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Hon. Mary D. Nichols, Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Draft Final AB 1318 Report

Dear Madam Chairman:

Calpine Corporation ("Calpine") submits these comments on the Draft Final Report entitled "Assembly Bill 1318: Assessment of Electrical Grid Reliability Needs and Offset Requirements in the South Coast Air Basin", prepared by the California Air Resources Board ("CARB") in consultation with the California Energy Commission, California Independent System Operator, California Public Utilities Commission, State Water Resources Control Board and Los Angeles Department of Water and Power, Oct. 2013 (hereinafter, "Draft Report").[1]

I. EXECUTIVE SUMMARY

Calpine appreciates CARB's significant efforts to satisfy the legislative mandate imposed by Assembly Bill 1318 ("AB 1318"), which required CARB, in association with the other agencies identified above, "to prepare and submit to the Governor and the Legislature a report that evaluates the electrical system reliability needs of the South Coast Air Basin and recommends the most effective and efficient means of meeting those needs while ensuring compliance with state and federal law," including, *inter alia*, "any requirements for emission reduction credits for new and modified sources of air pollution."[2]

While we appreciate the significant work that has gone into preparation of the Draft Report, we submit that it falls short of meeting its intended purpose in one critical respect: Rather than propose a complete solution to the problem faced by developers of new gas-fired power plants within the Los Angeles Basin due to the scarcity of emission reduction credits ("ERCs") for coarse particulate matter ("PM_{10}"), the Draft Report concludes that no problem will arise with respect to identified need prior to 2022 and, therefore, nothing needs to be done at this time.

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[1] *Available at*: http://www.arb.ca.gov/energy/esr-sc/ab1318DR/ab_1318_draft_final_report_oct_2013.pdf.

[2] Chap. 285 (Oct. 11, 2009) (Perez); *available at*: http://www.arb.ca.gov/energy/esr-sc/ab1318DR/appendix_a_bill_text.pdf, at § 2 (adding § 39619.8 to the Cal. Health and Safety Code).

This is premised upon the Draft Report's assumption that all new conventional generation needs in the Los Angeles Basin will or should be met by the once-through cooling ("OTC") "repowers", which have access to the South Coast Air Quality Management District's ("SCAQMD") Rule 1304(a)(2) exemption. As a practical matter, it is highly unlikely that all the OTCs can be repowered. Moreover, if the only parties who can build the required new generation facilities are those who currently own OTC units, competition and all other concerns which should inform the selection of such facilities (including location at critical junctures within the grid, consistency with local land use, restoration of coastal resources and support from the local community) will be subordinated to an offsets requirements mandated by neither federal nor State law.

The Draft Report should not defer consideration of the dilemma that scarcity in the PM_{10} ERCs market poses to developers of new generation capacity who do not own any of the coastal OTC units. Indeed, Southern California Edison ("SCE") has a pending request for offers ("RFO") seeking between 1,400 and 1,800 of new resource investment in the Western Los Angeles Basin, including between 1,000 and 1,200 MW from gas-fired resources.[3] Final resource decisions for this RFO are scheduled to be made in June, 2014. If policymakers believe that it is desirable for SCE to consider resource alternatives other than repowering the existing OTC units, then a solution to the problem posed by scarcity of PM_{10} ERCs needs to be developed immediately.

In particular, in light of the redesignation of the South Coast Air Basin as attainment for the national ambient air quality standard ("NAAQS") for PM_{10}, we recommend the following:

- CARB should clarify its 2006 interpretation of Senate Bill ("SB") 288, so that SCAQMD is authorized to make the District's internal PM_{10} offset bank available to developers of generating facilities that do not qualify for the exemption for repowering of OTC units upon payment of a mitigation fee. This option would only be available to developers of facilities needed for reliability purposes (as evidenced by a power purchase agreement) and only while the South Coast Air Basin is designated attainment for the PM_{10} NAAQS. The clarification that such a change does not amount to an overall weakening of the District's New Source Review ("NSR") program should be provided in the final AB 1318 report.

- Alternatively, CARB could advance narrowly tailored legislation following the model provided by AB 1318, which would accomplish the same goal and authorize developers of such facilities to satisfy the PM_{10} offsets requirement through payment of a mitigation fee.

