MEMORANDUM OF AGREEMENT BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGARDING A STATE IMPLEMENTATION PLAN TO ADDRESS CERTAIN REGIONAL HAZE AND INTERSTATE VISBILITY TRANSPORT REQUIREMENTS PURSUANT TO SECTIONS 110 AND 169A OF THE CLEAN AIR ACT

BACKGROUND

This memorandum of agreement memorializes discussions between staff at the Texas Commission on Environmental Quality ("TCEQ") and the United States Environmental Protection Agency ("EPA"). TCEQ and EPA agree that the regional haze and interstate visibility transport requirements of the Clean Air Act are best met by a state implementation plan ("SIP"), not a federal implementation plan ("FIP"). TCEQ and EPA further agree that this SIP can be and will be implemented quickly and lawfully.

TCEQ and EPA agree that this SIP will meet the best available retrofit technology ("BART") requirements through a new trading program. The foundation of that trading program will be the electric generating units ("EGUs") that the EPA would have subjected to BART in its FIP. *See* 92 Fed. Reg. 921 (Jan. 4, 2017). It is possible that some of these units should not be considered subject to BART, and it is possible that some BART units would be better regulated through source specific requirements. Moreover, some non-BART units may want to opt-in to the trading program. Working closely with EPA, the State through its SIP process will address each of these issues while ensuring that the State's SIP remains consistent with Act's regional haze requirements.

TCEQ and EPA further agree that the allocations to units included in the intrastate trading program should start from the allocations under the Cross-State Air Pollution Rule ("CSAPR"). That is important for the speed of the State's SIP process because it will allow regulators to build on work that EPA already has done. TCEQ and EPA recognize that the CSAPR FIP budget already has been held to be over-control for certain interstate transport requirements. *See EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The new trading program will start from the CSAPR unit-level allocations and will preserve flexibility to adjust those allocations where necessary.

EPA and TCEQ further agree to parallel processing of the SIP, which will ensure that the trading program is in place and finalized by the end of next year.

At each step, TCEQ and EPA will work together to determine which units should be included, what the unit level allocations should be, and how the trading program should work. The goal of the parties is that at the end of this process, EPA will be able to determine that Texas has met all outstanding requirements for regional haze under CAA § 169A, including SO_2, PM, and

NO_X BART and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour NO_2, and 2010 1-hour SO_2 national ambient air quality standards (NAAQS). And this process could serve as a model for cooperative federalism under the Clean Air Act.

NOW, THEREFORE, EPA AND TCEQ AGREE AS FOLLOWS:

1. The executive director of the TCEQ agrees in the spirit of cooperative federalism to submit to the commission for consideration a proposed revision to its SIP to address the outstanding BART and visibility transport requirements.

    a. The executive director agrees to submit a proposed SIP revision for commission consideration no later than March 31, 2018.
    b. TCEQ agrees to coordinate with the owners and operators of potentially impacted EGUs in the State to develop a SIP.
    c. Upon adoption by the commission, TCEQ agrees to submit to EPA for action a revision to its SIP to address the Regional Haze and interstate visibility transport requirements not later than October 31, 2018.
    d. TCEQ intends for this SIP submittal to incorporate trading program flexibilities, to the extent appropriate.
    e. TCEQ intends to ask EPA to parallel process this SIP submittal.
    f. TCEQ intends for this SIP revision to address requirements for regional haze under CAA § 169A for SO_2, PM, and NO_X BART and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for 1997 8-hour ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour NO_2, and 2010 1-hour SO_2 NAAQS.

2. EPA agrees to parallel process this SIP submittal and intends to sign a final action on the SIP revision by December 31, 2018.

3. TCEQ and EPA intend to work together to meet the goals of this MOA.

4. This document does not establish binding legal requirements on EPA or TCEQ or any of their officers, employees, other representatives, or any other person. EPA retains all the discretion afforded to it under the CAA and the general principles of administrative law. As required by the Antideficiency Act, 31 U.S.C. § 1341 and 1342, all commitments made by EPA herein are subject to the availability of appropriated funds. Nothing in this document in and of itself obligates EPA to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur other financial obligations. This document does not create any exemption from policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this document will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

5. All commitments made by TCEQ in this agreement are subject to Texas law, including but not limited to the Government Code, the Water Code, the Texas Health and Safety Code, and the General Appropriations Act. Nothing in this agreement requires TCEQ to expend funds in violation of Texas law.

6. This MOA may be signed in counterparts.

7. This MOA will terminate upon EPA's final rulemaking action on TCEQ's SIP submittal.

Signed this 14th day of August 2017.

Richard A. Hyde, P.E.
Executive Director
Texas Commission on
Environmental Quality

Samuel Coleman, P.E.
Acting Regional Administrator
United States Environmental
Protection Agency, Region 6