



# South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178  
(909) 396-2000 • [www.aqmd.gov](http://www.aqmd.gov)

**SUBJECT: NOTICE OF PREPARATION OF A DRAFT PROGRAM ENVIRONMENTAL ASSESSMENT**

**PROJECT TITLE: PROPOSED RULE 1304.2 – CALIFORNIA PUBLIC UTILITIES COMMISSION REGULATED ELECTRICAL GENERATING FACILITY FEE FOR USE OF SOX, PM10, AND NOX OFFSETS; AND, PROPOSED RULE 1304.3 – LOCAL PUBLICLY OWNED ELECTRICAL UTILITY FEE FOR USE OF SOX, PM10, AND NOX OFFSETS**


In accordance with the California Environmental Quality Act (CEQA), the South Coast Air Quality Management District (SCAQMD), as the Lead Agency, has prepared this Notice of Preparation (NOP) and Supplement to the NOP. This NOP serves two purposes: 1) to solicit information on the scope of the environmental analysis for the proposed project; and, 2) to notify the public that the SCAQMD will prepare a Draft Program Environmental Assessment (PEA) to assess the potential environmental impacts that may result from implementing the proposed project. The SCAQMD, as lead agency for the proposed project, has determined that a Program Environmental Assessment will be required due to potentially significant effects of the project. The SCAQMD believes that all 17 CEQA topics may be significantly affected, and thus, has concluded that an Initial Study is not required to be prepared pursuant to CEQA Guidelines § 15060(d). Comments received during the 33-day NOP review period will be used to refine the scope and content of the Draft Program Environmental Assessment to be prepared, as appropriate.

This letter, NOP, and Supplement to the NOP, are not SCAQMD applications or forms requiring a response from you. Their purpose is simply to provide information to you on the above project. If the proposed project has no bearing on you or your organization, no action on your part is necessary.

Comments focusing on your area of expertise, your agency's area of jurisdiction, if applicable, or issues relative to the environmental analysis should be addressed to Ms. Barbara Radlein (c/o CEQA) at the address shown above, or sent by fax to (909) 396-3324 or by email to [bradlein@aqmd.gov](mailto:bradlein@aqmd.gov). Comments must be received no later than 5:00 p.m. on Tuesday, September 20, 2016. Please include the name and phone number of the contact person. Questions relative to the proposed rules should be directed to Mr. Henry Pourzand at (909) 396-2414 or by email to [hpourzand@aqmd.gov](mailto:hpourzand@aqmd.gov).

The Public Hearing for the proposed rules is scheduled for January 6, 2017. (Note: Public meeting dates are subject to change.)

**Date:** August 18, 2016

**Signature:**   
\_\_\_\_\_  
Barbara Radlein  
Program Supervisor, CEQA Special Projects  
Planning, Rules, and Area Sources

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**  
**21865 Copley Drive, Diamond Bar, CA 91765-4178**

**NOTICE OF PREPARATION OF A DRAFT PROGRAM ENVIRONMENTAL ASSESSMENT**

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**Project Title:** Draft Program Environmental Assessment for Proposed Rule 1304.2 – California Public Utilities Commission Regulated Electrical Generating Facility Fee For Use of SOx, PM10, and NOx Offsets; and, Proposed Rule 1304.3 – Local Publicly Owned Electrical Utility Fee For Use of SOx, PM10, and NOx Offsets

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**Project Location:** The proposed project may affect existing and new Electrical Generating Facilities and Local Publicly Owned Electrical Utilities located throughout the South Coast Air Quality Management District’s (SCAQMD) jurisdiction, which covers all of Orange County, the urban portions of Los Angeles and San Bernardino counties southwest of the San Bernardino and San Gabriel mountains, and nearly all of Riverside County, with the exception of communities near the state border.

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**Description of Nature, Purpose, and Beneficiaries of Project:** SCAQMD staff is proposing two new rules to allow proposed Investor Owned Utility (IOU) and Local Publicly Owned Electrical Utility (LPOEU) power projects that meet specific requirements, to pay a fee for the use of SOx, PM10, and NOx emission offsets in SCAQMD’s internal accounts. The current supply of Emission Reduction Credits (ERCs) in the open market may be inadequate to meet the offset requirements for permitting new or expanded power projects. The purpose of these proposed rules is to ensure that adequate resources are available to maintain local and regional electrical grid reliability despite the decommissioning of the San Onofre Nuclear Generating Station (SONGS), an aging and progressively unreliable power generation inventory, and the increased reliance on interruptible renewable generation mandated by the California Renewables Portfolio Standard. An increase in generation capacity, especially ‘peaking’ units, may benefit electrical power consumers in the SCAQMD and statewide, by averting potential brown-outs and black-outs during periods of high peak demand. IOU projects may benefit from the sale of additional electricity generation. In addition, any fees received will be utilized to fund air pollution reduction projects to benefit communities located within close proximity to sited projects and other communities located in Environmental Justice areas. For more information, including proposed draft rule language, refer to the Supplement to the Notice of Preparation. The SCAQMD, as lead agency for the proposed project, has determined that a Program Environmental Assessment will be required due to potentially significant effects of the project. The SCAQMD believes that all 17 CEQA topics may be significantly affected, and thus, has concluded that an Initial Study is not required to be prepared pursuant to CEQA Guidelines § 15060(d). The Draft Program Environmental Assessment (PEA) to be prepared will analyze the potential effects that the project may cause on the environment. The environmental topic areas that that may be adversely affected by the proposed project and as such, warrant analysis and consideration in the Draft PEA, are as follows: aesthetics; agriculture and forestry resources; air quality and greenhouse gas emissions; biological resources; cultural resources; energy; geology and soils; hazards and hazardous materials; hydrology and water quality; land use and planning; mineral resources; noise; population and housing; public services; recreation; solid and hazardous waste; and, transportation and traffic.

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<b>Lead Agency:</b> South Coast Air Quality Management District	<b>Division:</b> Planning, Rule Development and Area Sources
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<b>NOP and all supporting documentation are available at:</b> SCAQMD Headquarters 21865 Copley Drive Diamond Bar, CA 91765	<b>or by calling:</b> (909) 396-2039	<b>or by accessing the SCAQMD’s website at:</b> <a href="http://www.aqmd.gov/home/library/document-s-support-material/lead-agency-scaqmd-projects">http://www.aqmd.gov/home/library/document-s-support-material/lead-agency-scaqmd-projects</a>
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**The NOP is provided to the public through the following:**

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| <input checked="" type="checkbox"/> Los Angeles Times (August 18, 2016) | <input checked="" type="checkbox"/> SCAQMD Mailing List & Interested Parties |
| <input checked="" type="checkbox"/> SCAQMD Public Information Center    | <input checked="" type="checkbox"/> SCAQMD Website                           |
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**NOP Review Period (33 days):**  
August 18, 2016 – September 20, 2016

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The proposed project may have statewide, regional or areawide significance; therefore, a CEQA scoping meeting is required (pursuant to Public Resources Code § 21083.9 (a)(2)) and will be held on September 7, 2016. See Scheduled Public Meeting Dates below for details.

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**Scheduled Public Meeting Dates (subject to change):** 1) Public Workshop / CEQA and Socioeconomic Scoping Meeting: September 7, 2016 - 1:30 p.m. at SCAQMD Headquarters; and, 2) SCAQMD Governing Board Hearing: January 6, 2017 - 9:00 a.m. at SCAQMD Headquarters.

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<b>Send CEQA Comments to:</b> Ms. Barbara Radlein	<b>Phone:</b> (909) 396-2716	<b>Email:</b> <a href="mailto:bradlein@aqmd.gov">bradlein@aqmd.gov</a>	<b>Fax:</b> (909) 396-3324
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<b>Direct Questions on Proposed Rules:</b> Mr. Henry Pourzand	<b>Phone:</b> (909) 396-2414	<b>Email:</b> <a href="mailto:hpourzand@aqmd.gov">hpourzand@aqmd.gov</a>	<b>Fax:</b> (909) 396-3324
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**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

**SUPPLEMENT TO THE NOTICE OF PREPARATION FOR:**

**DRAFT PROGRAM ENVIRONMENTAL ASSESSEMENT FOR  
PROPOSED RULE 1304.2 – CALIFORNIA PUBLIC UTILITIES  
COMMISSION REGULATED ELECTRICAL GENERATING FACILITY  
FEE FOR USE OF SOX, PM10, AND NOX OFFSETS; AND, PROPOSED  
RULE 1304.3 – LOCAL PUBLICLY OWNED ELECTRICAL UTILITY FEE  
FOR USE OF SOX, PM10, AND NOX OFFSETS**

**August 2016**

**SCAQMD No. 08182016BAR**

**State Clearinghouse No: To Be Determined**

**Acting Executive Officer**

Wayne Nastri

**Deputy Executive Officer**

**Planning, Rule Development and Area Sources**

Philip Fine, Ph.D.