In either case, the mitigation fees would be used to the greatest extent feasible to pursue reductions in PM_{10} and its precursors and energy efficiency in environmental justice

[3] SCE's procurement of such resources was authorized by the California Public Utilities Commission earlier this year. *See* CPUC, Decision Authorizing Long-Term Procurement for Local Capacity Requirements, Decision 13-02-015 (Feb. 13, 2013), Rulemaking 12-03-014; available at: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M050/K374/50374520.PDF.

communities surrounding the new generating facilities. Use of the mitigation fees to these ends would better support attainment of the NAAQS for which the South Coast Air Basin is still designated nonattainment (ozone and fine particulate matter ("$PM_{2.5}$")) and produce demonstrable improvements in the quality of life in communities impacted by air pollution.

II. DISCUSSION

A. The Draft Report Avoids Consideration of The Problem Posed By Scarcity In The Market for PM_{10} ERCs By Assuming That All OTC Units Will Be Repowered Pursuant To The Exemption Afforded By District Rules

The Draft Report states its purposes as, first, identifying whether additional fossil generation capacity is needed in the South Coast Air Basin to maintain reliability and, second, if additional fossil capacity is needed, to "outline options that could be pursued to ensure sustainable permitting of the identified capacity with a focus on solutions that address the limited availability of air pollutant emission offsets for power plant projects located within the jurisdiction of the [SCAQMD]."[4] Yet the Draft Report never really takes up the second question because it concludes instead that all need for new generating capacity (except a small amount above its conservatively "high bookend" condition) will be met through "OTC repowers"[5] and that "SCAQMD's internal offset bank contains sufficient credits to cover units repowering under the offsets exemption provided in Rule 1304(a)(2) in the near-term."[6]

First, in terms of sheer practicality, it is highly unlikely that all of the OTC repowers will occur in the timeframe needed to meet local capacity needs, if ever. Community opposition to some of the OTC repowers is high. Thus, reliance upon the OTC replacements alone to meet identified need provides an incomplete solution that cannot guarantee the needed capacity is developed where it needs to be when it needs to be there.

Second, because the OTC units are owned by so few parties, assuming that all needed conventional generation capacity will be obtained solely through repowering of those units comes at the cost of competition. As SCAQMD has described the situation, the owners of such units have a "near monopoly"[7] over development of the needed generation capacity in the South

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[4] Draft Report at 1.

[5] *See*, *e.g.*, Draft Report at 11 ("The range of generation needed for local reliability in the ISO high and low bookend scenarios can almost exclusively be covered with OTC generation repowerings or generation replacement."), 14 ("this assessment has identified OTC repowers as a potential strategy for meeting reliability needs through 2022 under the current permitting program…"), 22 ("Repowering the existing OTC power plants is one strategy to ensure reliability in the basin.").

[6] *Id*.; *see*, *e.g.*, *id*. at 14 ("SCAQMD is presently estimated to have an adequate amount of credits in its internal bank to cover the OTC repower projects…").

[7] *See* SCAQMD, Legislative Committee Report, Apr. 5, 2013 Board meeting, Agenda No. 23; available at: http://www.aqmd.gov/hb/attachments/2011-2015/2013Apr/2013-Apr5-023.pdf, Attachment 2a (reporting that Proposed Rule 1304.1 "would make it more equitable between existing outdated power plants and potential new power plants in our region. The existing power plants in SCAQMD have a near

Coast Air Basin. Indeed, the Draft Report recognizes that "[t]he scarcity and cost of emission reduction credits in the SCAQMD essentially limits the available options for replacing any lost capacity under the current air permitting program to those that already own existing steam boiler generation available for repower."[8]

Thus, although SCE may host a competitive process for procurement of the needed resources, the process will not truly be competitive. Rather, the absence of sufficient PM_{10} ERCs in the open market essentially means that: (1) Ratepayers cannot be guaranteed that they are getting the best project at the least cost; and (2) Siting decisions will be dictated, not by choice of what location is best in terms of meeting local reliability, use of public resources (including coastal resources) and consistency with local land use, but by an archaic exemption within the District's rules for repowering of utility boilers.

In sum, the conclusion that all the OTC units could be repowered in reliance upon the exemption represents not only an incomplete solution, but a costlier one that subordinates all other concerns relevant to the power plant siting process to a PM_{10} offsets obligation mandated by neither the federal Clean Air Act ("CAA"), nor the California Clean Air Act.

