit, emit or have the potential to emit any regulated pollutant other than GHGs above the major source threshold applicable to that type of source; or (2) a modification at a source emitting major amounts of a regulated NSR pollutant other than GHGs did not result in an increase in emission of any regulated pollutant other than GHGs in an amount equal to or greater than the applicable significance level for that pollutant. EPA

also considers in its evaluation if the source intends to rely on the EPA-issued Step 2 PSD permit for any other regulatory purpose.

For EPA-issued Step 2 PSD permits for Texas industry, EPA Region 6 retained the permitting authority for those sources in the recent final SIP and FIP actions (November 10, 2014) for Texas GHG PSD permitting. Under this authority, EPA Region 6 reviews and issues rescissions for EPA Region 6-issued Step 2 GHG PSD permits. From January 2, 2011 until November 10, 2014, EPA issued GHG PSD permits for facilities in the State of Texas. EPA approved the Texas GHG Permitting program on November 10, 2014, and Texas is currently the permitting authority for GHG PSD permits. EPA's action to rescind Step 2 PSD permits applies only to GHG PSD permits that were issued by EPA between January 2, 2011 and November 10, 2014.

## **REVIEW**

EPEC has included in the September 18, 2015 rescission request information to demonstrate:

1) At the time of issuance of the EPA GHG PSD permit, the new stationary source located at a greenfield site did not have the potential to emit emissions of any regulated New Source Review (NSR) pollutant other than GHGs in an amount equal to or greater than the applicable NSR major source thresholds for that pollutant. However, the proposed project's non-GHG emission levels did exceed the significant emission rates for NO<sub>x</sub>, CO, PM and PM<sub>10</sub>. By a letter dated February 13, 2013, TCEQ explained to EPA Region 6 the basis for TCEQ's view that it had the legal authority to issue permits meeting PSD requirements for regulated NSR pollutants other than GHGs for sources that are major sources based solely on the level of GHG emissions. Accordingly, at the time of EPA Region 6's issuance of the GHG PSD permit, TCEQ issued a PSD permit on January 21, 2014 (PSD Permit Number: PSDTX1290 and 102294) covering the emissions of all other regulated NSR pollutants emitted in amounts exceeding the significant emissions rates.

After the Supreme Court ruling<sup>1</sup>, EPEC applied to the TCEQ on September 15, 2014 for the rescission of the non-GHG PSD permit and issuance of registration under the TCEQ Standard Permit in accordance with 30 Texas Administrative Code § 116.602, Issuance of Standard Permits. In this Standard Permit registration submission to the TCEQ, EPEC proposed several project operating parameter changes and the non-GHG emission levels were increased above the levels previously permitted by the TCEQ in the non-GHG PSD permitting action (PSD TX1290). In TCEQ's technical review for the Standard Permit, the non-GHG emission levels were determined by the TCEQ to be below the applicable NSR major source thresholds<sup>2</sup>. With TCEQ's review and determination of the project's maximum allowable emission rates, TCEQ issued EPEC Standard Permit Number 123471 on October 2, 2014 for the non-GHG emissions associated with the Montana Power Station. On February 5, 2015, TCEQ notified EPEC that the TCEQ issued air quality permit numbers 102294 and PSDTX1290 have been cancelled.

With the issuance of the Standard Permit, the special conditions and the maximum allowable emission rate table (MAERT) associated with the TCEQ Air Quality Standard Permit for Electric Generating

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<sup>1</sup> *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)*, 12-1146, U.S., 1, (2014).

<sup>2</sup> Project emissions are based on the review and analysis contained in the TCEQ Technical Review document written by Mr. Sean O'Brien, TCEQ, for El Paso Electric Company, Montana Power Station, RN106392624 and CN600352819.

Units demonstrate that the project has been reviewed for the maintenance of the National Ambient Air Quality Standards (NAAQS), federal, state and local requirements, and the non-GHG emission levels associated with the project are below the applicable significant level(s) for all other regulated pollutants.

Project Emission Summary Table<sup>3</sup>

Air Contaminant	Non-GHG Emissions Pre-Project (TPY)	TCEQ Permit PSDTX1290 Allowable Emission Rates (TCEQ Voided) (TPY)	TCEQ Standard Permit Allowable Emission Rates (TPY)	PSD Major Stationary Source Emission Rate Level, 40 CFR 52.21(b) (TPY)	PSD Review Required?
VOC	0	21.94	38.96	250	No
NO <sub>x</sub>	0	96.37	249.05	250	No
CO	0	147.41	249.01	250	No
SO <sub>2</sub>	0	6.02	10.82	250	No
PM	0	61.62	115.60	250	No
PM <sub>10</sub>	0	61.62	113.76	250	No
PM <sub>2.5</sub>	0	61.62	112.89	250	No
H <sub>2</sub> SO <sub>4</sub> Mist	0	0.48	0.88	-	No
Other: NH <sub>3</sub>	0	67.02	118.06	-	No

\*The EPEC, Montana Power Station is located in eastern El Paso County, Texas. At the time of EPA’s permitting action, the area was classified as being in attainment or unclassifiable for all criteria air pollutants.

2) EPEC has asserted to EPA that the EPA-issued GHG PSD permit is not used, or planned to be used, for any other regulatory or compliance purpose and the information contained in the rescission request to EPA is factual and correct.

**RECOMMENDATION**

Based on the information provided to EPA Region 6 on September 15, 2015, EPEC has provided sufficient information to support the required rescission elements outlined in 40 CFR § 52.21(w)(2). EPA’s recommendation is to approve the rescission request and authorize publication of the public notice announcing the approval of the rescission.

<sup>3</sup> Project emissions are based on the review and analysis contained in the TCEQ Technical Review document written by Mr. Mr. Sean O’Brien, TCEQ, for El Paso Electric Company, Montana Power Station, RN106392624 and CN600352819.