**Acting Assistant Deputy Executive Officer**

**Planning, Rule Development and Area Sources**

Susan Nakamura

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<b>Author:</b>	Barbara Radlein	Program Supervisor, CEQA Special Projects
<b>Technical Assistance:</b>	Henry Pourzand	Air Quality Specialist
<b>Reviewed By:</b>	Michael Krause	Planning and Rules Manager, Planning, Rule Development, and Area Sources
	Jillian Wong	Planning and Rules Manager - CEQA, Planning, Rule Development, and Area Sources
	Tracy Goss, P.E.	Planning and Rules Manager, Planning, Rule Development, and Area Sources
	David Ono	Program Supervisor, Planning, Rule Development, and Area Sources
	Barbara Baird	Chief Deputy Counsel
	Mary Reichert	Senior Deputy District Counsel

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
GOVERNING BOARD**

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Speaker of the Assembly Appointee

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Cities of Orange County

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Supervisor, Second District  
County of San Bernardino

**ACTING EXECUTIVE OFFICER:**  
**WAYNE NASTRI**

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Appendix B: Proposed Rule 1304.3 – Local Publicly Owned Electrical Utility Fee For Use of SO<sub>x</sub>, PM<sub>10</sub>, and NO<sub>x</sub> Offsets (Preliminary Draft)

## **SUPPLEMENT TO THE NOTICE OF PREPARATION**

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**Description of Nature, Purpose, and Beneficiaries of Project**

**California Environmental Quality Act**

**Project Location**

**Alternatives**

## **DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT**

The South Coast Air Quality Management District (SCAQMD) staff is proposing two new rules: Proposed Rule 1304.2 – California Public Utilities Commission Regulated Electrical Generating Facility Fee For Use of SO<sub>x</sub>, PM<sub>10</sub>, and NO<sub>x</sub> Offsets; and, Proposed Rule 1304.3 – Local Publicly Owned Electrical Utility Fee For Use of SO<sub>x</sub>, PM<sub>10</sub>, and NO<sub>x</sub> Offsets. These proposed rules would allow proposed Investor Owned Utility (IOU) and Local Publicly Owned Electrical Utility (LPOEU) power projects, that meet specific requirements, to pay a fee for the use of SO<sub>x</sub>, PM<sub>10</sub>, and NO<sub>x</sub> emission offsets in SCAQMD’s internal accounts.

The current supply of Emission Reduction Credits (ERCs) in the open market may be inadequate to meet the offset requirements for permitting new or expanded power projects. The purpose of the rules are to ensure that adequate resources are available to maintain local and regional electrical grid reliability despite the decommissioning of the San Onofre Nuclear Generating Station (SONGS), an aging and progressively unreliable power generation inventory, and the increased reliance on interruptible renewable generation mandated by the California Renewables Portfolio Standard.

To utilize SCAQMD offsets, proposed projects must demonstrate a need, by reference to either a California Public Utilities Commission (CPUC) Long Term Procurement Program Plan (LTPP) or a municipal Integrated Resource Plan (IRP) with an adopted energy policy on Preferred Resources and Loading Order consistent with state requirements, including the Renewables Portfolio Standard, as applicable. Additional project requirements on applicants include: 1) certifying that reasonable efforts were made to procure ERCs/offsets from other sources, including from current holdings; 2) confirmation by SCAQMD that offset amounts above minimum threshold reserve amounts in the SCAQMD’s New Source Review accounts are available in accordance with the requirements in SCAQMD Regulation XIII – New Source Review; 3) demonstrating compliance with the California Environmental Quality Act (CEQA) for the specific project; 4) project and emission source compliance with the requirements of Regulation XIII, including Rule 1315 – Federal New Source Tracking System; and, 5) ensuring payment of the applicable offset mitigation fees. Offsets may be reserved for projects that qualify by payment of a reservation fee at the time the Permit to Construct or revised Permit to Operate is issued. To limit offset requests to valid projects only, applicants that cancel offset requests after the issuance of the Permit to Construct or revised Permit to Operate has been issued are assessed a cancellation fee equivalent to the total first year mitigation fee for such offsets. Reservations for offsets would be valid for 36 months and may be extended for up to 24 months upon written request from the project proponent. Offsets that are not utilized by the project proponent will be released for other existing eligible uses pursuant to Regulation XIII.

The offset mitigation fee will be based on the number of pounds per day of each pollutant required for offsetting. Fees may be paid as an up-front, one-time, lump sum payment, or in annual payments for the life of the project. Offset fees will be subject to the annual increase in the California Consumer Price Index (CPI) based on the due date. Offsets would be designated for use by a specific project and available for the life of the specific project only. Such offsets would not constitute any form of source property. For example, unlike ERCs, offsets under these proposed rules cannot be sold, leased, transferred or subject to any lien or pledge by the project proponent. In addition, the project proponent would only pay for the utilization of such offsets

which remain in the SCAQMD NSR accounts and such utilization would also preclude the use of the same offsets for any other purposes. The utilization and setting-aside of offsets for the purposes of these rules would be tracked and reported pursuant to Rule 1315 procedures.

An increase in generation capacity, especially “peaking” units, may benefit electrical power consumers in the SCAQMD and state-wide, by averting potential brown-outs and black-outs during periods of high peak demand. IOU projects may benefit from the sale of additional generation. Communities located within close proximity to any project site and communities located within Environmental Justice areas (as defined in the proposed rules) would benefit from the expenditure of mitigation fees (less up to eight percent for SCAQMD administration) on air pollution reduction projects that support the Air Quality Management Plan (AQMP) objectives required under the proposal. However, this benefit would not be realized until lump sum or annual mitigation fee revenues are received and subsequently approved for funding of mitigation projects/programs.

At the time of publication of the NOP, SCAQMD staff is only aware of two potential projects that may utilize the proposed rules. The Wellhead Electric Company, Inc. is proposing to construct the Stanton Energy Reliability Center in Stanton, California which will provide 98 MW of peaking power with battery backup and will serve as an EGF by contracting with Southern California Edison (SCE). The project proponent may consider utilizing Proposed Rule 1304.2 to obtain offsets. The City of Glendale (a municipal power provider) is requesting bids on up to an additional potential 250 MW of repowering existing equipment and may consider utilizing Proposed Rule 1304.3 to obtain offsets.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The California Environmental Quality Act (CEQA), California Public Resources Code Section 21000 *et seq.*, requires environmental impacts of proposed projects to be evaluated and feasible methods to reduce, avoid, or eliminate significant adverse impacts of these projects to be identified and implemented. The lead agency is the “public agency that has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment” (Public Resources Code § 21067). Since the SCAQMD has the primary responsibility for supervising or approving the entire project as a whole, it is the most appropriate public agency to act as lead agency (CEQA Guidelines<sup>1</sup> § 15051 (b)).

CEQA requires the evaluation of all potential adverse environmental impacts of proposed projects and implementation of methods to reduce or avoid identified significant adverse environmental impacts of these projects, if feasible. The purpose of the CEQA process is to inform the SCAQMD Governing Board, public agencies, and interested parties of potential adverse environmental impacts that could result from implementing the proposed project and to identify feasible mitigation measures or alternatives, when an impact is significant.

Public Resources Code Section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written documents in lieu of an environmental impact report once the Secretary of the Resources Agency has certified the regulatory program. The SCAQMD's regulatory program was certified by the Secretary of Resources Agency on March 1, 1989, and

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<sup>1</sup> The CEQA Guidelines are codified at Title 14 California Code of Regulations, §15000 *et seq.*



has been adopted as SCAQMD Rule 110 – Rule Adoption Procedures to Assure Protection and Enhancement of the Environment.

CEQA includes provisions for the preparation of program CEQA documents in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, including adoptions of broad policy programs as distinguished from those prepared for specific types of projects such as land use projects (CEQA Guidelines § 15168). A program CEQA document also allows consideration of broad policy alternatives and program-wide mitigation measures at a time when an agency has greater flexibility to deal with basic problems of cumulative impacts. Lastly, a program CEQA document also plays an important role in establishing a structure within which CEQA review of future related actions can effectively be conducted. This concept of covering broad policies in a program CEQA document and incorporating the information contained therein by reference into subsequent CEQA documents for specific projects is known as “tiering” (CEQA Guidelines § 15152).