B. The Draft Report Should Acknowledge The Opportunity Provided By EPA's Redesignation Of The South Coast Air Basin As Attainment For The Federal PM_{10} Standard

As the Draft Report recognizes, the South Coast Air Basin was recently redesignated attainment for the federal PM_{10} NAAQS.[9] EPA's redesignation was based upon the District's statement that its maintenance plan "does not rely on the continued implementation of nonattainment NSR (i.e., offsets to mitigate emissions growth) to demonstrate maintenance of the PM_{10} standard."[10] Further, the District no longer needs to continue tracking and reporting the District's offset accounts for PM_{10} or applying the federal NSR equivalency tests prescribed by District Rule

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monopoly because whey they shut down their existing utility boilers they get an exemption and in turn obtain free offsets from SCAQMD internal offset bank under Rule 1304 (a)(2) and use them toward permitting of their new gas turbines… This near-monopoly has resulted in circumstances where companies having the ability to access the SCAQMD's internal offset have essentially profited by selling their access.").

[8] Draft Report at iii.

[9] *See* Final Rule, Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Air Basin; Approval of PM10 Maintenance Plan and Redesignation to Attainment for the PM_{10} Standard, 78 Federal Register ("Fed. Reg.") 38223 (Jun. 26, 2013) ("Final Redesignation Rule").

[10] *See* Proposed Rule, Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM_{10}; Redesignation of the South Coast Air Basin to Attainment; Approval of PM_{10} Redesignation Request and Maintenance Plan for the South Coast Air Basin, 78 Fed. Reg. 20868, 20874 (Apr. 8, 2013) ("Proposed Redesignation Rule") (citing to District correspondence to EPA).

1315 to such accounts.[11] Thus, as of July of this year, when the attainment designation became effective,[12] requirements for PM_{10} offsets are no longer driven by either Section 173 of the federal CAA or the District's EPA-approved NSR tracking rule.[13]

As a threshold matter, the Draft Report should clarify that the problem of scarcity in the offsets market pertains almost entirely to PM_{10} ERCs and that the South Coast Air Basin is now designated attainment with the PM_{10} NAAQS. Likewise, where the Draft Report speaks generally of SCAQMD's obligations under the federal CAA, it should be clear that these obligations no longer apply to PM_{10}.[14, 15] Further, to the extent that the Draft Report suggests some basis for the District's PM_{10} offsets obligation under State law, the Draft Report should make clear that the California Clean Air Act's ("CCAA") "no net increase" requirements do not apply to PM_{10}.[16] These clarifications are important, as they would more accurately contextualize the dilemma posed by the scarcity of PM_{10} ERCs within governing federal and State law.

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[11] *See* District Rule 1315(c)(1) (providing that, "[i]f the [EPA] re-designates the District's attainment status from nonattainment to attainment for a specific air contaminant the Executive Officer may discontinue tracking and reporting the associated District offset account for that air contaminant provided there is a showing in the maintenance plan that the continued use of emissions offsets for that air contaminant is not necessary to maintain attainment for that contaminant."); Proposed Redesignation Rule, 78 Fed. Reg. at 20874, *supra* at note 10 (citing to District correspondence to EPA).

[12] Final Redesignation Rule, 78 Fed. Reg. at 38224.

[13] *See* Final Rule, Revision to the South Coast Air Quality Management District Portion of the California State Implementation Plan, South Coast Rule 1315, 77 Fed. Reg. 31200 (May 25, 2012) (approving District Rule 1315).

[14] For example, in describing the exemption provided by Rule 1304(a)(2), the Draft Report states that SCAQMD still must "determine the offset obligation under federal requirements, since SCAQMD has to balance these offset requirements through reductions made up elsewhere." Draft Report at 56. This is an incorrect statement of the law with respect to PM_{10}. According to SCAQMD's Rule 1315, it no longer needs to track and report upon its offset account for PM_{10}. *See supra* at note 11. Further, EPA's approval of SCAQMD's maintenance plan was expressly premised upon no longer requiring offsets for PM_{10}. *Id*.

[15] While we acknowledge the need to work towards attainment of the more stringent California ambient air quality standard ("CAAQS") for PM_{10} in due course, the South Coast Air Basin is not alone in its nonattainment of the CAAQS: Nearly every county in the State and every major urban area is currently designated nonattainment for the PM10 CAAQS. *See* 2012 Area Designations for State Ambient Air Quality Standards, PM10; available at: http://www.arb.ca.gov/desig/adm/2012/state_pm10.pdf (showing that all counties, other than Lake, Siskiyou and Northern Sonoma counties, which are designated attainment, and Mariposa and Tuolumne counties, which are unclassified, are designated nonattainment with the PM_{10} CAAQS).

[16] Cal. Health & Saf. Code § 40911(a) (applying "no net increase" requirement in an air district "which has been designated a nonattainment area for state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide…"). Although the CCAA affirms that nothing within it restricts CARB or a district from adopting regulations governing other pollutants, including suspended particulate matter or its precursors (*see id.*, § 40926), its "no net increase" offsetting requirement (*see id*., §§ 40918(a)(1), 40919(a)(2), 40920(b) and 40920.5(b)) does not apply to PM_{10}, as acknowledged by the

Because it proceeds from the assumption that all new gas-fired generation capacity will be met through repowering of OTC units pursuant to the Rule 1304(a)(2) exemption, the Draft Report identifies no problem with respect to unavailability of PM_{10} ERCs until after 2022, when the District's internal accounts could be depleted. To solve this "long-term" problem, the Draft Report recommends that CARB partner with SCAQMD to form a Working Group that will identify options and make recommendations to address "long-term permitting needs."[17] Thus, rather than take the opportunity to propose a solution to the near-term situation facing developers of power plants in the South Coast Air Basin, including those who do not own existing OTC boiler units, the Draft Report kicks the proverbial can down the road. In so doing, the Draft Report misses a critical opportunity to overcome the obstacles that the scarcity in PM_{10} ERCs currently poses to competition and selection of the most suitable locations for new generating facilities.

The Draft Report stops just short of concluding that, without further legislation, any change in the District's offsets rules would be barred by SB 288, leaving open the possibility that "innovative approaches to offsets" might avoid triggering SB 288.[18] We believe the Legislature intended for CARB to think critically about the existing offsets requirement and propose just such "innovative approaches to offsets" when it charged CARB with conducting the instant evaluation pursuant to AB 1318. We would encourage CARB to take up the second task the Draft Report presents for itself[19] now, rather than defer that task for completion by a Work Group charged with addressing a problem that, according to the Draft Report, will not materialize until 2022 at the earliest.

Importantly, the Draft Report acknowledges that the bar to any changes in SCAQMD's offsets requirement results, not from the text of SB 288 itself, but from "ARB legal staff's previous interpretation of the law" ("that offsets are covered by SB 288 on a programmatic basis").[20] In other words, the Draft Report acknowledges that it is not the text of the statute that presumably binds the District from revising its PM_{10} offsets requirement, but a legal opinion delivered by CARB staff in 2006.[21] Without challenging the conclusions reached by that opinion, we would

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District's own planning documents. *See* FINAL 2012 Air Quality Management Plan (Feb. 2013) at 6-14, 6-15 (providing that the requirements of the CCAA "do not directly apply to particulate matter plan" and that the CCAA "does not apply to particulate matter").

[17] *Id*. at v.

[18] Draft Report at 68. ("Unless new legislation is adopted that would clarify or modify elements of SB 288, or unless other innovative approaches to offsets are developed, potential offset strategies involving modification to the District's NSR rules that may trigger SB 288 are likely to remain an issue for SCAQMD for permitting new and modified facilities.").

[19] *See supra* at note 4 and accompanying text.

[20] *Id.*

[21] *See* letter from W. Thomas Jennings, Chief Counsel (CARB), to Barbara Baird, Principal Deputy District Counsel (SCAQMD), Apr. 11, 2006, re: Applicability of Senate Bill 288 to Changes to Offset Requirements in New Source Review Rules; *available at*: http://www.arb.ca.gov/nsr/sb288/bairdletter.pdf (agreeing with B. Baird's position that offsets are not expressly among the items to which SB 288 applies,

note that it differs from the views of SCAQMD personnel who were involved in the negotiation of AB 1318.

We submit that the authors of AB 1318 anticipated that CARB would, in the instant report, do more to critically evaluate the existing PM_{10} offsets requirement and the constraints it is imposing on the competitive procurement process, than conclude that nothing can or need be done at this time because there are sufficient offsets in SCAQMD's internal accounts to repower all OTC units.