A program CEQA document will provide the basis for future environmental analyses and will allow future project-specific CEQA documents, if necessary, to focus solely on the new effects or detailed environmental issues not previously considered. If an agency finds that no new effects could occur, or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program CEQA document and no new environmental document would be required (CEQA Guidelines § 15168 (c)(2)).

The proposed new rules are considered a “project” as defined by CEQA. SCAQMD’s review of the proposed project shows that implementation of Proposed Rules 1304.2 and 1304.3 may have a significant adverse effect on the environment. Since the proposed project may have statewide, regional, or areawide significance, a CEQA scoping meeting is also required to be held for the proposed project pursuant to Public Resources Code Section 21083.9 (a)(2). Information regarding the CEQA scoping meeting can be found on the NOP.

In addition, since the proposed project: 1) is connected to the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program (CEQA Guidelines § 15168 (a)(3)); and, 2) contains a series of actions that can be characterized as one large project and the series of actions are related as individual activities that would be carried out under the same authorizing regulatory authority and having similar environmental effects which can be mitigated in similar ways (CEQA Guidelines § 15168 (a)(4)), the appropriate type of CEQA document to be prepared for the proposed project will be a Program Environmental Assessment (PEA). The PEA is a substitute CEQA document, prepared in lieu of a program environmental impact report (EIR) (CEQA Guidelines § 15252), pursuant to the SCAQMD’s Certified Regulatory Program (CEQA Guidelines § 15251 (I); codified in SCAQMD Rule 110). The PEA is also a public disclosure document intended to: 1) provide the lead agency, responsible agencies, decision makers, and the general public with information on the environmental impacts of the proposed project; and, 2) be used as a tool by decision makers to facilitate decision making on the proposed project.

Typically, the first step of preparing a Draft PEA is to prepare a Notice of Preparation (NOP) with an Initial Study that includes an Environmental Checklist and project description.

However, the SCAQMD, as lead agency for the proposed project, has determined that the project will clearly have potentially significant adverse environmental impacts. The SCAQMD believes that all 17 CEQA topics may be significantly affected, and thus, has concluded that an Initial Study is not required to be prepared pursuant to CEQA Guidelines Section 15060(d). Instead, a Draft Program Environmental Assessment (PEA) will be prepared that will analyze the potential effects that the project may cause on the environment. The environmental topic areas that may be adversely affected by the proposed project and as such, warrant analysis and consideration in the Draft PEA, are as follows: aesthetics; agriculture and forestry resources; air quality and greenhouse gas emissions; biological resources; cultural resources; energy; geology and soils; hazards and hazardous materials; hydrology and water quality; land use and planning; mineral resources; noise; population and housing; public services; recreation; solid and hazardous waste; and, transportation and traffic. Thus, the SCAQMD as Lead Agency has prepared an NOP and Supplement to the NOP for the proposed project. Written comments received on the scope of the environmental analysis will be considered when preparing the Draft PEA.

### **PROJECT LOCATION**

The proposed rules would apply to proposed Investor Owned Utility (IOU) and Local Publicly Owned Electrical Utility (LPOEU) power projects operated at new or existing facilities located throughout the entire SCAQMD jurisdiction. The SCAQMD has jurisdiction over an area of approximately 10,743 square miles, consisting of the four-county South Coast Air Basin (Basin) (Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino counties), and the Riverside County portions of the Salton Sea Air Basin (SSAB) and Mojave Desert Air Basin (MDAB). The Basin, which is a subarea of the SCAQMD's jurisdiction, is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east. It includes all of Orange County and the nondesert portions of Los Angeles, Riverside, and San Bernardino counties. The Riverside County portion of the SSAB is bounded by the San Jacinto Mountains in the west and spans eastward up to the Palo Verde Valley. The federal nonattainment area (known as the Coachella Valley Planning Area) is a subregion of Riverside County and the SSAB that is bounded by the San Jacinto Mountains to the west and the eastern boundary of the Coachella Valley to the east (Figure 1).

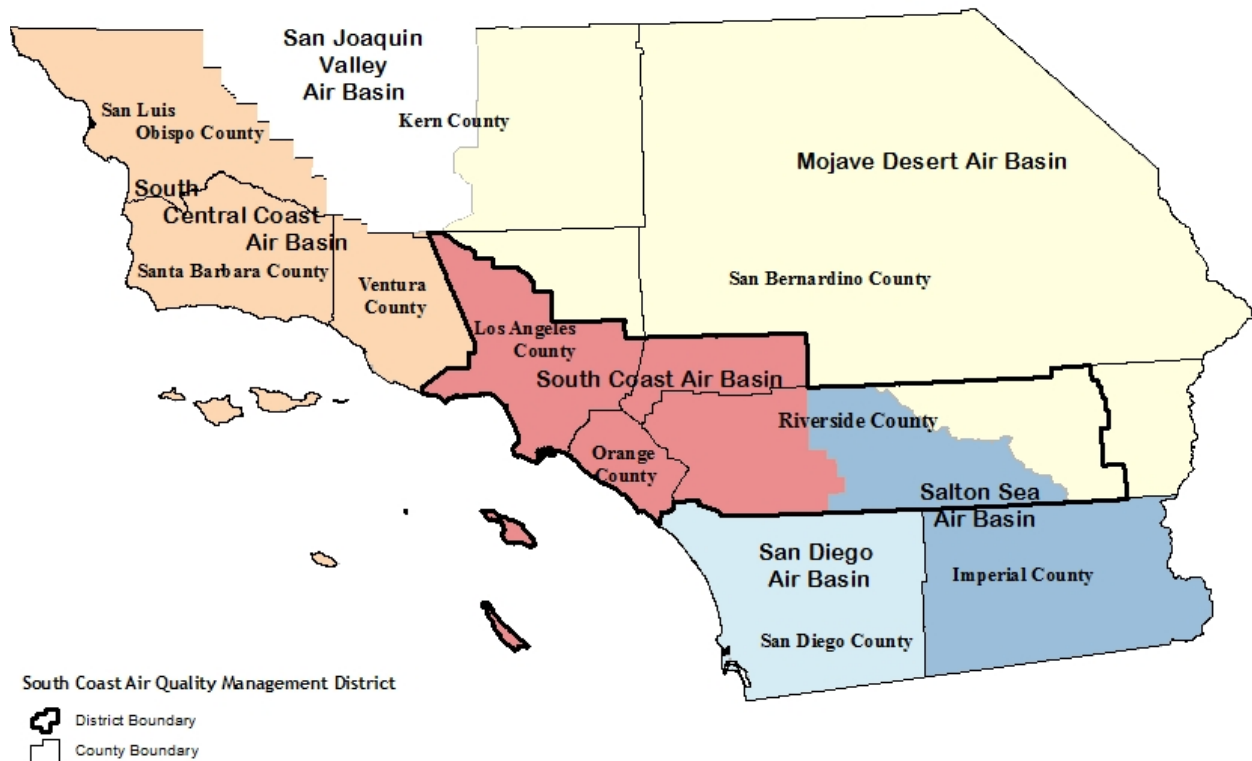


Figure 1: Southern California Air Basins

## ALTERNATIVES

The Draft PEA will discuss and compare a range of reasonable alternatives to the proposed project as required by CEQA Guidelines Section 15126.6 and by SCAQMD Rule 110 where there are potential significant adverse environmental impacts. Alternatives must include realistic measures for attaining the basic objectives of the proposed project and provide a means for evaluating the comparative merits of each alternative. In addition, the range of alternatives must be sufficient to permit a reasoned choice and it need not include every conceivable project alternative. The key issue is whether the selection and discussion of alternatives fosters informed decision making and public participation. A CEQA document need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

SCAQMD Rule 110 does not impose any greater requirements for a discussion of project alternatives in an environmental assessment than is required for an Environmental Impact Report under CEQA. Alternatives will be developed based in part on the major components of the proposed project. The rationale for selecting alternatives rests on CEQA's requirement to present "realistic" alternatives: that is, alternatives that can actually be implemented. CEQA also requires an evaluation of a "No Project Alternative."