C. The Draft Report Should Advance Innovative Approaches To Meeting The District's Existing PM_{10} Offset Requirement, Including Through Payment Of A Mitigation Fee That Would Better Advance The District's Clean Air Goals

To advance the discussion of the type of "innovative approaches to offsets" suggested by the Draft Report, we have enclosed a proposed rule amendment that SCAQMD could adopt to resolve this issue in the near-term. Our suggested approach is consistent with the type of proposal that SCAQMD staff indicated they were proceeding to develop in a presentation to the District's Governing Board at its October 4, 2013 Board Meeting: Now that PM_{10} offsets are no longer required under the federal CAA, the District's NSR rules would be revised to allow *all* developers of facilities intended to meet identified need to offset their emissions of PM_{10} through payment of mitigation fees.

The proposed rule amendments would only apply to PM_{10} and only while the District remains in attainment of the federal NAAQS. Revenue generated by collection of the fee could be used by the District to procure additional reductions in PM_{10} and its precursors[22] within the communities affected by new generating facilities and, to the greatest extent possible, within environmental justice communities. The revenue could also be used to promote energy efficiency within such communities and thereby reduce the need for new generating capacity in the vicinity served by the new generating facility. Such energy efficiency measures would reduce emissions of not only criteria pollutants for which the District is currently designated nonattainment with the NAAQS, but toxic air pollutants and greenhouse gases ("GHGs") as well. The mitigation fees could be established using substantially the same approach the District has established to calculate fees for exempt units to access its internal offsets bank pursuant to Rule 1304.1.

This would follow the model set forth by the Legislature, when it passed AB 1318 and provided a path towards development of the Sentinel Energy Project in Desert Hot Springs.[23] Given the

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but opining that SB 288 nevertheless prohibits any change that would relax offset requirements if the overall effect is to make the district's NSR rules less stringent than they were on December 30, 2002).

[22] This would include nitrogen oxides ("NO_x"), sulfur oxides ("SO_x") and volatile organic compounds ("VOCs"). *See* District Rule 1302(af).

[23] AB 1318, Chapter 285 (2009) (adding and repealing Cal. Health & Saf. Code § 40440.14, which required transfer of offsets from the District's internal offset accounts to a qualifying generator upon payment of mitigation fees).

opportunity provided by the South Coast Air Basin finally attaining the PM_{10} NAAQS, CARB should support the District's development of amendments to its NSR rules, following the example the Legislature set forth in AB 1318. This would provide certainty to all market participants that, if they can propose the most competitive project for ratepayers and thereby win approval of a power sales contract, they, too, can obtain a permit to construct.

Moreover, by allowing generators of needed capacity to pay mitigation fees to satisfy the offsets requirement for PM_{10}, the District could pursue more far-sighted improvements in air quality, such as the transportation electrification proposals at the centerpiece of the regional plan announced by the CARB, the District and the Southern California Association of Governments in their ambitious plan, *Powering the Future: A Vision for Clean Energy, Clear Skies and a Growing Economy in Southern California*.[24] Such projects would result in dramatic reductions in criteria pollutants, GHGs and air toxics (including diesel particulate matter) and thereby produce more cognizable improvements in the quality of life in communities burdened by excess air pollution.

- By reducing emissions of precursors of pollutants for which the South Coast Air Basin is still designated nonattainment for the federal NAAQS (ozone and $PM_{2.5}$), funding of such projects would also better advance the goals of both the District's Air Quality Plan and its Air Quality-Related Energy Policy, which acknowledges the role that electrification of the transportation sector must play in achieving the federal NAAQS and affirms that the District will seek mitigation in communities affected by new or repowered power plants.[25]

- By promoting energy efficiency within the communities impacted by power projects, the mitigation fee could also better assure that energy efficiency projects and the resulting reductions in demand materialize in the specific locations where the need for such reductions is likely the greatest, a goal the Draft Report acknowledges is unprecedented.[26]

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[24] South Coast Air Quality Management District, Southern California Association of Governments and California Air Resources Board, *Powering the Future: A Vision for Clean Energy, Clear Skies, and a Growing Economy in Southern California* (May 2011); available at: http://www.aqmd.gov/pubinfo/Publications/PoweringTheFuture/powering_the_future.htm (acknowledging that electrification of the transportation sector will increase electricity demand and that, while existing plants may be able to handle much of the load in the near term, "additional clean plants and grid infrastructure will be needed to supply changing demands over time"; estimating that power plants produce less than one percent (1%) of total emissions of NO_x in Southern California and "the increase in emissions from greater generation to service electrified transportation would be dwarfed by a large decline in emissions from vehicles and trains, even if the additional electricity is generated by powerplants in the region.").

[25] *See* AQMD Air Quality-Related Energy Policy, Agenda No. 32, Board Meeting Date: September 9, 2011, available at: www.aqmd.gov/pubinfo/Publications/PoweringTheFuture/powering_the_future.htm, Attachment A, Policy 2, Policy 7 and Policy 8.

[26] *See* Draft Report at iii ("the analyses upon which this report are based require the load reducing programmatic efforts to deliver specific impacts in particular locations, and this geographic specificity is unprecedented.").

> Targeted energy efficiency measures achieved through the mitigation fee, such as weatherizing of homes or installation of new appliances, would offer real quality of life improvements for surrounding communities.

CARB could authorize SCAQMD to take this important step by clarifying the opinion previously delivered by CARB's legal staff in 2006 to make clear that application of a mitigation fee of this sort – which applies solely for purposes of the PM_{10} offsets obligation and while the South Coast Air Basin remains in attainment of the federal NAAQS – does not result in an overall weakening of the District's NSR problem.

Given that CARB's previous interpretation was rendered in the abstract and prior to the South Coast Air Basin's redesignation to attainment, we believe CARB now has a real opportunity to consider the specifics of a proposed rule amendment intended to address a particular electric reliability need and find that payment of a mitigation fee in lieu of the ERCs surrender obligation does not amount to an overall weakening of the District's NSR program. We submit that a requirement to pay nearly $100,000 per pound of PM_{10} per day to achieve emissions reductions is no less stringent than the District's NSR program as it existed in 2002, when PM_{10} ERCs were available at an order of magnitude less cost than recent prices indicate.[27] At such time, the District's rules also authorized access to the Priority Reserve by electric generating facilities, but at a significantly lower cost than market rates today.

We urge CARB to support the District's efforts in reshaping the existing PM_{10} offsets requirement by clarifying the interpretation previously issued by CARB's legal staff, so that a narrowly crafted rule amendment of the sort we have enclosed is not deemed to result in an overall weakening of the District's NSR program and, accordingly, is permissible in accordance with SB 288. We recommend that CARB include this clarification of its legal interpretation in the final report.

If CARB does not believe it can clarify its prior interpretation to reflect the changed circumstances in the South Coast Air Basin since redesignation, CARB should move quickly to advance a legislative proposal following the lead of AB 1318 itself, which required the District to provide the required offsets to the Sentinel Energy Project. Accordingly, we have also included a narrowly tailored legislative proposal that would authorize generators of new capacity in the Los Angeles Basin intended to meet identified need (as evidenced by a power purchase

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[27] *Compare* Mohsen Nazemi, P.E., Deputy Executive Officer (SCAQMD), Presentation, *South Coast AQMD Activities Related to Electricity Infrastructure, South Coast Air Quality Management District, for CEC and CPUC Joint Workshop, Electricity Infrastructure Issues Resulting from SONGS Closure* (Jul. 15, 2013); available at: http://www.energy.ca.gov/2013_energypolicy/documents/2013-07-15_workshop/presentations/08_SCAQMD_7-15-13.pdf, Table entitled, "PM10 ERC Supply & Cost 2000 –2013*" (showing weighted average price of PM10 ERCs in 2002 of $21,710 per lb/day and high in 2009 of $261,659 per lb/day) *with* Robert Pease, P.E., Program Supervisor (SCAQMD), and Henry Pourzand, Air Quality Specialist (SCAQMD), *Revised Preliminary Draft Staff Report, Proposed Rule 1304.1 – Electrical Generating Facility Fee for Use of Offset Exemption* (June 2013); available at: http://www.aqmd.gov/rules/proposed/1304-1/PDSR1304_1.pdf, at 10 (showing weighted average cost for 2012-2013 of $99,643 lb/day and for 2012-2009 of $209,104 lb/day).

agreement) to fulfill the District's existing PM_{10} offsets requirement upon payment of a mitigation fee, which also would be used to pursue reductions of PM_{10} and its precursors and energy efficiency in environmental justice communities affected by the proposed power plant to the greatest extent possible.