SCAQMD's policy document Environmental Justice Program Enhancements for fiscal year (FY) 2002-03, Enhancement II-1 recommends that all SCAQMD CEQA environmental assessments

include a feasible project alternative with the lowest air toxics emissions. In other words, for any major equipment or process type under the scope of the proposed project that creates a significant environmental impact, at least one alternative, where feasible, shall be considered from a “least harmful” perspective with regard to hazardous air emissions.

The Governing Board may choose to adopt any portion or all of any alternative presented in the PEA with appropriate findings as required by CEQA. The Governing Board is able to adopt any portion or all of any of the alternatives presented because the impacts of each alternative will be fully disclosed to the public and the public will have the opportunity to comment on the alternatives and impacts generated by each alternative. Written suggestions on potential project alternatives received during the comment period for the NOP will be considered when preparing the Draft PEA.

**APPENDIX A**

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**PROPOSED RULE 1304.2 – CALIFORNIA PUBLIC UTILITIES  
COMMISSION REGULATED ELECTRICAL GENERATING  
FACILITY FEE FOR USE OF SOX, PM10, AND NOX OFFSETS  
(PRELIMINARY DRAFT)**

(Date of Adoption)

**PRELIMINARY DRAFT  
 PROPOSED RULE 1304.2. CALIFORNIA PUBLIC UTILITIES COMMISSION  
 - REGULATED ELECTRICAL GENERATING  
 FACILITY FEE FOR USE OF SO<sub>x</sub>, PM<sub>10</sub>, AND  
 NO<sub>x</sub> OFFSETS**

(a) Purpose and Applicability

The purpose of this rule is to establish administrative requirements that allow for the option to pay fees for the use of SO<sub>x</sub>, PM<sub>10</sub> and NO<sub>x</sub> emission offsets from SCAQMD internal accounts by an Electrical Generating Facility (EGF) that has contracted to sell energy to an Investor Owned Utility (IOU) subject to the jurisdiction of the California Public Utilities Commission (CPUC). Offsets in SCAQMD internal accounts are valuable public goods. Fees paid to recoup the fair market value of these offsets will be subsequently invested in air pollution improvement strategies consistent with the needs of the Air Quality Management Plan. This rule applies to CPUC-regulated EGFs sited or proposed to be sited within the jurisdiction of the SCAQMD that are unable to meet the Emission Reduction Credit (ERC) provisions of Rule 1303 – Requirements, specifically with regard to obtaining ERCs in the open market. This rule does not allow for the use of emission offsets from SCAQMD’s internal accounts for use as RECLAIM Trading Credits pursuant to Regulation XX – Regional Clean Air Incentives Market (RECLAIM).

(b) Definitions

- (1) COMMENCEMENT OF OPERATION means the date on which first fire of any new unit begins, including for test generation.
- (2) CONSTRUCTION means to build, erect, or alter any structure, plot of land, site, or piece of equipment; or to replace any piece of equipment.
- (3) ELECTRICAL GENERATING FACILITY (EGF) means a facility that generates electricity for local distribution and that may also contribute to grid reliability.
- (4) ENVIRONMENTAL JUSTICE AREA means an area where at least 10 percent of the population falls below the federal poverty level, based on the most recently published American Community Survey data, and which includes:
  - (A) For an area located within the SOCAB, the following:

- (i) the highest 15th percentile of PM<sub>2.5</sub> concentration measurements interpolated to a two (2) kilometer grid of the most recently published Multiple Air Toxics Emissions Study (MATES) modeling domain; or,
    - (ii) the highest 15th percentile of cancer risk as calculated in the most recently published MATES.
  - (B) For an area located within the Salton Sea Air Basin (SSAB), the highest 15th percentile of PM<sub>10</sub> concentration.
- (5) INCREASED CAPACITY means an increase in fossil-fueled electrical generation capacity, either from the construction of one or more units at an existing site, or an increase in the capacity factor of any existing unit at a site, or any combination thereof.
- (6) INVESTOR OWNED UTILITY (IOU) is a private business organization, subject to governmental regulation, providing an essential commodity or service, including the sale of electricity to the general public, pursuant to a California Public Utilities Commission (CPUC) Long Term Procurement Plan (LTPP).
- (7) LONG TERM PROCUREMENT PLAN (LTPP) means a long term strategic plan pursuant to California Public Utility Code Sections 454.5 and 399.13, which demonstrates that the associated IOU will comply with State policies, including the Loading Order and the Renewable Portfolio Standard, and will provide safe, reliable capacity at the least cost to ratepayers.
- (8) RESPONSIBLE OFFICIAL means:
  - (A) For a corporation: a president or vice-president of the corporation in charge of a principal business function or a duly authorized person who performs similar policy-making functions for the corporation;
  - (B) For a partnership or sole proprietorship: general partner or proprietor, respectively; or
  - (C) For a government agency: a duly authorized person.
- (c) Set Aside Conditions
  - Prior to setting aside any offsets, the IOU shall provide the Executive Officer (EO) with a projection of new EGF fossil fuel-generation capacity expected

within the SCAQMD, and a calculation of the associated offsets needed, based on a CPUC procurement decision, whereby:

- (1) The EO will review and verify the calculated amount of reasonably anticipated offsets needed; and
  - (2) The EO will account for reasonably anticipated offsets needed in the Federal New Source Review (NSR) Equivalency Determination Reports, pursuant to Rule 1315 – Federal New Source Review Tracking System (Rule 1315).
- (d) Setting Aside Offsets for Use by a CPUC-Regulated EGF
- (1) Following final approval by the CPUC of any executed contract between an EGF and associated IOU, the IOU shall provide notice to the EO identifying such contracts for new generation within the SCAQMD, including a request to the EO for setting aside offsets needed for permitting the approved projects.
  - (2) A request by an IOU for setting aside offsets will be approved by the EO in the form of a letter provided that:
    - (A) All ERCs, offsets, and credits available from all other sources including those already held by the contracted EGF are first exhausted;
    - (B) The requirements of Rule 1315 are met, including that the cumulative set aside offsets requested under all SCAQMD rules will not cause or contribute to the exceedance of the applicable Projections of Cumulative Net Emission Increases pursuant to Rule 1315; and,
    - (C) After accounting for all offsets set aside, including those for Rule 1304.3 – Local Publicly Owned Electrical Generating Facility Fee for Use of SO<sub>x</sub>, PM<sub>10</sub> and NO<sub>x</sub> Offsets, the SCAQMD's internal offset accounts will have a minimum balance of 50 pound per day (lb/day) of SO<sub>x</sub>, 420 lb/day of PM<sub>10</sub> and 3,000 lb/day of NO<sub>x</sub> offsets for Rule 1309.1 – Priority Reserve and Rule 1304 – Exemptions.
  - (3) In the event that the requested amount of offsets for set aside by an IOU exceed the amount of offsets available, the EO will set aside the maximum amount of offsets that meet the requirements specified in paragraph (d)(2).
  - (4) The EO will post the amount of offsets set aside pursuant to paragraph (d)(1) from SCAQMD's internal offset accounts on a quarterly basis on



the SCAQMD website and account for all such offsets set aside in the Preliminary and Final Determinations of Equivalency in accordance with Rule 1315.

- (5) In the event that the CPUC's decision to reject a contract becomes final and non-appealable, the associated IOU shall notify the EO within 30 days of such a decision. The EO will release such offsets set aside for other authorized uses pursuant to Rule 1315.
- (e) Conditions for the Use of Set Aside Offsets by a CPUC-regulated EGF
- Offsets set aside in accordance with the provisions of this subdivision will be debited from the SCAQMD's internal offset accounts prior to the issuance of the Permit to Construct to the owner or operator of a CPUC-regulated EGF identified in this subdivision subject to the following conditions for use:
- (1) The owner or operator of the CPUC-regulated EGF shall submit a good faith effort letter signed by a Responsible Official certifying that reasonable efforts have been undertaken by the owner or operator to secure, on the open market, the quantity of ERCs required pursuant to the ERC requirements of Rule 1303;
  - (2) The owner or operator of the CPUC-regulated EGF shall demonstrate compliance with the California Environmental Quality Act (CEQA) as follows:
    - (A) For facilities with greater than or equal to 50 MW generation, the necessary licensing shall be completed by the California Energy Commission (CEC), or
    - (B) For facilities with less than 50 MW generation, the applicable lead agency shall prepare the appropriate CEQA document for adoption or certification;
  - (3) The owner or operator of the CPUC-regulated EGF shall remit either the Set-Aside Offset Reservation Deposit Fee or the Single Payment Offset Fee, in accordance with subdivision (g);
  - (4) Any permit application for which the requested set aside offsets are needed is deemed complete, pursuant to Rule 210 – Applications;
  - (5) The CPUC-regulated EGF must be in compliance with all other applicable requirements pursuant to Regulation XIII;
  - (6) Any set side offsets that are not used by the CPUC-regulated EGF will remain in the SCAQMD's internal offset accounts for future use; and,

(7) Set aside offsets will be available for the facility or any successors for a period not to exceed 36 months from the confirmation date of the set aside identified pursuant to paragraph (d)(2), after which the set aside will be cancelled, and any remitted set aside offset fees will be forfeited. Following cancellation, the EO will release any set aside offsets for other authorized uses pursuant to Regulation XIII. The EO may approve a request for an extension of the set aside period by up to an additional 24 months, provided a written request is received by the EO prior to the expiration of the initial 36 month period.

(f) **Restrictions on the Use of Set Aside Offsets by a CPUC-Regulated EGF**  
Set aside offsets provided by the SCAQMD for use by a CPUC-Regulated EGF pursuant to the provisions of this rule are subject to the following restrictions:

- (1) Set aside offsets may only be utilized by the EGF to which they are provided and only for the life of the EGF from Commencement of Operation of the associated unit(s) until operations completely cease and all the associated permits are surrendered or have expired and are no longer reinstatable; and
- (2) Set aside offsets are not any form of property, and may not be sold, leased, transferred, or subject to any lien, pledge, or voluntary or involuntary hypothecation or transfer, and shall not be assets in bankruptcy, for purposes of taxation, or in any other legal proceeding.

Notwithstanding the foregoing, any offsets set aside for use, and subsequent use of such offsets, by any CPUC-Regulated EGF pursuant to this rule will not be affected by a valid Change of Operator pursuant to Rule 301 – Permitting and Associated Fees.

(g) **CPUC Regulated EGF Set Aside Offset Fees**

Any CPUC-regulated EGF owner or operator using offsets from SCAQMD internal offset accounts shall pay the Offset Fee ( $F_i$ ), calculated pursuant to paragraph (g)(1), for each pound of pollutant (i), for which the SCAQMD provides offsets. This fee may be paid on an annual basis, or as a single payment, at the election of the owner or operator, in accordance with the provisions of paragraph (g)(2).

(1) **Offset Fee Determination**

The Offset Fee ( $F_i$ ), for specific pollutant (i), will be calculated by multiplying the pollutant specific Annual Payment Offset Fee Rate ( $R_i$ ) or

Single Payment Offset Fee Rate (Li) in Table A, as applicable, by the potential to emit level of any new unit, or by the increase in permitted potential to emit of any Increased Capacity of an existing unit, for pollutant (i), in pounds per day. The offset fee determination is governed by equations in Table B and subparagraphs (g)(1)(A), (g)(1)(B) and (g)(1)(C).

**TABLE A**  
**Pollutant Specific CPUC-Regulated EGF Offset Fee Rates**

<b>Pollutant Offset (i)</b>	<b>Annual Payment Offset Fee Rate (Ri) (\$ per lb/day-year)*</b>	<b>Single Payment Offset Fee Rate (Li) (\$ per lb/day)<sup>[1]</sup></b>
SOx**	3,344	83,617
PM10	4,206	105,118
NOx**	3,371	84,274

\* The Annual Payment and Single Payment Offset Fee Rates Ri and Li will be adjusted annually by the same CPI factor as determined for Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III fees, and pursuant to Health and Safety Code Section 40510.5. The rates published in Table A are for FY 2016 - 2017 and are valid through June 30, 2017; however, in all cases the fee rate in effect on the due date determined in accordance with paragraph (g)(2) as applicable, will be used.

\*\* Not for use as RECLAIM trading credits, pursuant to Regulation XX – Regional Clean Air Incentives Market (RECLAIM).

**TABLE B**  
**Pollutant Specific CPUC-Regulated EGF Offset Fee Determination**

Fee Description	Fee (Fi) Calculation	Payment Due Date
Annual Payment Option		
Set Aside Offset Reservation Deposit	$(Ri) \times PTE_{NEWi}^*$	[1]
First Year of Commenced Operations	$(Ri) \times PTE_{NEWi}^*$	[2]
Continuing Operation	$(Ri) \times PTE_{NEWi}^*$	[3]
Single Payment Option		
Single Payment	$(Li) \times PTE_{NEWi}^*$	[1]

[1] Payment under the Annual Payment Option for the Set Aside Offset Reservation Deposit Fee and under the Single Payment Option for the Single Payment Offset Fee are due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit, pursuant to paragraph (g)(2).

[2] Payment of the First Year of Commenced Operations Offset Fee is due following Commencement of Operation, either on or before the anniversary of the issuance of the Permit to Construct or on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(ii).

[3] Payment of the Continuing Operation Offset Fee is due subsequent to the First Year of Commenced Operations Offset Fee payment, either annually on or before the anniversary of the issuance of the Permit to Construct or annually on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(iii).

\*  $PTE_{NEWi}$  is the permitted potential to emit of any new units or increase in permitted potential to emit of any Increased Capacity of an existing unit, for pollutant (i), in pounds per day, less ERCs, offsets or any other credits available, determined in accordance with subparagraph (g)(1)(C).

(A) Annual Fee Determination

A CPUC-regulated EGF owner or operator choosing the annual payment option shall pay a Set Aside Offset Reservation Deposit Fee, the First Year of Commenced Operations Offset Fee, and the Continuing Operation Offset Fee, in an amount equal to the Offset Fee (Fi) under the annual payment option, determined in accordance with the following formula:

$$\text{Offset Fee (Fi)} = (\text{Ri}) \times \text{PTE}_{\text{NEWi}}$$

Where:

Fi = Offset Fee for pollutant (i)

Ri = Table A, Annual Offset Fee Rate for pollutant (i), in terms of dollars per pound per day per year

PTE<sub>NEWi</sub> = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

(B) Single Payment Fee Determination

A CPUC-regulated EGF owner or operator choosing the single payment option shall pay a one-time Offset Fee (Fi), determined in accordance with the following formula:

$$\text{Offset Fee (Fi)} = (\text{Li}) \times \text{PTE}_{\text{NEWi}}$$

Where:

Fi = Offset Fee for pollutant (i)

Li = Table A, Single Payment Offset Fee Rate for pollutant (i), in terms of dollars per pound per day

PTE<sub>NEWi</sub> = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

(C) Portion of the Total Potential to Emit Eligible for Offsets

The portion of the total potential to emit eligible for offsets will be based on the total amount of the permitted potential to emit corresponding to the total MW capacity for which the Permit to Construct is being issued for any new units, or total amount of the permitted potential to emit of the Increased Capacity of any existing units, for pollutant (i), in pounds per day, less ERCs, offsets or any other credits available to the CPUC-regulated EGF outside of SCAQMD internal offset accounts. The permitted potential to emit will be calculated pursuant to Rule 1303, except that to the extent allowed under the provisions of both this rule and Rule 1306 – Emission Calculations, offsets procured pursuant to this rule may be used to satisfy the Required Offset requirements of Rule 1306, and the ERC requirements of Rule 1303, as applicable.

## (2) Offset Fee Payment Schedule

The Offset Fee payment schedule under an annual payment option is specified in subparagraph (g)(2)(A). The Offset Fee payment schedule under a single payment option is specified in subparagraph (g)(2)(B).

## (A) Annual Fee Payment Schedule

A CPUC-regulated EGF owner or operator choosing the annual payment option shall pay a Set Aside Offset Reservation Deposit Fee, the First Year of Commenced Operations Offset Fee, and the Continuing Operation Offset Fee, determined pursuant to subparagraph (g)(1)(A) and due in accordance with the following:

## (i) Set Aside Offset Reservation Deposit Fee

The Set Aside Offset Reservation Deposit Fee is due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit, as a one-time initial payment.

## (ii) First Year of Commenced Operations Offset Fee

The First Year of Commenced Operations Offset Fee is the initial annual payment for the portion of the total permitted MW capacity that commenced operation over the previous 12 months prior to the due date, pursuant to the following:

(I) The due date shall be on either: the first anniversary of the issuance of the Permit to Construct following Commencement of Operation; or, on the first anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit following Commencement of Operation.