III. CONCLUSION

The Draft Report acknowledges that scarcity of PM_{10} ERCs in the open market prevents developers of new generating capacity who do not own existing OTC units from competing on equal footing with those who own the OTC units. Yet the Draft Report defers any serious consideration of this issue for a later date, concluding instead that any new gas-fired generation capacity needed in the Los Angeles Basin can be met through repowering of OTC units pursuant to the existing exemption. Deferral of this issue risks not only that the required generation capacity will not be developed in a timely fashion, but that the decision on where it should be located will be dictated solely by an offsets obligation mandated by neither State nor federal clean air law.

We would encourage CARB to take advantage of the opportunity presented by the South Coast Air Basin's attainment of the PM_{10} NAAQS and provide a clear path for developers of new generating units who do not own existing OTC units to compete on equal footing with owners of OTC units. CARB should support the District's efforts in this respect, either by clarifying the legal opinion previously issued by CARB legal staff in its final report or by advancing legislation that authorizes use of a mitigation fee to satisfy the District's existing PM_{10} offsets obligation.

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Thank you for the opportunity to submit these comments. Please contact Barbara McBride at 925.570.0849 or Kassandra Gough at 916.491.3366 if you have any questions.

Sincerely,

/S/

Barbara McBride
Director – Environmental Services

/S/

Kassandra Gough
Director, Government and Legislative Affairs

Attachments

PROPOSED RULE AMENDMENTS TO AUTHORIZE NEW GENERATION FACILITIES WHICH DO NOT QUALIFY FOR UTILITY REPLACEMENT TO SATISFY PM_{10} OFFSETS REQUIREMENT THROUGH PAYMENT OF MITIGATION FEE

The following changes are proposed to Rule 1303, with insertions shown by underlining:

RULE 1303. REQUIREMENTS

(a) Best Available Control Technology (BACT):

…

(b) The Executive Officer or designee shall, except as Rule 1304 applies, deny the Permit to Construct for any new or modified source which results in a new emission increase of any nonattainment air contaminant at a facility, unless each of the following requirements is met:

(1) Modeling

…

(2) Emission Offsets

(A) Emission Reduction Credits

Unless exempt from offsets requirements pursuant to Rule 1304, emission increases shall be offset by either Emission Reduction Credits approved pursuant to Rule 1309, or by allocations from the Priority Reserve in accordance with the provisions of Rule 1309.1, or allocations from the Offset Budget in accordance with the provisions of Rule 1309.2, or pursuant to clause (b)(2)(A)(i) below. Offset ratios shall be 1.2-to-1.0 for Emission Reduction Credits and 1.0-to-1.0 for allocations from the Priority Reserve, except for facilities not located in the South Coast Air Basin (SOCAB), where the offset ratio for Emission Reduction Credits only shall be 1.2-to-1.0 for VOC, NO_x, SO_x and PM_{10} and 1.0-to-1.0 for CO.

(i) An applicant who is seeking to construct an electric generation facility to meet identified need for new generation capacity within the Los Angeles Basin at any location that EPA has designated as attainment for the National Ambient Air Quality Standard for PM_{10} may, solely for the purposes of offsetting emissions increases of PM_{10}, satisfy the offsets requirement set forth at clause (b)(2)(A) by payment of a mitigation fee, which shall be calculated as follows:

$$F_{PM10} = (L_{A1} \times PTE_{\leq 100}) + (L_{A2} \times PTE_{>100})$$

Where:

F_{PM10}	mitigation fee for PM_{10}
L_{A1}	$24,911
L_{A2}	$99,643

MW	MW rating of generation facility
PTE	permitted potential to emit PM_{10}, in pounds per day (maximum permitted monthly emissions ÷ 30)
$PTE_{\leq 100}$	If $MW \leq 100 = PTE$
	If $MW > 100 = \frac{100}{MW} \times PTE$
$PTE_{>100}$	$\frac{MW-100}{MW} \times PTE$

(ii) The owner/operator electing to pay a mitigation fee pursuant to clause (b)(2)(A)(i) above shall remit the mitigation fee prior to issuance of the permit to construct. The full amount of any payment made pursuant to this paragraph shall be refunded if a written request by the facility owner/operator is received prior to the commencement of operation. Such a request for refund shall automatically trigger cancellation of the permit to construct and/or operate. Prior to commencement of construction of each new electrical generating unit, an owner/operator may request the Executive Officer to have its permit amended to limit the permitted maximum monthly emissions and/or generation capacity and may seek a refund for the fee adjustment corresponding to the requested reduction in capacity.