(II) A portion of the Set Aside Offset Reservation Deposit Fee, remitted in accordance with clause (g)(2)(A)(i), in an amount proportional to the ratio of the actual MW that commenced operation during the previous 12 months prior to the due date, to the total permitted MW, will be credited towards the First Year of Commenced Operations Offset Fee payment for the portion of the total MW commencing operation. The Set Aside Offset Reservation Deposit Fee may not be credited

towards annual fee payments subsequent to this First Year of Commenced Operations Offset Fee payment for this portion of the total MW commencing operation.

(iii) Continuing Operation Offset Fee

Following remittance of the First Year of Commenced Operations Offset Fee in accordance with clause (g)(2)(A)(ii), the Continuing Operation Offset Fee is due annually, on either: the anniversary of the issuance of the Permit to Construct, or the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, each year, for the portion of the total permitted MW capacity that has commenced operation.

(B) Single Payment Fee Payment Schedule

A CPUC-regulated EGF owner or operator choosing the single payment option shall pay a one-time Offset Fee, determined in accordance with subparagraph (g)(1)(B), due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit.

(C) Switching from the Annual Payment to the Single Payment Option

The owner or operator of a CPUC-regulated EGF that has elected the annual fee payment option may switch to the single payment option by submitting a written request, signed by the Responsible Official, to the EO. The amount of the single payment offset fee due will be based on offset fee rates applicable on the date the written request for the change in payment method is submitted to the EO. The sum of any remitted annual payment offset fees prior to the submittal of a request for change to a single payment option will be credited towards the single payment offset fee amount due.

(h) Application Cancellation and Refund

If the CPUC-regulated EGF owner or operator, following payment of offset fees in accordance with subdivision (g), submits a written request signed by a Responsible Official to cancel either a Permit to Construct application prior to Commencement of Construction or an application to modify a Permit to Operate for an Increased Capacity prior to the Commencement of Operation of the

affected modified units, the EO will release the associated offsets pursuant to this rule for other authorized uses pursuant to Rule 1315, and:

- (1) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and no future annual payments due; or
- (2) if the single payment option was chosen pursuant to subparagraph (g)(2)(B) then the amount paid, less the amount equal to the Set Aside Offset Reservation Deposit Fee determined in accordance with subdivision (g), will be refunded.

(i) Permit Cancellation or Modification and Refund

If the CPUC-regulated EGF owner or operator, following payment of set-aside offset fees in accordance with subdivision (g), submits a written request signed by a Responsible Official to cancel an issued Permit to Construct or modify an issued Permit to Construct to limit the maximum generation capacity, the EO will release the associated offsets for other authorized uses pursuant to Rule 1315, and:

- (1) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and no future payments due; or
- (2) if the constructed MW capacity for which the Permit to Construct was issued is built out in multi-year phases, prior to commencing construction of any phase, an owner or operator of a CPUC-regulated EGF can request that the EO modify the associated permit to limit the maximum monthly or annual generation capacity, and:
  - (A) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and any subsequent offset fee payment subject to this rule will be based on the resultant approved Potential to Emit (PTE), pursuant to subparagraph (g)(1)(A) and clauses (g)(2)(A)(ii) and (g)(2)(A)(iii); or,
  - (B) if the single payment option was chosen pursuant to subparagraph (g)(2)(B) then, for the corresponding reduction in offsets, the amount paid, less the amount equal to the Set Aside Offset Reservation Deposit Fee determined in accordance with subdivision (g), will be refunded.

(j) Failure to Pay Fees

If the owner or operator of a CPUC-regulated EGF fails to pay any offset fee required pursuant to this rule within thirty (30) days after the due date, any



associated permit will expire and no longer be valid, unless such offsets are replaced by an equivalent amount of ERCs by the owner or operator. Any such permit may be reinstated within sixty (60) days following expiration by making full payment of the applicable fees owed plus an additional 50% of the applicable fees owed.

(k) Use of Offset Fee Proceeds

- (1) Except as provided in paragraph (k)(2), offset fee proceeds paid pursuant to this rule will be deposited in an SCAQMD special fund account and will be used to obtain emission reductions consistent with the needs of the Air Quality Management Plan. Priority will be given to funding air quality improvement projects in impacted surrounding communities where the CPUC-regulated EGF project is located and in Environmental Justice Areas.
- (2) Up to 8% of the Offset Fee proceeds, deposited in a restricted fund account, may be used by the EO to cover administrative costs related to implementation of this rule.

(l) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances.

**APPENDIX B**

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**PROPOSED RULE 1304.3 – LOCAL PUBLICLY OWNED  
ELECTRICAL UTILITY FEE FOR USE OF SOX, PM10, AND NOX  
OFFSETS (PRELIMINARY DRAFT)**

(Date of Adoption)

**PRELIMINARY DRAFT  
PROPOSED RULE 1304.3. LOCAL PUBLICLY OWNED ELECTRICAL  
UTILITY FEE FOR USE OF SO<sub>x</sub>, PM<sub>10</sub>, AND NO<sub>x</sub>  
OFFSETS**

(a) Purpose and Applicability

The purpose of this rule is to establish administrative requirements that allow for the option to pay fees for the use of SO<sub>x</sub>, PM<sub>10</sub> and NO<sub>x</sub> emission offsets from SCAQMD internal accounts by a Local Publicly Owned Electrical Utility (LPOEU). Offsets in SCAQMD internal accounts are valuable public goods. Fees paid to recoup the fair market value of these offsets will be subsequently invested in air pollution improvement strategies consistent with the needs of the Air Quality Management Plan. This rule applies to Publicly Owned Electrical Generating Facilities (POEGFs) sited or proposed to be sited within the jurisdiction of the SCAQMD that are unable to meet the Emission Reduction Credit (ERC) provisions of Rule 1303 – Requirements, specifically with regard to obtaining ERCs in the open market. This rule does not allow for the use of emission offsets from SCAQMD’s internal accounts for use as RECLAIM Trading Credits pursuant to Regulation XX – Regional Clean Air Incentives Market (RECLAIM).

(b) Definitions

- (1) COMMENCEMENT OF OPERATION means the date on which first fire of any new unit begins, including for test generation.
- (2) CONSTRUCTION means to build, erect, or alter any structure, plot of land, site, or piece of equipment; or to replace any piece of equipment.
- (3) ELECTRICAL GENERATING FACILITY (EGF) means a facility that generates electricity for local distribution and that may also contribute to grid reliability.
- (4) ENVIRONMENTAL JUSTICE AREA means an area where at least 10 percent of the population falls below the federal poverty level, based on the most recently published American Community Survey data, and which includes:
  - (A) For an area located within the SOCAB, the following:
    - (i) the highest 15th percentile of PM<sub>2.5</sub> concentration measurements interpolated to a two (2) kilometer grid of

- the most recently published Multiple Air Toxics Emissions Study (MATES) modeling domain; or,
- (ii) the highest 15th percentile of cancer risk as calculated in the most recently published MATES; or,
- (B) For an area located within the Salton Sea Air Basin (SSAB), the highest 15th percentile of PM10 concentration.
- (5) INCREASED CAPACITY means an increase in fossil-fueled electrical generation capacity, either from the construction of one or more units at an existing site, or an increase in the capacity factor of any existing unit at a site, or any combination thereof.
- (6) INTEGRATED RESOURCE PLAN (IRP) means a plan describing the mix of energy supply resources and conservation programs that will meet forecasted energy needs as approved by an LPOEU.
- (7) LOCAL PUBLICLY OWNED ELECTRIC UTILITY (LPOEU) means a municipal utility, a municipal utility district, a public district, an irrigation district or a joint powers authority as defined in California Public Utilities Code (CPUC) Section 224.3.
- (8) NATIVE LOAD means the wholesale and retail customers that:
- (A) An LPOEU by statute, charter, ordinance, franchise, regulatory requirement, or contract has an obligation to serve;
  - (B) Is the subject of an IRP that has been approved by the LPOEU; and,
  - (C) On whose behalf the LPOEU has undertaken an obligation to construct and operate those facilities required to meet the reliable electric needs of its customers.
- (9) PUBLICLY OWNED ELECTRICAL GENERATING FACILITY (POEGF) means an EGF facility that generates electricity primarily for the purpose of supporting the native load of an associated LPOEU and also to maintain grid reliability.
- (10) RESPONSIBLE OFFICIAL means:
- (A) For a corporation: a president or vice-president of the corporation in charge of a principal business function or a duly authorized person who performs similar policy-making functions for the corporation;
  - (B) For a partnership or sole proprietorship: general partner or proprietor, respectively; or

- (C) For a government agency: a duly authorized person.
- (c) Set Aside Conditions
- (1) Prior to setting aside any offsets, the LPOEU shall designate the specific POEGF projects for which the offsets are requested, including a projection of new EGF fossil fuel-generation capacity expected within the SCAQMD, and a calculation of the associated offsets needed, and shall demonstrate to the Executive Officer (EO) that the following conditions have been achieved for all projects:
    - (A) The LPOEU or members of a joint powers authority serving as an LPOEU have an approved IRP;
    - (B) The LPOEU or members of a joint powers authority serving as an LPOEU have adopted an energy policy on preferred resources and a Loading Order consistent with California state regulations and policies, including the Renewable Portfolio Standard pursuant to the Public Utilities Code; and,
    - (C) Any joint powers authority serving as an LPOEU has identified the specific MW generation capacity under agreement, and a calculation of the associated offsets needed, designated for use within the jurisdiction of the SCAQMD.
  - (2) Following review and confirmation of the conditions precedent identified in (c)(1), the EO will:
    - (A) review and verify the calculated amount of reasonably anticipated offsets needed by the LPOEU designated for use within the jurisdiction of the SCAQMD; and
    - (B) account for reasonably anticipated offsets needed in the Federal New Source Review (NSR) Equivalency Determination Reports, pursuant to Rule 1315 – Federal New Source Review Tracking System (Rule 1315).
- (d) Setting Aside Offsets for Use by a POEGF
- Following demonstration of the conditions identified in paragraph (c)(1), the associated POEGF may submit a request for the setting aside of offsets needed for permitting the approved projects to the EO.
- (1) A request by an LPOEU for setting aside offsets will be approved by the EO in the form of a letter provided that:

- (A) All ERCs, offsets, and credits available from all other sources including those already held by the contracted EGF are first exhausted;
  - (B) The requirements of Rule 1315 are met, including that the cumulative set aside offsets requested under all SCAQMD rules will not cause or contribute to the exceedance of the applicable Projections of Cumulative Net Emission Increases pursuant to Rule 1315; and,
  - (C) After accounting for all offsets set aside, including those for Rule 1304.2 – California Public Utilities Commission-Regulated Electrical Generating Facility Fee for Use of SO<sub>x</sub>, PM<sub>10</sub> and NO<sub>x</sub> offsets, the SCAQMD’s internal offset accounts will have a minimum balance of 50 pound per day (lb/day) of SO<sub>x</sub>, 420 lb/day of PM<sub>10</sub> and 3,000 lb/day of NO<sub>x</sub> offsets for Rule 1309.1 – Priority Reserve and Rule 1304 – Exemptions.
- (2) In the event that the requested amount of offsets for set aside by an LPOEU exceed the amount of offsets available, the EO will set aside the maximum amount of offsets that meet the requirements specified in paragraph (d)(1).
  - (3) The EO will post the amount of offsets set aside pursuant to paragraph (d)(1) from SCAQMD’s internal offset accounts on a quarterly basis on the SCAQMD website and account for all such offsets set aside in the Preliminary and Final Determinations of Equivalency in accordance with Rule 1315.
  - (4) In the event that the LPOEU fails to meet the conditions of paragraph (c)(1) for any reason, the associated LPOEU shall notify the EO within 30 days. The EO will release such offsets set aside for other authorized uses pursuant to Rule 1315.
- (e) Conditions for the Use of Set Aside Offsets by a POEGF
- Offsets set aside in accordance with the provisions of this subdivision will be debited from the SCAQMD’s internal offset accounts prior to the issuance of the Permit to Construct to the owner or operator of a POEGF identified in this subdivision subject to the following conditions for use:
- (1) The owner or operator of the POEGF shall submit a good faith effort letter signed by a Responsible Official certifying that reasonable efforts have

- been undertaken by the owner or operator to secure, on the open market, the quantity of ERCs required pursuant to the ERC requirements of Rule 1303;
- (2) The owner or operator of the POEGF shall demonstrate compliance with the California Environmental Quality Act (CEQA) as follows:
    - (A) For facilities with greater than or equal to 50 MW generation, the necessary licensing shall be completed by the California Energy Commission (CEC), or
    - (B) For facilities with less than 50 MW generation, the applicable lead agency shall prepare the appropriate CEQA document for adoption or certification;
  - (3) The owner or operator of the POEGF shall remit either the Set-Aside Offset Reservation Deposit Fee or the Single Payment Offset Fee, in accordance with subdivision (g);
  - (4) Any permit application for which the requested set aside offsets are needed is deemed complete, pursuant to Rule 210 – Applications;
  - (5) The POEGF must be in compliance with all other applicable requirements pursuant to Regulation XIII;
  - (6) Any set aside offsets that are not used by the POEGF will remain in the SCAQMD's internal offset accounts for future use; and,
  - (7) Set aside offsets will be available for the facility or any successors for a period not to exceed 36 months from the confirmation date of the set aside identified pursuant to paragraph (d)(2), after which the set aside will be cancelled, and any remitted set aside offset fees will be forfeited. Following cancellation, the EO will release any set aside offsets for other authorized uses pursuant to Regulation XIII. The EO may approve a request for an extension of the set aside period by up to an additional 24 months for the specified POEGF project MW, provided a written request is received by the EO prior to the expiration of the initial 36 month period.
- (f) **Restrictions on the Use of Set Aside Offsets by a POEGF**  
Set aside offsets provided by the SCAQMD for use by a POEGF pursuant to the provisions of this rule are subject to the following restrictions:
- (1) Set aside offsets may only be utilized by the POEGF to which they are provided and only for the life of the POEGF from Commencement of Operation of the associated unit(s) until operations completely cease and

all associated permits are surrendered or have expired and are no longer reinstatable; and

- (2) Set aside offsets are not any form of property, and may not be sold, leased, transferred, or subject to any lien, pledge, or voluntary or involuntary hypothecation or transfer, and shall not be assets in bankruptcy, for purposes of taxation, or in any other legal proceeding.

Notwithstanding the foregoing, any offsets set aside for use and subsequent use of such offsets, by any POEGF pursuant to this rule will not be affected by a valid Change of Operator pursuant to Rule 301 – Permitting and Associated Fees.

(g) POEGF Set Aside Offset Fees

Any POEGF owner or operator using offsets from SCAQMD internal offset accounts shall pay the Offset Fee ( $F_i$ ), calculated pursuant to paragraph (g)(1), for each pound of pollutant (i), for which the SCAQMD provides offsets. This fee may be paid on an annual basis, or as a single payment, at the election of the owner or operator, in accordance with the provisions of paragraph (g)(2).

(1) Offset Fee Determination

The Offset Fee ( $F_i$ ), for specific pollutant (i), will be calculated by multiplying the pollutant specific Annual Payment Offset Fee Rate ( $R_i$ ) or Single Payment Offset Fee Rate ( $L_i$ ) in Table A, as applicable, by the potential to emit level of any new unit, or by the increase in permitted potential to emit of any Increased Capacity of an existing unit, for pollutant (i), in pounds per day. The offset fee determination is governed by equations in Table B and subparagraphs (g)(1)(A), (g)(1)(B) and (g)(1)(C).

**TABLE A**  
**Pollutant Specific POEGF Offset Fee Rates**

<b>Pollutant Offset (i)</b>	<b>Annual Payment Offset Fee Rate (<math>R_i</math>) (\$ per lb/day-year)*</b>	<b>Single Payment Offset Fee Rate (<math>L_i</math>) (\$ per lb/day)<sup>[1]</sup></b>
SO <sub>x</sub> **	3,344	83,617
PM <sub>10</sub>	4,206	105,118
NO <sub>x</sub> **	3,371	84,274

\* The Annual Payment and Single Payment Offset Fee Rates  $R_i$  and  $L_i$  will be adjusted annually by the same CPI factor as determined for Rule 320 – Automatic Adjustment Based on Consumer Price Index for Regulation III



fees, and pursuant to Health and Safety Code Section 40510.5. The rates published in Table A are for FY 2016 - 2017 and are valid through June 30, 2017; however, in all cases the fee rate in effect on the due date determined in accordance with paragraph (g)(2) as applicable, will be used.

\*\* Not for use as RECLAIM trading credits, pursuant to Regulation XX – Regional Clean Air Incentives Market (RECLAIM).