(iii) The mitigation fee proceeds paid pursuant to paragraph (b)(2)(A)(ii) above shall be deposited in an SCAQMD-restricted fund account and shall be used either to fund energy efficiency programs intended to reduce the demand for electricity and combustion of natural gas for heating within residential buildings or to obtain reductions in emissions of PM_{10} and its precursors as identified pursuant to Rule 1302(af) consistent with the needs of the Air Quality Management Plan and this paragraph (b)(2)(A)(iii). The Executive Officer shall assure that, to the greatest extent feasible, such mitigation fee proceeds are spent within Environmental Justice communities located within the vicinity of the new generation facilities, which shall be identified by the Executive Officer as communities containing grid cells where at least 10% of the population is below the poverty level (based on 2010 Federal census data) and either:

1. PM_{10} Exposure: the PM_{10} exposure is greater than 46 $\mu g/m^3$ (as determined by the SCAQMD monitoring); or
2. Air Toxics Exposure: the cancer risk is greater than one thousand in one million (as determined by the SCAQMD Multiple Air Toxics Exposure Study (MATES II).

PROPOSED LEGISLATION TO AUTHORIZE PAYMENT OF MITIGATION FEES IN LIEU OF PROVIDING PM_{10} OFFSETS FOR OWNERS OF NEW GENERATION FACILITIES CONSTRUCTED TO MEET IDENTIFIED NEED WITHIN THE LOS ANGELES BASIN

SECTION 1. Section 40440.12 is added to the Health and Safety Code, to read:

40440.12. (a) Notwithstanding anything otherwise provided by the rules of the south coast district, this code, including the Protect California Air Act of 2003 (Chapter 4.5 of Part 4 of Division 26 (commencing with Section 42500)) and Chapter 10 of Part 3 of Division 26 (commencing with Section 40910), or the Public Resources Code, owners of new electric generating facilities intended to meet identified need in the Los Angeles Basin Reliability Area who do not qualify for an exemption from the emissions offsets requirements of the south coast district's rules, which exemption only applies to the replacement of coastal boiler units, shall not be required to offset their emissions of coarse particulate matter (less than 10 microns in diameter (PM_{10})), so long as all of the following are true:

(1) The South Coast Air Basin continues to be designated attainment for the National Ambient Air Quality Standard for PM_{10} and the maintenance plan approved by the U.S. Environmental Protection Agency for such standard does not rely upon the continued implementation of the PM_{10} offsets requirement to demonstrate maintenance with such standard.

(2) The generating facility will meet all other requirements of the south coast district rules and the federal Clean Air Act, including that it will meet emissions limits for both applicable criteria pollutants and greenhouse gas emissions equivalent to those achievable through use of the best available control technology.

(3) The generating facility is intended to meet identified need within the Los Angeles Basin Reliability Area, as evidenced by a power purchase agreement with a public utility, as defined by Section 216 of the Public Utilities Code, or a determination of need by a municipal utility.

(4) The owner of the generating facility pays a mitigation fee to the south coast district prior to issuance of a permit to construct for the facility, which mitigation fee shall be calculated using substantially the same formulae that the south coast district uses to calculate the mitigation fees for PM_{10} offsets for generating facilities subject to the exemption for replacement of utility boilers, including that the emissions of PM_{10} attributable to the first 100 megawatts of the facility's generating capacity shall be subject to a lower fee rate, in dollars per pounds per day, and the emissions attributable to generating capacity above 100 megawatts shall be subject to a higher fee rate.

(b) All mitigation fee proceeds collected by the executive officer of the south coast district pursuant to this section shall be deposited in a restricted fund and used by the executive officer either to pursue energy efficiency programs designed to reduce the demand for electricity or natural gas combustion within residential buildings or to obtain reductions in emissions of PM_{10} and its precursors, as identified by the rules of the south coast district, consistent with the needs of the south coast district's air quality management plan and the following requirements:

(1) The executive officer of the south coast district shall assure that the greatest percentage of such proceeds and in no event less than forty percent (40%) of them is spent on energy efficiency improvements or emission reductions within environmental justice communities located within the vicinity of the proposed electric generating facilities, as identified by the executive officer in his discretion.

(2) The executive officer of the south coast district shall assure that the remainder of such proceeds is spent pursuing energy efficiency improvements and emission reductions within communities affected by the proposed electric generating facilities.