**TABLE B**  
**Pollutant Specific POEGF Offset Fee Determination**

Fee Description	Fee (Fi) Calculation	Payment Due Date
Annual Payment Option		
Set Aside Offset Reservation Deposit	$(R_i) \times PTE_{NEW_i}^*$	[1]
First Year of Commenced Operations	$(R_i) \times PTE_{NEW_i}^*$	[2]
Continuing Operation	$(R_i) \times PTE_{NEW_i}^*$	[3]
Single Payment Option		
Single Payment	$(L_i) \times PTE_{NEW_i}^*$	[1]

[1] Payment under the Annual Payment Option for the Set Aside Offset Reservation Deposit Fee and under the Single Payment Option for the Single Payment Offset Fee are due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit, pursuant to paragraph (g)(2).

[2] Payment of the First Year of Commenced Operations Offset Fee is due following Commencement of Operation, either on or before the anniversary of the issuance of the Permit to Construct or on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(ii).

[3] Payment of the Continuing Operation Offset Fee is due subsequent to the First Year of Commenced Operations Offset Fee payment, either annually on or before the anniversary of the issuance of the Permit to Construct or annually on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(iii).

\*  $PTE_{NEW_i}$  is the permitted potential to emit of any new units or increase in permitted potential to emit of any Increased Capacity of an existing unit, for pollutant (i), in pounds per day, less ERCs, offsets or any other credits available, determined in accordance with subparagraph (g)(1)(C).

## (A) Annual Fee Determination

A POEGF owner or operator choosing the annual payment option shall pay a Set Aside Offset Reservation Deposit Fee, the First Year of Commenced Operations Offset Fee, and the Continuing Operation Offset Fee, in an amount equal to the Offset Fee (Fi) under the annual payment option, determined in accordance with the following formula:

$$\text{Offset Fee (Fi)} = (\text{Ri}) \times \text{PTE}_{\text{NEWi}}$$

Where:

Fi = Offset Fee for pollutant (i)

Ri = Table A, Annual Offset Fee Rate for pollutant (i), in terms of dollars per pound per day per year

PTE<sub>NEWi</sub> = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

## (B) Single Payment Fee Determination

A POEGF owner or operator choosing the single payment option shall pay a one-time Offset Fee (Fi), determined in accordance with the following formula:

$$\text{Offset Fee (Fi)} = (\text{Li}) \times \text{PTE}_{\text{NEWi}}$$

Where:

Fi = Offset Fee for pollutant (i)

Li = Table A, Single Payment Offset Fee Rate for pollutant (i), in terms of dollars per pound per day

PTE<sub>NEWi</sub> = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

## (C) Portion of the Total Potential to Emit Eligible for Offsets

The portion of the total potential to emit eligible for offsets will be based on the total amount of the permitted potential to emit corresponding to the total MW capacity for which the Permit to Construct is being issued for any new units, or total amount of the permitted potential to emit of the Increased Capacity of any existing units, for pollutant (i), in pounds per day, less ERCs, offsets or any other credits available to the POEGF outside of SCAQMD internal offset accounts. The permitted potential to

emit will be calculated pursuant to Rule 1303 – Requirements, except that to the extent allowed under the provisions of both this rule and Rule 1306 – Emission Calculations, offsets procured pursuant to this rule may be used to satisfy the Required Offset requirements of Rule 1306, and the ERC requirements of Rule 1303, as applicable.

(2) Offset Fee Payment Schedule

The Offset Fee payment schedule under an annual payment option is specified in subparagraph (g)(2)(A). The Offset Fee payment schedule under a single payment option is specified in subparagraph (g)(2)(B).

(A) Annual Fee Payment Schedule

A POEGF owner or operator choosing the annual payment option shall pay a Set Aside Offset Reservation Deposit Fee, the First Year of Commenced Operations Offset Fee, and the Continuing Operation Offset Fee, determined pursuant to subparagraph (g)(1)(A) and due in accordance with the following:

(i) Set Aside Offset Reservation Deposit Fee

The Set Aside Offset Reservation Deposit Fee is due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit, as a one-time initial payment.

(ii) First Year of Commenced Operations Offset Fee

The First Year of Commenced Operations Offset Fee is the initial annual payment for the portion of the total permitted MW capacity that commenced operation over the previous 12 months prior to the due date, pursuant to the following:

(I) The due date shall be on either: the first anniversary of the issuance of the Permit to Construct following Commencement of Operation; or, on the first anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit following Commencement of Operation.

(II) A portion of the offset Set Aside Offset Reservation Deposit Fee, remitted in accordance with clause (g)(2)(A)(i), in an amount proportional to the ratio

of the actual MW that commenced operation during the previous 12 months prior to the due date, to the total permitted MW, will be credited towards the First Year of Commenced Operations Offset Fee payment for the portion of the total MW commencing operation. The Set Aside Offset Reservation Deposit Fee may not be credited towards annual fee payments subsequent to this First Year of Commenced Operations Offset Fee payment for this portion of the total MW commencing operation.

(iii) Continuing Operation Offset Fee

Following remittance of the First Year of Commenced Operations Offset Fee in accordance with clause (g)(2)(A)(ii), the Continuing Operation Offset Fee is due annually, on either: the anniversary of the issuance of the Permit to Construct, or the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, each year, for the portion of the total permitted MW capacity that has commenced operation.

(B) Single Payment Fee Payment Schedule

A POEGF owner or operator choosing the single payment option shall pay a one-time Offset Fee, determined in accordance with subparagraph (g)(1)(B), due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit.

(C) Switching from the Annual Payment to the Single Payment Option

The owner or operator of a POEGF that has elected the annual fee payment option may switch to the single payment option by submitting a written request, signed by the Responsible Official, to the EO. The amount of the single payment offset fee due will be based on offset fee rates applicable on the date the written request for the change in payment method is submitted to the EO. The sum of any remitted annual payment offset fees prior to the submittal of a request for change to a single payment option will be credited towards the single payment offset fee amount due.

## (h) Application Cancellation and Refund

If the POEGF owner or operator, following payment of offset fees in accordance with subdivision (g), submits a written request signed by a Responsible Official to cancel either a Permit to Construct application prior to Commencement of Construction or an application to modify a Permit to Operate for an Increased Capacity prior to the Commencement of Operation of the affected modified units, the EO will release the associated offsets pursuant to this rule for other authorized uses pursuant to Rule 1315, and:

- (1) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and no future annual payments due; or
- (2) if the single payment option was chosen pursuant to subparagraph (g)(2)(B) then the amount paid, less the amount equal to the Set Aside Offset Reservation Deposit Fee determined in accordance with subdivision (g), will be refunded.

## (i) Permit Cancellation or Modification and Refund

If the POEGF owner or operator, following payment of offset fees in accordance with subdivision (g), submits a written request signed by a Responsible Official to cancel an issued Permit to Construct or modify an issued Permit to Construct to limit the maximum generation capacity, the EO will release the associated offsets for other authorized uses pursuant to Rule 1315, and:

- (1) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and no future payments due; or
- (2) if the constructed MW capacity for which the Permit to Construct was issued is built out in multi-year phases, prior to commencing construction of any phase, an owner or operator of a POEGF can request that the EO modify the associated permit to limit the maximum monthly or annual generation capacity, and:
  - (A) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and any subsequent offset fee payment subject to this rule will be based on the resultant approved Potential to Emit (PTE), pursuant to subparagraph (g)(1)(A) and clauses (g)(2)(A)(ii) and (g)(2)(A)(iii); or,
  - (B) if the single payment option was chosen pursuant to subparagraph (g)(2)(B) then, for the corresponding reduction in offsets, the

amount paid, less the amount equal to the Set Aside Offset Reservation Deposit Fee determined in accordance with subdivision (g), will be refunded.

(j) Failure to Pay Fees

If the owner or operator of a POEGF fails to pay any offset fee required pursuant to this rule within thirty (30) days after the due date, any associated permit will expire and no longer be valid, unless such offsets are replaced by an equivalent amount of ERCs by the owner or operator. Any such permit may be reinstated within sixty (60) days following expiration by making full payment of the applicable fees owed plus an additional 50% of the applicable fees owed.

(k) Use of Offset Fee Proceeds

(1) Except as provided in paragraph (k)(2), offset fee proceeds paid pursuant to this rule will be deposited in an SCAQMD special fund account and will be used to obtain emission reductions consistent with the needs of the Air Quality Management Plan. Priority will be given to funding air quality improvement projects in impacted surrounding communities where the POEGF project is located and in Environmental Justice Areas.

(2) Up to 8% of the Offset Fee proceeds, deposited in a restricted fund account, may be used by the EO to cover administrative costs related to implementation of this rule.

(l) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances.