APPENDIX E

COMMENT LETTER ON THE DRAFT PEA AND RESPONSES TO THE COMMENTS

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June 28, 2007

VIA E-MAIL

Mr. Michael Krause
South Coast Air Quality Management District
(c/o CEQA)
21865 Copley Drive
Diamond Bar, California 91765

Re: Draft Program Environmental Assessment
Proposed Amendments to Rule 1309.1 – Priority Reserve

Dear Mr. Krause:

On behalf of GE Energy, developer of the Inland Empire Energy Center, we submit the following comments on the Draft Program Environmental Assessment ("EA") prepared in connection with proposed amendments to South Coast Air Quality Management District Rule 1309.1 ("PAR 1309.1").

At page 2-14 of the EA, paragraph (h)(2) of PAR 1309.1, which provides for a refund of mitigation fees paid by electric generating facilities that filed complete applications in the 2001-2003 period, is paraphrased. The language in the EA does not accurately paraphrase paragraph (h)(2). For example, the EA states that 20% of the mitigation fees paid would be retained by the SCAQMD. While paragraph (h)(2) does provide for the retention of some portion of the mitigation fees under certain circumstances, the amount that may be retained by the SCAQMD is not a straight 20%. The EA also states that the refund must occur within twelve months of the purchase of offsets from the Priority Reserve. Paragraph (h)(2) does include some timing requirements, but there is no requirement that the refund occur within twelve months of payment of the fees. We note that variations of some of the elements ascribed to paragraph (h)(2) do appear in paragraph (h)(1), which provides for a refund of fees for projects that filed complete applications in the 2005-2008 period. This may have resulted in some confusion. We recommend that the EA be revised to accurately reflect the refund mechanism set forth in paragraph (h)(2). 1-1

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LATHAM & WATKINS LLP

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Best regards,

Michael J. Carroll
of LATHAM & WATKINS LLP

cc: James Sevinsky, GE Energy
Steven Meyers, GE Energy
Robert Wyman, Latham & Watkins, LLP

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COMMENT LETTER NO. 1
LATHAM & WATKINS LLP on behalf of GE ENERGY

Michael J. Carroll
June 28, 2007

Response 1-1

According to PAR 1309.1(h)(1), a mitigation fee refund less 20 percent or $2,000,000, whichever is less, shall be allowed only for In-District EGFs that filed complete applications for which credits are sought in years 2005 through 2008 provided the applicant submits a written request to the District Executive Officer stating the reasons and provided:

(1) The project requiring credits was cancelled within twelve months of purchase of the Priority Reserve credits due to circumstances that the Executive Officer determines is beyond the reasonable control of the applicant; and

(2) A written request to the Executive Officer justifying the refund is received no more than 30 days after the project cancellation.

Further, for complete applications filed during years 2001 through 2003, a refund of mitigation fees shall be allowed for In-District EGFs provided they comply with the conditions specified in PAR 1309.1(h)(2), including the condition that the written request for a refund must be submitted within three months after the source testing. The amount of the refund calculated is the difference between the original and revised Permit to Construct mass emission limits and shall be reduced by:

(1) Any legal costs incurred by the District in defending the issuance of the original or revised permits for the project; and

(2) Any administrative costs incurred by the District in administering the mitigation fees; and

(3) Any mitigation fees encumbered or expended for air quality improvement projects.

The relevant discussion in the PEA will be replaced by the above information.

CALIFORNIA COMMUNITIES AGAINST TOXICS
COALITION FOR A SAFE ENVIRONMENT
COMMUNITIES FOR A BETTER ENVIRONMENT
NATURAL RESOURCES DEFENSE COUNCIL

June 29, 2007

VIA EMAIL & U.S. MAIL

Michael Krause
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Re: Comments on Draft Program Environmental Assessment for Proposed Amended Rule 1309.1 – Priority Reserve and Proposed Re-adopted Rule 1315 – Federal New Source Tracking System

Dear Mr. Krause and Mr. Hasan:

California Communities Against Toxics, Coalition for a Safe Environment, Communities for a Better Environment, and Natural Resources Defense Council (collectively "Petitioners") submit these comments on the Draft Program Environmental Assessment ("DPEA") conducted by the South Coast Air Quality Management District ("District") for the proposed re-adopted rule 1315 and amended rule 1309.1. Our groups are environmental and environmental justice organizations who work to improve air quality and community health for residents in the South Coast Air Basin. We request that the District consider and respond to these comments and objections in the final Program Environmental Assessment in accordance with CEQA Guidelines section 15088. In addition to the comments and the attached exhibits, we request that the District also consider, and incorporate into the record, the materials referenced in these comments, which, although not attached as exhibits, are publicly available.[1] 2-1

[1] We have provided some of the relevant source materials as Exhibits to this document, see Attachment A for a list of the materials provided. Note: The Exhibits were submitted separately, via e-mail, by Tim Grabiel, Attorney, Natural Resources Defense Council, on Friday, June 29, 2007. Please notify us as soon as possible if you have not received that e-mail and the Exhibits.

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The California Environmental Quality Act ("CEQA") requires the District to analyze all projects that have the potential to cause significant environmental impacts and to mitigate all significant impacts to the maximum extent feasible. The Draft Program Environmental Assessment (DPEA) developed by the District is inadequate because it fails to meet CEQA's minimum procedural and substantive requirements. Substantively, the DPEA contains an inadequate project summary, project description, statement of objectives, identification and analysis of environmental impacts, selection and analysis of mitigation measures, discussion of cumulative impacts, discussion and selection of project alternatives. Procedurally, the District failed to analyze the impacts of Rule 1315, failed to circulate the document as required, failed to list permits and other approvals required to implement the project and failed to provide information and the calculations that form the basis of critical aspects of the DPEA's determinations. 2-2

The DPEA fails to meet minimum statutory and regulatory standards and it is so fundamentally and basically inadequate that meaningful review of the program and its impacts are precluded. With these comments, Petitioners are not merely pointing out flaws. Our comments recommend a feasible project alternative and additional mitigation measures. These recommendations are considerably different from those previously analyzed, and would lessen the environmental impacts of the project. Because of its fundamental flaws, and in accordance with CEQA Guidelines section 15088.5(a)(4), the DPEA must be re-drafted and re-circulated. 2-3

I. THE DRAFT PROGRAM ENVIRONMENT ASSESSMENT IS SUBSTANTIVELY INADEQUATE

From outset, the District fails even to describe project's benefits in a way that would justify its undertaking. Indeed, the DPEA shows that the health and air quality impacts of the proposed program far exceed its benefits. The District seeks to justify the project by contending that if blackouts occur due to a lack of Los Angeles-area energy generating facilities ("EGFs"), diesel back-up generators cause serious air pollution, which the project will avoid.[2] Yet the District's only offered support for its assumption that more electric generation capacity is needed in "the Los Angeles local reliability area" is a statement by an individual who seems to be associated with a proponent of one of the projects seeking access to the Priority Reserve.[3] The District fails to provide information to allow a decision-maker or an interested member of the public to determine the credibility, accuracy, or truth of this assertion. 2-4

Equally inadequate is District staff's analysis of "emissions from highly polluting diesel-fired standby generators" despite the central importance of these purported emissions in the District's theory of need for the project and its environmental impacts.[4] District staff states: 2-5

[2] DPEA at 4-8

[3] DPEA at 2-5, n.6.

[4] The District claims at least a dozen times that reducing the use of diesel back up engines is the air quality reason for the Rule changes. DPEA at 1-1, 1-4, 2-18, 4-1, 4-8, 4-11, 4-32, 5-15, 6-6, 6-8, 6-9, and 6-10.

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SCAQMD staff concluded that during a typical rolling blackout, daily emissions from diesel internal combustion engines increased by the following amounts:

- 10.6 pounds of PM10 emissions;
- 514 pounds of NOx emissions;
- 111 pounds of CO emissions;
- 7.7 pounds of SOx emissions; and
- 41 pounds of VOC emissions[5]

The following table demonstrates the daily emissions the District expects from the project:

TABLE 1: Estimated Emissions from Priority Reserve[6]

	Estimated Emission Credits to be Withdrawn from Priority Reserve	Total Emissions Projected To Be Released During A Calendar Year
PM10	4,657 lbs/day	1,699,805 lbs/year
SOx	1,485 lbs/day	542,025 lbs/year
CO	5,677 lbs/day	2,072,105 lbs/year

2-5 cont.

These, the District's own numbers, suggest that even if the diesel backup generators operated every day, the project would STILL generate more PM10, SOx and CO pollution than they do. To justify the emissions of 1,699,805 pounds/year of particulate matter, 542,025 lbs/year of SOx, and 2,072,105 lbs/year of carbon monoxide, the District offers that it is *possible*, at some point in the future, that there *may* be a rolling blackouts or brownouts caused by an inability for the state to find or generate sufficient electricity to meet demand. It is unclear that such a thing has ever happened before, and the unsupported assertion of its remote possibility at some point in the future is inadequate to support the District's decision to add millions of pounds of air pollution to the most polluted Air Basin in the country. These numbers show that the harm to human health and the environment does not stem from rolling blackouts/brownouts, but rather from the District's creation of credits to make available to facilities operating year round. The District's proposed medicine is far worse than the disease it purports to cure.

A. THE DRAFT PROGRAM ENVIRONMENTAL ASSESSMENT'S PROGRAM IS POORLY DEFINED AND DISTORTED

2-6

CEQA requires that an agency provide an accurate and detailed description of the proposed project's objectives, as well as the project's technical, economic and environmental characteristics.[7] The project description must be accurate and consistent throughout an EIR. Courts have found that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.[8] Such a description is critical in order for

[5] DPEA at 4-8, 5-15, and 6-8 *(formatting changed—bullet points added—for emphasis)*

[6] DPEA at 4-10.

[7] California Public Resources Code §§15124(b), (c).

[8] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (italics in original); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.app.3d 692, 738; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.

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agencies and the public to fully and accurately evaluate the potential impacts of a project. California courts have supported this notion, stating:

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance.[9]

Because of the central importance of the project description to the environmental analysis, CEQA requires clarity. In the section of the DPEA entitled "Project Description," the District writes: 2-6 cont.

> The following project description includes the entire program of rule amendments, including the currently proposed amendments to Rules 1309.1 and 1315, and potential future proposed amendments anticipated to Rule 1309.1. As discussed above, only the EGF amendments are part of the current proposal. In order to construct and operate new EGFs, owner/operators will need to obtain permits for air polluting and control equipment. The permits will not be issued until the applicant appropriately offsets the new emissions in accordance with Regulation XIII – New Source Review. However, based on future increased demand for electricity the supply of PM10, SOx and CO ERCs available in the open market at this time may be limited and could restrict construction of new power generating facilities. To increase the availability of ERCs for EGFs in the district, the SCAQMD is proposing amendments to Rule 1309.1 and add additional conditions for EGFs to access the Priority Reserve as summarized in the following sections. A copy of PAR 1309.1 and PRR 1315 can be found in Appendix A.

The District then proceeds with a six page "description" of the program/project that it is proposing. During the entire, long, drawn-out, "Project Description" endeavor the District fails to provide the public or other decision makers with an accurate, stable, and finite description of the program.

Is the program the "entire program of rule amendments"? If so, does that mean the program is to amend the District's New Source Review program? If the District is amending the New Source Review Program it needs to say that. Also, its analysis must include how the new program complies with SB 288, California Health and Safety Code 42500-42507 (Stats 2003 ch 476 (Sher)), among other things, which the District fails to do in the DPEA. 2-7

Is the program "amendments to Rule 1309.1 and add additional conditions for EGFs to access the Priority Reserve?"[10] If so, how do Rule 1315 and the changes for allowing other kinds of facilities to access Rule 1309.1 credits fit into the program? Specifically, the 2-8

[9] *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192-93 (1977).

[10] We also note that adding conditions to access the Priority Reserve is more appropriately a mitigation measure, not part of the program or project.

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District's Rule 1309.1 and 1315 indicate that the following kinds of facilities would be allowed to access credits through 1309.1:

- In-District Electrical Generating Facilities (EGF);[11]
- EGF Projects Located In Downwind Air Basin;[12]
- Energy Projects of Regional Significance – Liquefied Natural Gas and Crude Oil facilities;[13]
- Biosolids Treatment Facilities;[14] and
- Rule 1304 Exempt Facilities.[15]

2-8 cont.

Is the purpose of the program "to increase the availability of ERCs for EGFs in the district?" If so, again, how does Rule 1315 fit into this program as well as the other facilities outlined in Rule 1309.1? Further, for all of these descriptions, how do these changes impact the District's New Source Review Program?

2-9

The District's failure to clearly define the program being analyzed by the DPEA has resulted in a document that lacks focus and clearly defined options, impacts, and mitigations. This failure leaves the document so fundamentally and basically inadequate that meaningful review and comment are precluded. To address this, the District must redraft the DPEA and recirculate it for review and comment.

2-10

A viable alternative program could be: "To ensure sufficient clean energy resources are available to meet the needs of the residents, visitors, and businesses of the South Coast Air Basin." Such a program would facilitate the development of options protective of public health and the environment while allowing the District to do its part in addressing the Basin's energy needs. The program would be narrowly tailored to fulfill the stated objectives without authorizing unwarranted or unjustified program measures and components that broaden the program beyond what is required to achieve program objectives. It would also lead to a program which would look very different from that currently proposed by the District.

2-11

B. THE DPEA'S PROJECT OBJECTIVES ARE NOT IN LINE WITH THE STATED PROGRAM DESCRIPTION

Further highlighting the failure of the District to provide a clear, stable, finite program description, is the failure of the District to provide adequate project objectives that conform with any of the many possible readings of the program description. The CEQA Guidelines underscore the critical importance of project objectives writing:

2-12

> A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers

[11] DPEA at 2-5 to 2-7.
[12] DPEA at 2-8.
[13] DPEA at 2-8 to 2-10.
[14] DPEA at 2-10 to 2-11.
[15] Although not specifically acknowledged by the District, there are a class of facilities that will receive credits generated by Rule 1315. These facilities are facilities that utilize the emission offset exemptions contained in Rule 1304. See Rule 1315(a) and (c)(2)(C).

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in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.[16]

The District offers its Project Objectives in two parts, titling the parts as: (1) The objectives of the proposed amendments to Rule 1309.1 include the following; and (2) The objectives of PRR 1315 include the following.[17] These do not describe the objectives of the entire program, which appears to be either, "the entire program of rule amendments," or "amendments to Rule 1309.1 and add additional conditions for EGFs to access the Priority Reserve," or "to increase the availability of ERCs for EGFs in the district." 2-12 cont.

The District has offered, in place of coherent program objectives, a series of justifications for the Rules the District has already adopted and plans to adopt again upon presentation of this document.

C. THE DPEA CONTAINS INADEQUATE ANALYSES OF THE ENVIRONMENTAL IMPACTS OF THE PROJECT

The purpose of CEQA is to "inform the public and decision makers of the environmental consequences of agency decisions before they are made."[18] CEQA is to be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language;[19] requires an EIR for all projects that may cause significant environmental impacts;[20] and requires public agencies first to analyze all of a project's reasonably foreseeable environmental effects in the EIR and to analyze mitigation measures and alternatives to the project. The District failed to meet these obligations. The project's impacts were not adequately analyzed and significant impacts were not mitigated nor were alternatives adopted. 2-13

The CEQA Guidelines require that an assessment be conducted by the lead agency that will "identify and focus on the significant environmental effects of the proposed project."[21] Precisely, "[d]irect and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects."[22] The District's grudging and pro forma nod to CEQA results in gross mistreatment of the environmental impacts of Rules 1309.1, minimizing and failing to address the true scope of its environmental impacts, refusal to analyze the impacts of Rule 1315, and a complete failure to analyze the entire proposed program.[23] 2-14

[16] CEQA Guidelines § 15124

[17] DPEA at 2-17 to 2-18.

[18] *See Woodward Park Homeowners Ass'n, Inc. v. City of Fresno*, (April 13, 2007) 2007 Cal.App.5 Dist., 2007, WL 1096885.

[19] *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.

[20] *See* Pub Res Code § 21080(d); *see also Joy Road Area Forest and Watershed Ass'n v. California Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 666 ("CEQA requires the preparation of an environmental impact report (EIR) for any project which has a potential significant effect on the environment").

[21] CEQA §15126.2(a)

[22] CEQA, §15126.2(a).

[23] SCAQMD asserts that Rule 1315 is not a project to which CEQA applies.

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While the District attempts to separate the impacts of Rules 1309.1 and 1315 from the siting and construction of new EGFs, it is clear that they all are connected. In fact, the District admits: "Rule 1309.1, would result in a direct benefit to the new energy resources by providing access to ERCs that would not otherwise be available, thus, allowing proposed new affected facilities to comply with NSR offset requirements."[24] The District can only allocate credits that they have been able to capture or generate – the precise purpose of Rule 1315. To continue to treat the impacts of rules as separate from each other and separate from the impact of the construction and operation of the EGFs that rely on the rules is to circumvent the requirements under CEQA. 2-15

Rule 1315's Impacts Unanalyzed. The DPEA ignores numerous significant environmental effects that will result from passage of Rule 1315 and its interplay with Rule 1309.1. That Rule 1315 is increasing the universe of credits available for distribution, after correcting unlawfully inflated balances, is evidenced by the plain language of the District's draft staff report.[25] These newly generated credits and their environmental impacts must be analyzed, and it violates reason and common sense to claim, as the District does, that Rule 1315 does "not, directly or indirectly, result in any adverse effect on the environment."[26] 2-16

Rule 1315 will have real and substantial environmental consequences. The emission credits created for redistribution are significant even by the District's own significance standard. The District's staff report describes the amount of credits generated by each credit-generating provision.[27] We took District data and compiled the table below to clearly describe the impact of each newly-applied credit-generating provision. The table summarizes the aggregate impact of this retroactive policy change: 2-17

[24] DPEA at 4-22.

[25] Draft Staff Report (June 2007), Attachment B (Staff Report: Proposed Rule 1315 – Federal New Source Review Tracking System).

[26] DPEA at 1-10.

[27] SCAQMD Staff Report, Proposed Rule 1315 – Federal New Source, at I-2 – I-4. (Sept. 8, 2006).

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Table 2: Credits Generated by Rule 1315 by Class of Credits (tons per day)[1]

	VOC t/d	NO_x t/d	SO_x t/d	CO t/d	PM10 t/d	TOTAL t/d
Credits from Minor Source Orphan Shutdowns and Reductions under Rule 1315(c)(3)(A)(i) and (ii)[2]	50.39	17.35	4.12	14.01	13.56	**99.43**
Credits from Minor Source Emissions Offsets under Rule 1315(c)(3)(A)(iii)[2]	1.61	0.57	0.15	1.04	1.01	**4.38**
Credits from State and Federal Offset Ratio Differential under Rule 1315(c)(3)(A)(iv)[2]	0.00	0.00	0.00	0.47	0.04	**0.51**
Credits from Payback of Offset Debt under Rule 1315(c)(3)(A)(v)[2]	0.03	0.00	0.02	0.01	0.02	**0.08**
Credits from Emissions Reductions from BACT Discount under Rule 1315(c)(3)(A)(vi)[2]	0.00	0.00	0.00	6.67	0.00	**6.67**
Total Credits Generated by Rule 1315	**52.03**	**17.92**	**4.29**	**22.20**	**14.63**	**111.07**

Notes:

[1] This table assumes that the District's prior policy, i.e., tracking system, generated credits from major source orphan shutdowns and reductions; therefore, the passage of Rule 1315 had no significant effect on these classes of credits. (*See* AR 95.) This practice is codified under Rule 1315(c)(3)(A)(i) and (ii).

[2] These figures represent the aggregate of credits generated under Rule 1315 for each year for each credit-generating provision as indicated on "Table I-1: AQMD's NSR Offset Tracking—Updated Running Balances." (AR 144-146.)

2-17 cont.

While it is true that Rule 1315 attempts to address longstanding shortcomings in the accounting system that tracks emission reduction credits in the District's internal accounts, under the guise of "formalizing" its accounting system, the District also made significant changes to District policy and disrupts the previous balance struck under the district's NSR program. The District weakened the NSR offset requirements by retroactively and prospectively changing the rules governing the generation and distribution of ERCs for its internal accounts in two key ways: 1) by changing the NSR offset requirements; and 2) by turning previous air quality gains into pollution credits for use as offsets.

2-18

The District has been under extreme pressure from EPA to provide evidence that the credits it claimed in internal offset accounts met the federal requirements of real, permanent, enforceable, quantifiable, and surplus. In 2002, EPA grew increasingly concerned that the District was distributing invalid credits. Specifically, EPA questioned whether credits in the District's accounts actually existed;[28] whether the District's use of those credits was proper;[29] and whether the District's accounting procedures resulted in an inflated baseline.[30] Ultimately, despite some 6,000 staff hours of work on the problem, the District was unable to

[28] This concern is described as the "creditability of pre-1990 emission reductions, particularly availability of existing records associated with such reductions" and "creditability of reductions resulting from the BACT discount of newly-banked ERCs, since the discount is presumably also used to satisfy the federal time of use discount requirement." SCAQMD Staff Report, Proposed Rule 1315 – Federal New Source, at 2. *Id.*

[29] This concern is described as "consistency of credit use with assumptions in the State Implementation Plan (SIP)" and "surplus adjustment at time of use of credits in the tracking system." *Id.*

[30] This concern is described as "baseline calculation procedures to assure an 'actual' baseline." *Id.*

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make this showing for any of its pre-1990 credits, resulting in the elimination of all pre-1990 credits and causing significant reductions to its internal ERC accounts.[31] 2-18 cont.

To overcome these significant credits reductions, the District proposed at least four novel credit-generating provisions to its tracking system—referred to as "additional classes of credits."[32] Rule 1315's credit-generating provisions capture previous clean air gains and create pollution rights, as indicated in Table 1, below:

Table 1: Summary of Changes[33]

AQMD's Existing NSR Tracking System	AQMD's Proposed Revised NSR Tracking System
No credit taken for orphan shutdowns from minor sources.	Orphan shutdowns include shutdowns of both major and minor sources.
No credit taken for surplus reductions from SO_x, CO, and PM_{10} offsets provided by AQMD for major sources exempted by AQMD at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0.	SO_x, CO, and PM_{10} offsets provided by AQMD for major sources exempted by AQMD at a ratio of 1.0 to 1.0.
No credit taken for surplus reductions created from offsets (ERCs) provided (at 120%) by minor sources which are not exempt from offset requirements under AQMD NSR rules (*i.e.*, > 4 but < 10 TPY of VOCs and NOx, etc.).	Credit taken for surplus reductions created from offsets (ERCs) provided (at 120 %) by minor sources which are not exempt from offsets requirements under AQMD rules (*i.e.*, >4 but < 10 TPY of VOCs and NOx, etc.).
No credit taken for surplus reductions created from the 20 % additional SO_x, CO, and PM_{10} offsets (ERCs) provided by major sources at 1.2 to 1.0 ratio compared to 1.0 to 1.0 ratio.	Credit taken for surplus reductions created from the 20 % additional SO_x, CO, and PM_{10} offsets (ERCs) provided by federal major sources at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0 ratio.

2-19

The four changes to policy regarding ERC credits fall into two main categories: (i) accounting for reductions "surplus" to NSR requirements; and (ii) accounting reductions from minor source shutdowns.

These changes are a matter of District policy, not accounting, and the *policy* decision to change how to address these "surplus" reductions and minor source shutdowns is utterly ignored in the DPEA. Further, the staff's decision to apply this new policy direction *retroactively* further compounds the environmental harm caused by the policy shift. In Rule 1315, the District has developed a scheme through which it retroactively recaptures the "surplus" 0.2 offset ratio differential and puts it back in its offset accounts.[34] Legal counsel for the California Air Resources Board (ARB) has already opined that such a change could weaken air quality protections or, in state Clean Air Act parlance, "backslide."[35] In April

[31] The reductions eliminated up to as much as 92% of the pre-1990 credits. *Id.*
[32] *Id.* at 7, 10-14, and 16-17.
[33] Excerpt from "Table 7- Summary of Changes between AQMD'S Existing and Proposed Revised NSR Tracking Systems for Equivalency with Federal Requirements: 1990 and Beyond Federal Emission Reductions." *Id.* at 16.
[34] The District admits that it does not take credit for minor source shutdowns. *Id.* at 6-7.
[35] *See* SB 288, "Protect California's Air Act of 2003" (Sher).

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2006, ARB's Chief Counsel wrote, "[t]here is little doubt that reducing or eliminating offset requirements will reduce the stringency of an NSR rule unless the effect of those changes is offset by other amendments making the NSR rule more stringent."[36] Rule 1315 does not establish any rule changes to offset this change. Further, the 0.2 offset ratio differential has already been credited to the District's SIP-required air quality advancements and, even if it was creditable 16 years ago, is no longer surplus.[37] 2-19 cont.

It is worth emphasizing the impact of this *policy* shift, using just the 0.2 offset ratio differential as an example. Rule 1315 recaptures the 0.2 offset ratio differential in excess of federal offset requirements for CO, PM_{10} and SO_x. Therefore, by way of example, under Rule 1315 when a power plant purchases 12 lbs/day of PM_{10} credits from the Priority Reserve (allowing it to emit 10 lbs/day) the District will recapture 2 lbs/day of the PM_{10} credits that it *just* sold and place them back in the Priority Reserve to be distributed *again*. The table below, which appears on page 2-7 of the DPEA, indicates the impact of this practice for just the 11 or so power plants that the District identifies: 2-20

TABLE 2-4

Estimated Emissions Offset Requirements for Emissions From Power Plant Projects Totaling 5,000 MW*

Criteria Pollutant	Emissions Needing to be Offset (pounds per day)	ERC Offset Ratio Needs (1.0 to 1.2) (pounds per day)
CO	4,997	5,996
PM10	4,419	5,303
SOx	364	437

* Assuming the 30-day average emissions are the same as the daily permitted levels for the purpose of Rule 1303(b)(4) requirements.

In other words, the District, after distributing 5,996 lbs/day of CO, will then recapture 20% of that total and regenerate 999 lbs/day of CO, which will be placed in its offset accounts for distribution *again*. If these 999 lbs/day of CO are resold at a 1.2 to 1 ratio, the District will then recapture 199 lbs/day and put them back in its offset accounts for distribution *yet again*. This practice continues *ad infinitum*. And the same thing occurs for PM_{10} and SO_x, resulting in the District recapturing and regenerating 884 lbs/day of PM10 and 73 lbs/day of SO_x, which are then placed back in the Priority Reserve for distribution *again*. Depending on how many times these credits are recaptured, the impacts will increase proportionally. The District provides *no environmental analysis or mitigation measures whatsoever* for the above-described impacts or any other impact from its credit-generating provisions (Rule 1315). In fact, the District denies its impact where it is clear that the above-mentioned example alone exceeds the District's own significance thresholds.[38]

[36] Letter from W. Thomas Jennings, ARB Chief Counsel to Barbara Baird, Principal Deputy District Counsel, South Coast Air Quality Management District at 5 (April 11, 2006).
[37] Further, the 0.2 credits cannot be verified as being real, permanent, enforceable, or quantifiable therefore not meeting the definition of a creditable offset. *See, generally,* 42 U.S.C. § 7503.
[38] DPEA at 4-6.

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The same pressure that drove the District to attempt to collect, retroactively, 16-year-old air quality benefits for use today drove it to gather and apply offset credits from minor source shutdowns retroactively. The District states that "AQMD has not previously used these [minor source emission reduction] credits . . . in AQMD's offset accounts."[39] Rule 1315 does exactly that. It substantively shifts from an existing NSR program that advances air quality goals by applying the benefit of minor source shutdowns to air quality improvements, to a practice of foregoing those benefits. 2-21

Put simply, the District does not address the impacts of its project or "program" on the District's NSR program, including: (i) the impacts of expanding the universe of pollution credits in the South Coast Air Basin; (ii) the effects on prices of existing pollution credits and the growth-inducing impacts thereof; (iii) the chilling effect on businesses that, but for the influx of credits reducing ERC demand and price, would have voluntarily reduced emissions to generate credits for sale to third parties; (iv) the effects from the eventual incorporation of "Rule 1309.2 – Offset Budget" into the NSR program; (v) the impacts from 1304-exempt facilities that will access those credits; (vi) the impacts of recapturing the 0.2 differential from Priority-Reserve-eligible power plants, which makes their true offset 1-to-1 instead of 1.2-to-1; and (vii) the effect on state offset requirements and the District's state NSR program; among others impacts. The failure to analyze Rule 1315 alone compels the District to re-draft and re-circulate the DPEA. 2-22

Aesthetic Impacts. By generating credits and making them available to polluting facilities, the District instantly expands the universe of emission credits by 111.07 tons per day, with untold future emissions from the prospective generation of credits. Also, "by providing access to ERCs that would not otherwise be available, thus, allowing proposed new affected facilities [powerplants] to comply with NSR offset requirements"[40] the District is also causing aesthetic impacts locally and regionally. And this is happening in the dirtiest air basin in the country. This proposed project will degrade the visual environment by increasing smog and haze (particulate matter). As the District is well aware, nitrogen oxides (NO_x) are typically created during combustion processes, and are a major contributor to smog formation and acid deposition. NO_x contributes to ozone as they react with volatile organic compounds in the air to create ground level ozone.[41] Volatile organic compounds (VOCs) are carbon-containing compounds that evaporate into the air, contributing to the formation of smog, and may be independently toxic.[42] Harmful ground-level ozone forms when NO_x and VOCs interact in the presence of sunlight. Ozone also damages trees and other natural vegetation, 2-23

[39] *Id.*

[40] DPEA at 4-22.

[41] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *NOx: How Nitrogen Oxides Affect the Way We Live and Breathe* (EPA 456-F-98-005, Sept. 1998), *available at* http://www.epa.gov/air/urbanair/nox/noxfldr.pdf.

[42] California Air Resources Board: Glossary of Air Pollution Terms (last updated June 4, 2007), *available at* http://www.arb.ca.gov/html/gloss.htm.

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reduces agricultural productivity, and reduces visibility.[43] Particulate matter 2.5 microns or less ($PM_{2.5}$), called "fine" particulate, is primarily a result of combustion products emitted into the atmosphere as well as those particles that are formed in the atmosphere from gaseous pollutants as a result atmospheric chemistry (secondary formation). These particles can reside in the atmosphere for long periods of time and are the main contributors to reduced visibility.[44]

The project area comprises portions of Los Angeles County,[45] Orange County,[46] and San Bernardino and Riverside Counties,[47] and includes portions of Antelope Valley and Mohave Desert. Increasing emissions within the project area will aesthetically impact a diverse array of scenic resources and environments, from urban centers to rural agricultural lands to natural woodlands and deserts. The mix of climate, topography, and flora and fauna found in the natural environment, and the diversity of style, composition, and distribution of the built environment, provides an extraordinary range of visual features in the project area. Natural features include land and water resources such as parks and open space areas, wilderness areas (mountains and deserts), beaches, and natural water sources. Elements of the visual environment that have been constructed to resemble natural features, such as manmade lakes are also included in the aesthetic environment. Rural and agricultural settings also may include features or landscapes valued for their scenic or aesthetic qualities. Features of the built environment that may have visual significance include individual structures or groups of structures that are distinctive due to their aesthetic, historical, social, or cultural significance or characteristics. The visually significant built environment may include architecturally appealing buildings or groups of buildings, landscaped freeways, or a location where an historic event occurred.

2-23 cont.

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[43] U.S. Environmental Protection Agency, National Center for Environmental Assessment, *Air Quality Criteria for Ozone and Related Photochemical Oxidants* (Feb. 2006), *available at* http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=149923.

[44] California Air Resources Board: Glossary of Air Pollution Terms (last updated June 4, 2007), *available at* http://www.arb.ca.gov/html/gloss.htm.

[45] Los Angeles County is 4,081 square miles in size and has an 81-mile coastline; its topography is dominated by the Transverse Ranges and the Los Angeles Basin. Distinct geographic region include the Antelope Valley in the northern part of the county, the Angeles National Forest-San Gabriel Mountains region south of the Antelope Valley, the highly urbanized San Fernando Valley between the San Gabriel Mountains and the Santa Monica Mountains, the Santa Monica Mountains in the westernmost part of the County, and Los Angeles Basin.

[46] Orange County is a geographically diverse area of mountains, hills, flatlands and shoreline. The major topographic features are the Los Angeles Basin and the Peninsular Ranges, which also extend through San Diego and Riverside Counties. The highly urbanized Los Angeles Basin dominates the northwestern part of the county. Rising above the Los Angeles Basin to the east, along the eastern boundary of the county, is the chaparral-covered slopes of the Chino Hills and Santa Ana Mountains of the Peninsular Ranges. Forested areas scatter the higher elevations along the border of Riverside County. The southern part of the county is characterized by chaparral and scrub covered slopes of the San Joaquin Hills and Laguna Hills, and a mix of open, undeveloped areas and urban centers, including the towns of Mission Viejo and Laguna Hills. Forty-two miles of beaches line the coast.

[47] The landscape of San Bernardino and Riverside Counties is dominated by the Transverse Ranges in southwestern San Bernardino County, the Peninsular Ranges, which extend through the western half of Riverside County, and the creosote, mesquite, and Joshua trees of the Mojave Desert. Urban development is centered in the fast-growing metropolitan region around the cities of San Bernardino and Riverside, in the southwestern corner of San Bernardino and northwestern corner of Riverside County, respectively.

Throughout the project area, views of the coast and various mountain ranges are considered valuable visual resources. Views of the coast occur in locations in Los Angeles, Orange, and San Diego Counties in southern California. Views of various mountain ranges occur throughout the project area: the Coast Ranges, including the Santa Monica, San Gabriel, and San Bernardino Mountains in Los Angeles and San Bernardino Counties, and the Peninsular Ranges, including the Santa Ana and San Jacinto Mountains, paralleling the coast in Orange and San Diego Counties and the western regions of Riverside and Imperial Counties. Other natural features that may have visual significance are the numerous rivers, streams, creeks, lakes and reservoirs located within the project area and multiple reservoirs throughout the impacted region. The District cannot ignore the significant aesthetic impacts of hundreds of thousands of pounds of emissions on these resources. The District must identify the range of scenic resources in project area, identify the impacts of the facilities the communities when the facilities will be sited and then analyze the impacts for public review and comment. 2-23 cont.

Health Impacts. When addressing human health impacts, the Legislature and the Secretary of Resources have determined that certain kinds of impacts are necessarily "significant" and thus automatically require action to effectuate CEQA's substantive mandate.[48] These mandatory findings of significance include human health impacts when "[t]he environmental effects of a project will cause substantial adverse impacts on human beings, either directly or indirectly."[49] 2-24

The District chooses to highlight *one* facility that will gain access to the Priority Reserve as a result of the proposed Rule amendments: the Vernon Power Plant.[50] The District estimates that there "may be an increase in *annual* adult mortality" from the Vernon Power Plant of 3.82 persons – other cited studies estimate close to 12 persons.[51] The Vernon Power Plant, assuming operation over 30 years, may be expected to result in 115-360 dead people. The Vernon Power Plant is but one of 11 identified power plants lining up to get Priority Reserve credits. The District concludes that "it is necessary to carefully balance these effects against the potential safety effects of rolling blackouts and brownouts in the region" but utterly fails to provide this sort of balancing.[52]

In addition, through Rule 1315, the District is instantly generating hundreds of thousands of pounds of new emission credits, with many hundreds of thousands more expected to come as this policy into the future. Per the District's policy of "equat[ing] use of ERCs that would not otherwise be used to offset emission increases with an actual increase in emissions," these newly-generated emissions must be considered *in the air* for environmental review purposes.[53] Therefore, the result of creating 111.07 tons of daily emissions will be a significant and have a negative impact on Southern California air quality, including increased 2-25

[48] *See* 14 C.C.R. section 15065.

[49] *Id.*

[50] DPEA at 5-14 to 5-15.

[51] *Id.*

[52] *Id.* at 15.

[53] DPEA at 4-7.

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emissions of oxides of nitrogen and volatile organic compounds, which culminates in the formation of ozone, sulfur oxides, particulate matter, carbon monoxide, and carbon dioxide. NO_x are typically created during combustion processes, and are a major contributor to smog formation and acid deposition. In addition, NO_x may result in numerous adverse health effects, including aggravation of chronic respiratory disease and respiratory symptoms. NO_x also contributes to ozone, as they react with volatile organic compounds in the air to create ground level ozone.[54] VOCs are carbon-containing compounds that evaporate into the air, contributing to the formation of smog, and may be independently toxic.[55] Harmful ground-level ozone forms when NO_x and VOCs interact in the presence of sunlight. Ozone causes irreversible changes in lung structure, leading to premature aging of the lungs and/or chronic respiratory illnesses such as emphysema and chronic bronchitis. Children and adults who work outdoors and individuals with respiratory illnesses such as asthma are among those most at risk. Ozone also damages trees and other natural vegetation, reduces agricultural productivity, and reduces visibility.[56] Particulate matter ten microns or less (PM_{10}) is a mixture of various substances. These substances occur in the form of solid particles or as liquid drops. Some particles are emitted directly into the atmosphere. Other particles result from gases that are transformed into particles through physical and chemical processes in the atmosphere. PM10 is often responsible for much of the haze that we think of as smog. Particulate matter 2.5 microns or less ($PM_{2.5}$), called "fine" particulate, is primarily a result of combustion products emitted into the atmosphere as well as those particles that are formed in the atmosphere from gaseous pollutants as a result atmospheric chemistry (secondary formation). Generally, the fine particulate poses a greater health risk because these particles can deposit deep in the lung and contain chemicals that are particularly harmful to health. In addition to health impacts, these particles can reside in the atmosphere for long periods of time and are the main contributors to reduced visibility.[57] Sulfur oxides (SO_x) are pungent, colorless gases (sulfates are solids) formed primarily by the combustion of sulfur-containing fossil fuels, especially coal and oil. Considered major air pollutants, sulfur oxides may impact human health and damage vegetation.[58] Carbon monoxide (CO) is a colorless, odorless gas resulting from the incomplete combustion of hydrocarbon fuels. CO interferes with the blood's ability to carry oxygen to the body's tissues and results in numerous adverse health effects.[59]

2-25 cont.

[54] U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *NOx: How Nitrogen Oxides Affect the Way We Live and Breathe* (EPA 456-F-98-005, Sept. 1998), *available at* http://www.epa.gov/air/urbanair/nox/noxfldr.pdf.

[55] California Air Resources Board: Glossary of Air Pollution Terms (last updated June 4, 2007), *available at* http://www.arb.ca.gov/html/gloss.htm.

[56] U.S. Environmental Protection Agency, National Center for Environmental Assessment, *Air Quality Criteria for Ozone and Related Photochemical Oxidants* (Feb. 2006), *available at* http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=149923.

[57] California Air Resources Board: Glossary of Air Pollution Terms (last updated June 4, 2007), *available at* http://www.arb.ca.gov/html/gloss.htm.

[58] California Air Resources Board: Glossary of Air Pollution Terms (last updated June 4, 2007), *available at* http://www.arb.ca.gov/html/gloss.htm.

[59] U.S. Environmental Protection Agency, Office of Mobile Sources, *Automobiles and Carbon Monoxide* (EPA 400-F-92-005), *available at* http://www.epa.gov/otaq/consumer/03-co.pdf.

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All these emissions have deleterious health effects, as the District is well aware.[60] But the District's treatment of the aggregate health impacts of Rules 1315 and 1309.1 is limited to one paragraph.[61] This analysis is inadequate for at least three reasons. *First*, the District fails to include data on the expected exacerbation of current state and federal standards. These standards, which are supposed to protect human health, are already being violated and the expected contribution of hundreds of thousands of pounds of emissions must be analyzed. *Second*, the DPEA purports to analyze the indirect impacts, but only references Chapter 5 which lists ten facilities and potential impacts from each one. This reference does not look at the aggregate impact of multiple facilities, thereby minimizing the true magnitude of the impacts. *Third*, the spatial distribution of impacts vary, with some communities already suffering disproportionate burdens, including the communities of Wilmington, Carson, Long Beach, Huntington Park, Riverside, and Antelope Valley, where Petitioners have members. The DPEA fails to disclose the distribution of these health impacts or discuss their localized potential. 2-25 cont.

Energy. The District shamelessly asserts: "The proposed amendments are not expected to conflict with energy conservation plans, use non-renewable resources in a wasteful manner, or result in the need for new or substantially altered power or natural gas systems." California is attempting to take on the challenge of addressing global climate change and has recognized that to do it is critical to conserve energy and reduce the use of fossil fuels for energy. Every additional megawatt of fossil fuel energy added to the current energy system reduces the incentive to conserve energy and to replace fossil fuel energy generation with a renewable resource. 2-26

Further, the District in it's DPEA develops an internally inconsistent definition of "renewable energy" when it asserts

> Renewable energy is defined as energy derived from natural processes that do not involve the consumption of exhaustible resources such as fossil fuels and uranium. Renewable energy includes, but is not limited to, hydropower, wind and wave power, solar and geothermal energy, *and fossil-fuel-based energy provided the emissions are no more than those from a fuel cell.*

Not only is the definition internally inconsistent, such a definition promotes the consumption of non-renewable resources for energy creation. Natural gas is a fossil fuel and burning it to produce energy has considerable and well documented impacts on public health and the environment. The District has failed to appropriately analyze these impacts.

Environmental Justice. Adopting the project would have serious implications for environmental justice. Low income communities of color, which often already host a disproportionate percentage of polluting industry and suffer cumulative impacts from both stationary and mobile sources, are being targeted to host the EGFs already lined up to receive the project's benefits. At its September 8, 2006, meeting the AQMD Governing Board directed staff to address the environmental justice impacts from the project. The DPEA fails 2-27

[60] Draft PEA at 3-1 to 3-23.

[61] Draft PEA at 4-14.

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to describe accurately the Project's environmental justice impacts and fails to acknowledge the extent and known environmental justice impacts of the project. 2-27 cont.

Also, the mitigation developed by the staff to address the environmental justice impacts are completely inadequate. The District proposes:

> To address the [environmental justice] concerns raised by the Governing Board at the September 2006 public hearing, PAR 1309.1 includes a provision that would subdivide the district into three zones based on average PM2.5 concentrations observed for years 2003 through 2005. *These zones correspond to health-based exposure levels* classifying Zone 1 as an area with annual average PM2.5 concentration of less than 18 micrograms per cubic meter (µg/m3), Zone 2 with a PM2.5 concentration of 18 to 20 µg/m3, and Zone 3 with a PM2.5 concentration greater than 20 µg/m3. The zones are used to define the criteria and requirements for eligibility to access the Priority Reserve and to determine the amount of the mitigation fee for the Priority Reserve credits.[62]

2-28

The District's claim that the "zones correspond to health-based exposure levels" is completely unsupported by fact or justification. As a matter of fact, the health-based standards adopted by the State of California for exposure to PM2.5 is 12 $\mu g/m^3$ and the Federal adopted standard is 15 $\mu g/m^3$.[63] The District must provide justification for how and why it developed its own "health-based exposure levels" and show why these levels mitigate or avoid the significant effects of PM2.5 on the environment and human health.

Biosolids and Energy Projects of Regional Significance. The District does not analyze the direct or indirect impacts of providing access to biosolids facilities and energy projects of regional significance.[64] 2-29

Global Warming. Carbon dioxide (CO_2) is a colorless, odorless gas that occurs naturally in the Earth's atmosphere. Significant quantities are also emitted into the air by fossil fuel combustion. CO_2 is a greenhouse gas that contributes to climate change. Climate change has many adverse environmental impacts, including sea level rise, shrinking glaciers, changes in the range and distribution of plants and animals, trees blooming earlier, lengthening of growing seasons, ice on rivers and lakes freezing later and breaking up earlier, and thawing of permafrost. These changes disrupt and destroy ecosystems, and result in irreversible changes to the human and natural environment.[65] 2-30

According to AQMD, the power plants receiving Priority Reserve credits will produce 35.4 billion pounds of CO2 emissions *a year* (more than 16 MMTCO2e), which, according to

[62] DPEA at 2-12 (emphasis added).
[63] DPEA at 3-3.
[64] *See, e.g.*, DPEA, Chapter 5 and Appendix D.
[65] Intergovernmental Panel on Climate Change, Climate Change 2007: *The Physical Science Basis: Summary for Policymakers* (Switzerland February 2007), *available at* http://ipcc-wg1.ucar.edu/wg1/wg1-report.html.

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the DPEA,[66] is *5% of California's current CO2 inventory*. The emissions from these facilities along will be more CO2 emissions a year than emitted by 107 countries.[67]

After disclosing this startling fact, the District writes:

> …the proposed projects taken together overall will contribute to greenhouse gas emissions in California as well as related potential adverse health effects. Given the position of the legislature on AB 32, which states that global warming poses serious threats to health and the environment, and the requirements of CEQA for the lead agency to determine whether a project will have a significant impact, the overall effect of 35.4 billion pounds of projected annual CO2 emissions is considered sizeable. Thus, the indirect greenhouse gas impact from the proposed project is considered significant.

2-30 cont.

The DPEA also acknowledges "it is likely that EPRS and publicly-owned biosolids treatment projects will also emit GHGs, thus, contributing to global climate change."[68] It is also clear that the other projects which the District intends to allow to access the Priority Reserve will emit GHGs which the District has failed to mention, estimate, or analyze. In addition, the District fails to develop any mitigation at all for these significant environmental and health impacts.

II. THE CUMULATIVE IMPACTS ANALYSIS FALLS FAR SHORT OF CEQA REQUIREMENTS FOR A PROGRAM ENVIRONMENTAL ASSESSMENT

2-31

In addition to failing to consider the above-mentioned impacts resulting from the proposed "program," in its haste to produce a document the District *forgets* to analyze "cumulative impacts." Cumulative impacts are defined as "two or more individual effects which, when considered together, are considerable or… compound or increase other environmental impacts."[69] Stated another way, "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."[70] One of the primary justifications for doing a program environmental assessment is to "ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis" which "allows the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems of cumulative impacts."[71] And CEQA outlines the two-step analysis, which the District utterly fails to conduct (or any other

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[66] DPEA at 5-9.

[67] United Nations statistics Division, *Dioxyde de carbone (CO2), émissions en mille tonnes de CO2 (CDIAC)* (last visited June 19, 2007), *available at* http://millenniumindicators.un.org/unsd/mifre/mi_series_results.asp?rowID=749&fID=r15&cgID=; Wikipedia, List of Countries by Carbon Dioxide Emissions (last visited June 19, 2007), *available at* http://en.wikipedia.org/wiki/List_of_countries_by_carbon_dioxide_emissions.

[68] DPEA at 5-9.

[69] 14 C.C.R. § 15355.

[70] 14 C.C.R. § 15130(a)(1).

[71] 14 C.C.R. § 15168(b).

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defensible analysis).[72] We urge the District to review the CEQA Guidelines § 15130 and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

How is this analysis inadequate? The District spends a paltry 61 words describing the cumulative air quality impacts, half of the words wasted on directing the reviewer to Chapter 5. But Chapter 5 (and associated Appendix D) fails to provide any substantial cumulative impacts analysis of the District's program. CEQA requires a cumulative impacts analysis because "[t]he full environmental impact of the proposed … action cannot be gauged in a vacuum."[73] But this is exactly what the District does. The District attempts to offer statements about individual facilities that are likely to access the Priority Reserve as a result of this program as an analysis of the cumulative impacts of the program. The District fails to analyze the *sum* of the impacts of *all* the facilities as well as the impacts of *allowing* such a change on the Air Basin. Therefore, the public is being deprived of its ability to meaningfully comment on an important matter: 2-31 cont.

> Courts have highlighted the importance of assessing cumulative impacts as follows: One of the most important environmental lessons evident from the past experience is that environmental damage often occurs incrementally from a variety of sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.[74]

Moreover, "[t]he requirement for a cumulative impact analysis must be interpreted so as to afford the fullest possible protection of the environment within the reasonable scope of the statutory and regulatory language."[75] CEQA Guidelines § 15130(b) provides guidance from the California Resources Agency on the minimum, necessary elements to an adequate discussion, which include either a "list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency," or a summary of projections… which described or evaluated regional or areawide conditions contributing to the cumulative impact."

Furthermore, the District's cumulative impacts analysis fails to include "future projects" that may be "probable."[76] These projects are required even though they may never be built so long as they are foreseeable at the time of preparation of the environmental document.[77] Not only does the DPEA ignore the impacts of credits generated under Rule 1315, but it fails to account for emissions resulting from all proposed *and known* EGF, EPRS, 2-32

[72] *See also* 14 C.C.R. § 15130.

[73] *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408.

[74] *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.

[75] *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431-432, citing *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.

[76] *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337.

[77] *Id.*

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and biosolids facilities.[78] And the District also fails to list them as required under the CEQA Guidelines.[79]

In short, the District must analyze the cumulative impacts from the "program" or "project," which includes the unanalyzed impacts identified above as well as economic and social effects.[80] Because the cumulative impacts analysis is so meager and inadequate, the public is wholly precluded from meaningful participation. 2-32 cont.

III. THE DISTRICT FAILS TO CONSIDER A REASONABLE RANGE OF ALTERNATIVES IN VIOLATION OF CEQA

An adequate alternatives analysis is a crucial component of complying with CEQA. CEQA requires that the environmental assessment discuss alternatives to the project (including the possibility of not moving forward with the project),

> ... which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.[81]

The EA "shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."[82] CEQA and California common law require that an environmental assessment must provide "information to the public to enable it to understand, evaluate and respond ..." to the proposed project.[83] More specifically, "[t]he key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and *informed public participation*."[84] The analysis of the alternatives throughout the document fails in many important respects. 2-33

As an initial matter, because of a meandering "program" description, the District's alternatives analysis suffers.

In addition, the alternatives discussed by the District are not real alternatives, as they provide alternatives for neither credit generation under Rule 1315 nor the other facilities that fall within the "program" (biosolids, energy projects of regional significance, 1304-exempt facilities). As currently drafted, the so-called alternatives identified by the District are nothing more than a mish-mash of pricing schemes for *power plants*. Not a single alternative has been offered to the "program" outlined by the District—once again, the District has failed to analyze its *program* which as impacts which include, but are beyond, those of the individual

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[78] *Compare* DPEA at 2-10 *with* DPEA, Chapter 5 and Appendix D.

[79] 14 C.C.R. § 15130; *see San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713

[80] *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170.

[81] CEQA, at §15126.6(b).

[82] CEQA, at §15126.6(d).

[83] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 403 (1988).

[84] *Id.*

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facilities or the individual kinds of facilities identified within the program. Among the numerous alternatives that the District failed to analyze are: 2-33 cont.

Diesel-Fired Generators Alternatives. The primary justification given for disturbing the balance under the District's previous NSR program is the environmental and public health impacts of diesel-fired electrical power generation.[85] The District fails to quantify aggregate emissions from diesel-fired generators, despite the prevalence of available and obtainable data.[86] The District also fails to consider alternatives such as (i) diesel-fired generator retrofits, (ii) diesel-fired generator fuel requirements or (iii) more restrictive standards for diesel-fired generators. Each of these alternatives is within the District's authority, and would significantly reduce environmental impacts. 2-34

Limited-Transfer Alternatives. Rather than wholesale access to a large pool of pollution credits, significantly altering the balance struck under the previous NSR program, the District could drastically limit the credits to narrowly fulfill the stated objectives. As is, the District is breaking the bank for a slue of energy projects, biosolids facilities, and Rule 1304 exempt facilities that have nothing to do with the stated objectives, resulting in impacts far beyond those necessary to achieve the "program" objectives. The District must analyze: (i) reducing the number of credits to be distributed to narrowly achieve the "program" objectives; (ii) limiting the types of facilities that may gain access to those will *improve* air quality and likewise fall within the stated "program objectives;" and (iii) precluding transfers to facilities that rely on fossil fuel for electrical generation. 2-35

Alternatives to Credit Generation. The District offers *no alternatives whatsoever* to the retroactive and prospective generation of pollution credits. Not only do these actions violate SB 288's prohibition on backsliding,[87] but the DPEA also fails to identify and analyze alternatives to credit generation. Two important alternatives include approval of: (i) a "tracking system" that continues the current decades-long District policy with respect to credit generation; and (ii) a tracking system that only *prospectively* generates credits from "additional classes of credits." 2-36

Limited Facility Access Alternatives. The "program" includes biosolids, energy projects of regional significance, and 1304-exempt facilities in addition to power plants.[88] But the District only analyzes alternative power plant pricing schemes.[89] Instead, a feasible and viable alternative would limit the range of facilities that access the District's credits from its offset accounts, providing actual alternatives for the range of facilities (biosolids, power 2-37

[85] *See, e.g.*, Draft Program Environmental Assessment (DPEA) at 1-1, 1-4, 4-1 4-8 and 6-6.

[86] *See, e.g.*, California Energy Commission, Inventory of Backup Generators in the State of California, Publication No. 500-01-027 (Dec. 2001), *available at* http://www.energy.ca.gov/pier/final_project_reports/500-01-027.html. The District has previously calculated daily emissions from diesel internal combustion engines for other environmental analyses, but fails to do so here. *See* DPEA at 5-15.

[87] *See* Letter from California Communities Against Toxics et al. to Shams Hasan, SCAQMD, Planning, Rule Development and Area Sources (May 29, 2007) (Re: Comments on Proposed Amended Rule 1309.1 – Priority Reserve; and Proposed Re-adopted Rule 1315 – Federal New Source Tracking System).

[88] DPEA at 1-13 to 1-14; 2-1 to 2-18.

[89] DPEA at 6-1 to 6-11.

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plants, energy projects of regional significance, 1304-exempt facilities) and actions (current 1309.1 amendments, Rule 1315, and future 1309.1 amendments) that constitute the "program" under review.[90] 2-37 cont.

No Project Alternative. The District must clearly analyze a "No Project Alternative." Currently, the District wafts between two analyses, both of which fail to analyze the actual impacts of no project or "program." The District fails to describe the implications of foregoing retroactive and prospective credit generation, precluding access to energy projects of regional significance, biosolids facilities, and 1304-exempt facilities (just as the District failed to analyze the environmental impacts thereof), and the environmental benefits of maintaining the current balance struck by its NSR program. Therefore, the one paragraph the District does spend on analyzing the "No Project Alternative" is insufficient for CEQA purposes 2-38

Further, the DPEA states: "Alternative A, the No Project Alternative, would mean no re-adoption of the amendments to Rule 1309.1 and, therefore, maintaining the existing SCAQMD Rule 1309.1 requirements."[91] This is the wrong baseline for the No Project Alternative, since it is highly likely that the September 2006 amendments to 1309.1 were adopted illegally since there was no CEQA review prior to the adoption. In addition, the DPEA completely fails to analyze the "No Project Alternative" to adopting Rule 1315. Its analysis also should not assume a baseline which includes the September 2006 adoption of the Rule.

Renewable Electrical Generation Alternatives. Southern California can meet most, if not all, of its new energy demand by using a combination of energy efficiency, solar, and wind technology.[92] Moreover, there are new solar technologies coming into the market that are more efficient and can capture more energy. Wind resources, previously constrained by transmission problems, are set to capture the lion's share of new renewable output capacity. And energy efficiency programs will continue to displace dozens of power plants each decade as they have done in the past. All of this can be done economically, justly, and without relying on foreign, volatile sources of energy for California. 2-39

Southern California Edison (SCE), southern California's main supplier of energy, is the nation's leading purchaser of renewable energy, and four of its largest renewable power suppliers recently announced an agreement establishing a fixed price for SCE's wind, solar, biomass, geothermal, and small hydro power purchases through mid-2012. SCE's agreements with Caithness Energy, Colmac, Ormat, and FPL Energy establish a five-year price *of 6.15 cents per kilowatt-hour* that increases 1% annually starting in the second year. Renewable facilities participating in the agreement supply approximately 45% of the renewable energy SCE buys for its customers. "The agreement secures significant value for our customers," said SCE Chief Executive Officer Alan Fohrer. "The new price we have negotiated is attractive and the agreement helps protect customers from price volatility in natural gas markets."

[90] DPEA at 1-13 to 1-14; 2-1 to 2-18.
[91] DPEA at 6-3.
[92] South Coast Green Repower Project: The Community Alternative (June 2007), Exhibit H.

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- SCE procured more than 13,000 gigawatt-hours of renewable energy in 2004, more than any U.S. utility and enough to power almost two million homes for an entire year.
- In 2004, more than 18% of the power SCE delivered to the 13 million Californians it serves came from renewable energy sources.
- SCE's current renewable portfolio can deliver 2,588 MW of electricity, including: (i) 1,021 MW from wind; (ii) 892 MW from geothermal; (iii) 354 MW from solar; (iv) 226 MW from biomass; (v) 95 MW from small hydro.
- Within the next several weeks, SCE will launch its ninth request for offers by independent power producers in the past three years and the third exclusively for proposals by renewable energy providers. These open, competitive solicitations have resulted in 12 new renewable contracts with a maximum potential capacity of 1,630 MW.[93]

SCE is set to continue to increase its purchasing of clean, renewable energy benefiting both the lungs and pocket books of those that live in Southern California. The District should consider ways to support these efforts instead of adopting schemes that further harm Californians.

2-39 cont.

Utilities that service Southern California continue to meet a significant demand with energy efficiency projects. According the Energy Commission, Southern California has sufficient energy efficiency projects available that will contribute to shaving demand for energy in Southern California, and that percentage will not diminish in the next generation. Millions of megawatts will be saved in the next decade by new energy efficiency technologies and by continuing to mine efficiencies from old buildings and homes.[94]

Utility	Total MWh Saved
Southern California Edison	8,901,686
Pacific Gas & Electric	6,232,939
Northern States Power	3,787,182
Florida Light & Power	3,663,877
Connecticut Light & Power	2,118,687
Puget Sound Energy	2,086,208
PacifiCorp	2,052,368
Massachusetts Electric	1,990,984
Boston Edison	1,346,101
Interstate Power and Light	1,136,646
Minnesota Power	892,802
MidAmerican Energy	657,216

[93] Source, Southern California Edison, May 2007 Press Release, *available at* www.sce.org/Press.

[94] *Top U.S. Utility Energy-Efficiency Programs, 1992 to 2005 (Savings shown in megawatt-hours (MWh) or thousands of kWh). Source-U.S. Dept. of Energy, Energy Information.*

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SCE recently signed a contract for 1500 MW of wind from Tehachapi, California. The provider will be Oak Creek Energy Systems. Tehachapi is about 100 miles North of Los Angeles and is referred to as the "Saudi Arabia of Wind" by the energy industry. Efforts to tap into this vast energy resource have been hampered only by a lack of transmission capacity. Indeed, the success of the large wind project announced by SCE depended on SCE receiving authorization from the CPUC and other regulatory agencies to construct a series of new and upgraded high-voltage transmission lines that would deliver electricity from new wind farms in the Tehachapi area. Several such wind projects are in varying stages of planning and development. When completed, this renewable transmission project would be capable of delivering *4,500 MW* of electricity, enough energy to supply almost three million homes. These transmission lines have recently been approved by the CPUC and construction of the first phase of transmission lines is set for completion by 2010.[95] The second phase known as the Tehachapi Renewable Transmission Project is set for completion in 2013.

Southern California has immense potential to capitalize upon concentrated solar. A 2005 California Energy Commission report estimated that Los Angeles County has the capacity to produce 74,233 megawatts of concentrated solar energy. To put that into perspective, the entire state of California uses 50,000 MW at peak demand. Southern California Edison produces approximately 15,000 MW of power for use in Southern California.

2-39 cont.

The potential for photovoltaic is also immense. The same CEC report estimated that in Los Angeles County new homes constructed with photovoltaic could supply 217, 847 MW of power and that using commercial buildings for PV could supply 4, 478, 579 MW of power.[96]

The Stirling dish technology converts thermal energy to electricity by using a mirror array to focus the sun's rays on the receiver end of a Stirling engine. This technology has been piloted for 20 years in Arizona and is finally being built at commercial scale. The internal side of the receiver heats hydrogen gas which expands. The pressure created by the expanding gas drives a piston, crank shaft, and drive shaft assembly much like those found in internal combustion engines but without igniting the gas. The drive shaft turns a small electricity generator. The entire energy conversion process takes place within a canister the size of an oil barrel. The process requires no water and the engine is emission-free. There are now two major Stirling Technology projects in California, one near Victorville and one near the Mexican border in Imperial County. Both of these projects will deliver energy into the Southern California grid. Each of these projects produce 500 MW each – the size of a large power plant. These projects are expected to be online and delivering power to the grid by 2010.

The options available for Southern California to meet its new energy demand from renewables are many. The reduced human health impacts from using solar and wind to power Southern California instead of fossil fuels is one of many powerful reasons to pursue

[95] *See* http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/65666.htm.

[96] California Solar Sources, California Energy Commission, April 2005.

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alternative rather than fossil fuel power, in addition to the price volatility and energy dependence issues. Rather than make credits and distribute them at below market rates to polluting facilities, the District must explore opportunities to support renewable energy alternatives in a meaningful way with the regulatory tools it has at its disposal. 2-39 cont.

Energy Efficiency Alternative. An energy efficiency potential study, commissioned by the Los Angeles Department of Water and Power, identifies a number of measures that the City of Los Angeles can adopt in achieving energy savings.[97] The City of Los Angeles and many municipalities in the Basin can adopt measures to retrofit large residential facilities, enhance residential and nonresidential HVAC performance programs, capture energy savings in new construction programs, and expand the residential compact fluorescent lamp program, among others things, to promote energy conservation. Statewide, energy savings from building standards, appliance standards, and utility efficiency programs increased by 3000 MW between 2000 and 2003 – the equivalent of six new power plants.[98] The recent spike in efficiency savings was driven largely by utilities in response to the perceived electricity shortage. This Priority Reserve amendment would do the opposite, and instead remove a major incentive for utilities and other industry to become more efficient, fostering the need for even more power plants. Rather than make credits and distribute them at below market rates to polluting facilities, the District must explore opportunities to support energy efficiency with the regulatory tools it has at its disposal. 2-40

Community Choice Aggregation Alternative. A key vehicle in meeting energy demand without interfering with the goal of meeting air quality standards is Community Choice Aggregation. In 2002 California became the third state to adopt a Community Choice Law (AB 117)[99], allowing municipalities to aggregate the electric load of their communities to foster the purchase and sale of electricity in a more competitive market. The law reopens the door for Electric Service Providers (ESPs) to break into California's electricity market to serve whole cities and regions not only with bulk power, but also programs for energy efficiency and conservation. Community Choice benefits consumers financially, fights global climate change, promotes energy efficiency, and provides relative price stability. 2-41

Community Choice would provide communities with local control over energy decisions, which is currently vested in a handful of Investor Owned Utilities (IOUs). By giving elected City Councils decision-making power over resource planning and rate-setting, Community Choice not only creates new business development opportunity for innovative ESPs, but also allows residents to decide what kind of energy will fuel their community. The result would be an expanded market for renewable energy, energy efficiency, conservation, and distributed generation to more accurately reflect the political and economic choices of Southern California residents, who have indicated to their representatives that they want cleaner air and renewable energy, but are currently less able to translate those choices in the energy sector.

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[97] Michael Rufo, Alan North, Fred Coito, "Los Angeles Department of Water and Power Energy Efficiency Potential Studies," *Quantum Consulting*. February 8, 2006.

[98] Art Rosenfeld, "Efficient Use of Energy in California", Power Electronics Conference, October 25, 2006, *available at* http://www.energy.ca.gov/2006publications/CEC-999-2006-021/CEC-999-2006-021.ppt.

[99] AB 117, now codified in various sections of the California Public Utilities Code ("PUC").

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Community Choice programs benefit consumers financially. Customers at Cape Light Compact in Massachusetts saved between 11 and 22 percent on their electrical generation bill, and the Parma CCA in Ohio achieved a 17% discount on generation costs for its 90,000 customers. Projected savings in San Francisco's CCA range from $750 million to $1.47 billion over 20 years.[100] Feasibility studies conducted by Navigant Consulting, and commissioned by twenty-three other California municipalities expressing interest in CCA, showed an average benefit of 5 percent in cost savings over 20 years.

Community Choice would also implement in practical terms California's political preference for energy solutions that achieve clean air and fight climate change. *First*, if a CCA prefers to invest in renewable and alternative energy generation, it can partner with an ESP to provide a portfolio of energy generation rich in renewables. This will enable those communities, and the state as a whole, to meet and exceed the renewable portfolio standard of 20% by 2017, a state mandate that IOUs and even several publicly-owned utilities (POUs) are having difficulty achieving. The relationship between Community Choice and Renewable Energy is already developing. In April 2007, San Francisco announced a CCA program that would make the City's energy supply 51% renewable by 2017. The municipalities (including Los Angeles County) that commissioned the Navigant study asked for a feasibility analysis that assumed a 40% RPS goal for 2017. This analysis showed that CCAs would remain cost effective with the status quo, with an average benefit of 3% under the aggressive renewables scenario. *Second*, energy efficiency is yet another advantage of CCAs. Petitioners can contract with ESPs or fund directly new renewable generation, which will both facilitate the retirement of old fossil-fuel plants and alleviate the need for new long-term fossil-fuel commitments. *Third*, CCAs may provide price stability from the volatility in the fossil-fuel electricity market. The expanding market for renewables created by CCAs will bring their cost down to conventional electricity prices within a decade. Additionally, CCAs can finance their own renewable energy projects, and/or apply to the CPUC to administrate the 2.85% public benefit surcharge for such projects. 2-41 cont.

Combined, the benefits of local control, lower and more stable energy costs, and investment in clean renewable energy and efficiency all help the District achieve Southern California's ambient air quality goals, while meeting regional energy needs and protecting public health. Rather than make credits and distribute them at below market rates to polluting facilities, the District must explore opportunities to support CCA with the regulatory tools it has at its disposal.

IV. THE DISTRICT FAILS TO ADEQUATELY DESCRIBE AND REQUIRE FEASIBLE MITIGATION MEASURES

The DPEA failed to adequately describe and require mitigation measures for the project's significant environmental impacts. CEQA asks that agencies describe "feasible measures which could minimize significant adverse impacts, including where relevant, 2-42

[100] "Community Choice Aggregation: The Viability of AB 117 and its Role in California's Energy Markets - An Analysis for the California Public Utilities Commission," June 13, 2005 - The Goldman School of Public Policy, U.C. Berkeley

inefficient and unnecessary consumption of energy."[101] Under CEQA, "it is the policy of the state that public agencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects."[102] In addition, CEQA requires agencies to adopt a monitoring program for all mitigation measures that will ensure that implementation of those measures occurs.[103]

CEQA also requires governmental agencies to "mitigate or avoid the significant effects on the environment… whenever it is feasible to do so."[104] In other words, CEQA requires agencies to adopt feasible mitigation measures. A guiding principle under CEQA is that the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[105] Accordingly, CEQA requires "[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" in the EIR or, in this instance, the environmental assessment.[106] Under CEQA, "it is the policy of the state that public agencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects."[107] In addition, CEQA requires agencies to adopt a monitoring program for all mitigation measures that will ensure that implementation of those measures occurs.[108] 2-42 cont.

Failure to Mitigate Unanalyzed Significant Impacts. As a general matter, to the extent that the District has failed to analyze significant impacts, it has also failed to describe and require feasible mitigation measures to reduce those impacts. For example, impacts were not assessed for the aesthetics, health, air quality, global warming, and energy, among others.

Feasible Mitigation Measures for NSR Impacts. As noted above, the DPEA does not address the impacts of the proposed project or "program" on the District's NSR program, including: (i) the impacts from the credit-generating provisions (Rule 1315);[109] (ii) the effect of defining biosolids facilities as essential public services, which will thereby provide indefinite access to Priority Reserve for these facilities; (iii) the impacts of 1304-exempt facilities access to new-found credits; (iv) the foreseeable approval of Rule 1309.2 and distribution of credits to 1309.2-eligible facilities; (v) the disruption of the previous NSR balance; among other impacts. The District, by failing to recognize these types of impacts, has not provided any mitigation measures to reduce their effect. 2-43

[101] CEQA, at §15126.4(a)(1).

[102] *Los Angeles Unified School District,* 58 Cal.App.4th at 1024-25.

[103] CEQA, at §§15091, 15097; *see also* Pub. Res. Code §21081.6.

[104] Pub.Res.Code § 21002.1(b).

[105] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.

[106] Pub. Resources Code §§ 21002.1(b); 21100(b)(3); CEQA Guidelines § 15126.4(a)(1).

[107] *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th at 1024-25.

[108] CEQA, at §§15091, 15097; *see also* Pub. Res. Code §21081.6.

[109] *See, supra,* "Rule 1315's Impacts Unanalyzed."

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Failure to Mitigate Credit-Generating Provisions. The District concludes that "[b]ecause PRR 1315 was determined to not generate a significant adverse air quality impact, no mitigation measures are warranted or necessary."[110] As noted above, the District does not address the impacts of credit generation (Rule 1315) by itself or on the District's NSR program, including: (i) the impacts of expanding the universe of pollution credits in the South Coast Air Basin; (ii) the effects on prices of existing pollution credits and the growth-inducing impacts thereof; (iii) the chilling effect on businesses that, but for the influx of credits (which will reduce ERC demand and price), would have voluntarily reduced emissions to generate credits for sale to third parties; (iv) the effects from the eventual incorporation of "Rule 1309.2 – Offset Budget" into the NSR program; (v) the impacts from 1304-exempt facilities that will access those credits; (vi) the impacts of re-capturing the 0.2 differential from Priority-Reserve-eligible power plants, which makes their true offset 1-to-1 instead of 1.2-to-1; and (vii) the effect on state offset requirements. These unanalyzed impacts are significant. 2-44

Failure to Require Mitigation for Biosolids Facilities. The District's "program" includes defining "essential public services" to include biosolids facilities.[111] As such, these facilities will not be required to purchase Priority-Reserve credits (i.e., no "mitigation fees") and, therefore, will result in significant environmental impacts.[112] The District fails to incorporate mitigation measures for this change. 2-45

Mitigation Fees Are Not a Mitigation Measure. As we will discuss, the measures that were actually suggested may seem substantial at first glance but, in reality, will lead to minimal emissions reductions. For example, SCAQMD will require facilities, other than Essential Public Services,[113] to pay mitigation fees that "will be used to fund appropriate clean air projects."[114] Yet, in its discussion of mitigation measures, the District repeatedly acknowledges the following:

> Due to the lack of certainty that the mitigation fee will fully replenish credit accounts, credits are *expected to be used* in amounts that *exceed* the SCAQMD's PM10, SOx, CO and VOC daily operational significance thresholds.[115]

Additionally the District acknowledges, "the emission reduction from these project [*sic*] may not necessarily provide emission reductions equal to the number of ERCs withdrawn from the Priority Reserve."[116] Furthermore, it is not explicitly stated that the mitigation fees for air emissions are actually linked to reductions of the same emissions. In *Kings County Farm Bureau*, the court held that it is inadequate to offer a mitigation measure and fail to fully evaluate its feasibility.[117] That is, where there is not clarity as to the sufficiency of the 2-46

[110] DPEA at 4-17.
[111] DPEA at 2-16.
[112] *See* DPEA, Appendix A at 11-12 (Rule 1309.1(g)).
[113] DPEA, at 2-14.
[114] DPEA, at 4-13.
[115] DPEA, at 1-3, 1-9, 1-15, 4-9, 4-13, 4-14, 4-18, 4-32, 6-8, 6-9. (emphasis added).
[116] DPEA, at 1-8, 4-9, 4-13, 4-14, 6-10.
[117] *Kings County Farm Bureau v. City of Hartford* 221 Cal.App.3d 692, 727-728 (1990).

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mitigation fees being able to fully cover the mitigated measure, the use of such a mitigation measure will not be upheld in court.[118] The courts have recently reinforced this notion, and in *Endangered Habitat League* the court states: "… even where a developer's contribution to roadway improvements is reasonable, a fee program is insufficient mitigation where, even with that contribution, a county will not have sufficient funds to mitigate the effects …"[119] Offering fees that will not fully address the environmental impacts, as the District has here, are insufficient to meet the standard for mitigation measures. 2-46 cont.

In addition to acknowledging the inadequacy of the mitigation fees for electrical generating facilities, the District neglects to even consider other polluting facilities that will gain access to these credits. For instance, facilities exempt under Rule 1304, facilities receiving allocations from the Offset Budget in accordance with Rule 1309.2, and biosolids facilities, which are anticipated to have access to the Priority Reserve but will *not* have to pay mitigation fees.[120] Consequently, there are additional, unanalyzed and thus unmitigated environmental impacts from these additional facilities.[121] 2-47

Mitigation Fee Reductions Not Linked to Same Emission or Locality. The District fails to ensure that fees will be used to fund clean air projects reducing equivalent emissions of the *same emission* at the *same locality*.[122] The practical effect of such assurances potentially results in inter-pollutant, stationary-to-mobile, or cross-regional trading impacts.

Feasible Air Quality Mitigation Measures. The District does not provide a single mitigation measure for significant air quality impacts.[123] Presumably the District intends to rely on the "mitigation fees" for this showing, but this reliance is misplaced and, nevertheless, inadequate. The "mitigation fees" admittedly "may not necessarily provide emission reductions equal to the number of ERCs withdrawn from the Priority Reserve."[124] Therefore, the District concludes, "the air quality impact would remain significant."[125] The question is, then, how can the District mitigate (remove) air pollution that it is now allowing to be released. With the District's ability to mandate specific business practices from facilities that wish to access Priority-Reserve credits, the range of mitigation measures is limitless. For example, the District could require that companies purchasing credits from its offset accounts are using the best available control technology (BACT) or best available retrofit control technology (BARCT) at all their facilities or that each company's electricity needs are met only by renewable energy. With respect to natural gas-fired or pet-coke power plants, the District could mandate renewable energy development that will displace high-polluting energy on the grid, sufficient to reduce an equal amount of emissions that the District's project or "program" intends to release. Although not the preferred mitigation measure, the District 2-48

[118] *Id.*

[119] *Endangered Habitats League v. County of Orange*,131 Cal.App.4th 777, 785 (2005).

[120] DPEA, at 4-14.

[121] The District anticipates that future amendments to Rule 1302 will not only add biosolids facilities as an Essential Public Service, but will also re-define them. DPEA, at 4-14.

[122] See, e.g., DPEA at 1-13; 4-12 to 4-13.

[123] DPEA at 4-6 to 4-14.

[124] DPEA at 4-13.

[125] *Id.*

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could seek to limit the number of energy projects to that required to prevent excessive rolling brownouts/blackouts, only if that threat is found to be greater than aggregate emissions to be released by the District. 2-48 cont.

Inadequate Discussion of Greenhouse Gases. SCAQMD refuses to directly address the impacts that these rules will have on global warming. Overall, they offer a scant discussion of the general impacts of global warming. The District concludes by stating that it will not be possible for them to assess the potential impacts of their projects until other state agencies "more precisely quantify [of global warming] impacts in various regions of the State."[126] SCAQMD bases their argument on expectations that other State agencies will, at some point, more precisely measure the impacts of certain emissions on global warming.[127] However, just as it was expected that the District would meaningfully consider the impacts the new rules would have on global warming, one cannot rely on expectations.

It is well-documented in California that global warming will have a real and severe impact on the future landscape; hence the motivation for the enactment of The California Global Warming Solutions Act of 2006 ("AB 32"). The Act acknowledges, and the draft PEA affirms, that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and *the environment of California*."[128] It is also stated in the Act that, "[g]lobal warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry."[129] 2-49

CEQA requires an EA analyze any "significant environmental effects" of a proposed project.[130] A " '[s]ignificant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment."[131] Specifically, it describes "[a] proposed project [that] has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals."[132] As acknowledged by the District themselves, in their brief discussion of greenhouse gases and global warming, "[g]lobal warming may also contribute to air quality problems from increased frequency of smog and particulate air pollution."[133] The high pollutant discharge potential from the adoption of these new rules will clearly "[have] the potential to degrade the quality of the environment." The Project will allow foreseeable and quantifiable emissions of carbon dioxide and other greenhouse gases during its lifetime. These emissions, although relatively small in comparison to worldwide greenhouse gas emissions, will contribute directly and cumulatively to the increase in greenhouse gases in the atmosphere, and will thus

[126] DPEA, at 3-25.
[127] *Id.*
[128] DPEA, at 3-24, *citing* The California Global Warming Solutions Act of 2006, California Health and Safety Code §38501(a) 2006. (emphasis added).
[129] Id., at § 38550.
[130] Pub. Res. Code § 21100(b)(l); CEQA Guidelines, at §§ 15126(a), 15126.2(a), 15143.
[131] Pub. Res. Code § 21068.
[132] Pub. Res. Code § 21083(b).
[133] DPEA. At 3-25.

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contribute directly and cumulatively to global warming. As such, the effects of this project, as relates to global warming, must be specifically identified, discussed and mitigated in order to be compliance with CEQA. 2-49 cont.

No Mitigation of Greenhouse Gases. The draft PEA fails to adequately address the significant, direct and indirect, consequences of the high greenhouse gas emissions the rules will create. The Climate Action Team notes that, as of 2002, 19.6% of greenhouse gas emissions in California stem from electric power facilities.[134] When a new rule that directly supports such facilities will have the effect of releasing over 35 *billion* pounds of CO_2 into the atmosphere *per year*[135], it is completely unacceptable that the District will not include a discussion of the impacts as well as their plans to mitigate this pollution. In light of the increasing threats posed by global warming, and to mitigate the increasing contributions of greenhouse gas emissions, Executive Order S-3-05 requires that state and local agencies address the issue of global warming by analyzing and reversing the emissions of greenhouse gases.[136] The District generally acknowledges that greenhouse gas emissions will have an impact on global warming, yet does not discuss how the proposed rule and amendments will specifically contribute to this crisis.

SCAQMD further states that they, through their "Policy on Global Warming and Stratospheric Ozone Depletion," are required to "consider global impacts in rulemaking."[137] However, the District does not even adhere to its own rules, and in the DPEA, skirts this discussion by instead offering well-known scientific evidence about greenhouse gases and their effects on global warming. To further shirk any responsibility, SCAQMD provides several tables of suggested mitigation measures, but in the next breath, emphatically states that the responsibility of implementing such measures falls upon *CARB*, the *CEC* and *CPUC*.[138] This underhanded approach to mitigation will only serve to the greater detriment of SCAQMD. 2-50

Given the mandates of CEQA[139], particularly in the context of AB 32, which requires California to reduce its greenhouse gas emissions to 1990 levels by 2020, these rules will clearly have a significant impact on greenhouse gas pollution. Implementation of effective mitigation at the onset of such projects will not only save the EGFs money, but also aide the State in moving closer to its emissions reduction goals. In his Executive Order, the Governor acknowledged, "mitigation efforts will be necessary to reduce greenhouse gas emissions and adaptation efforts will be necessary to prepare Californians for the consequences of global warming."[140] Tested and achievable examples of mitigation include, but are in no means

[134] California Department of Transportation Business, Transportation, and Housing Agency, *Climate Action Program at Caltrans*, page 3, *available at*: http://www.dot.ca.gov/docs/ClimateReport.pdf (last accessed June 29, 2007)
[135] DPEA, at 5-7.
[136] Executive Order S-3-05, June 1, 2005.
[137] DPEA, at 3-21.
[138] DPEA, at 5-12.
[139] CEQA, at Pub. Res. Code § 21101(b)(1), requires that an EA address any "significant environmental impact" a project may have.
[140] Executive Order S- 3-05, June 1, 2005.

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limited to use of SCONOx™, SCR with oxidation catalyst, and Xonon Cool Combustion techniques.[141]

2-50 cont

In short, in order for the EA to be legally compliant, it must address the environmental impacts--direct and indirect--of greenhouse gas emissions.

Mitigation of Indirect Impacts Inadequate. An environmental assessment must contain "a *detailed* statement setting forth ... [m]itigation measures proposed to minimize significant effects on the environment, including but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[142] CEQA requires that agencies adopt mitigation measures that will "substantially lessen the environmental impacts of such projects."[143] Further, mitigation measures should be capable of the following:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.[144]

2-51

When the mitigation measures (or rather the lack thereof) offered by SCAQMD for the indirect impacts are considered in light of CEQA requirements, it becomes evident that they are insufficient to be compliant. In this section of the DPEA, the District discusses the potential impacts of the substantially increased greenhouse gas emissions in the environment, as well as the adverse health consequences of the siting, construction and operation of projects supported by the new rules. The District completely disregards CEQA requirements to discuss proposed mitigation measures for these projects. Rather, the District refers to Appendix D for information about the mitigation measures for each of the facilities that are in queue to receive credits once the rules are approved.[145]

The problem with the information provided in Appendix D is that all of the proposed mitigation measures stem from requirements that these facilities must fulfill in order to be sited.[146] There are also areas in which several of the power plants do not address certain

2-52

[141] *See, e.g.* Air Resources Board, Report To The Legislature:Gas-Fired Power Plant Nox Emission Controls And Related Environmental Impacts, Stationary Source Division, May 2004, *available at* http://www.arb.ca.gov/energy/noxlegrpt/report.doc (last accessed June 29, 2007)
[142] Pub. Res. Code §21100(b)(3). (emphasis added).
[143] Pub. Res. Code §21002.
[144] CEQA Guidelines, at §15370.
[145] DPEA, at 5-2.
[146] Air Districts: Authority to Construct, §III(E), *available at* http://www.arb.ca.gov/permits/airdisac.htm (Last visited: June 24, 2007).

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impacts, and thus offer no mitigation.[147] Nowhere in CEQA does it state that an agency may deflect its responsibility to discuss feasible mitigation measures to the projects that will benefit from the enactment of the rules. Thus, the mitigation measures offered by facilities for review by the CEC cannot be substituted for the consideration and adoption of mitigation measures by the District. 2-52 cont.

As an example of the District's extreme disregard for the need to adequately mitigate the project's impacts, and the complete failure of its purported "environmental justice measures" the District does not even offer mitigation measures when considering the consequential increased mortality rate from the operation of the Vernon Plant. The DPEA states "the SCAQMD has prepared an estimation of the health effects from PM emissions from a plant proposed to be constructed in the City of Vernon, which is the currently the largest of the proposed facilities and thus most likely to have the largest emissions of PM as compared to the other proposed facilities" and reports finding, conservatively, "an increase in *annual* adult mortality" from the Vernon Power Plant of 3.82 persons is possible.[148] With this staggering information available, the District still offers no mitigation measures to address this direct loss of *human lives*. In light of the severe environmental and human health consequences, it is completely unacceptable that mitigation measures are not considered by the District to lessen the impact of these projects. The District is responsible for considering and adopting feasible mitigation measures for any aspect of the project that will have a direct or indirect impact on the environment. SCAQMD's failure to do so here is impermissible, and prevents them from reaching compliance with CEQA guidelines for an environmental assessment. 2-53

District Must Provide Mitigation Monitoring Plan. CEQA requires that a monitoring or reporting program be adopted by the lead and/or responsible agency.[149] By not including a monitoring plan, either in the DPEA or in the Rules proposed for adoption, the District is preventing the public an opportunity to comment on it nor providing the ability to assess whether the environmental impacts of the proposed rulemaking have actually been mitigated. 2-54

V. THE DRAFT PROGRAM ENVIRONMENT ASSESSMENT IS INADEQUATE BECAUSE OF ITS PROCEDURAL FAILURES 2-55

In its rush to sell pollution credits to build power plants, the District's analysis can best be characterized as a grudging and pro forma nod to CEQA's requirements, failing to meet the

[147] For example, there is no discussion of the energy impacts from the siting, construction and operation of the El Segundo Repower facility. *See*, DPEA, at D3-7.
[148] DPEA, at 5-14–15.
[149] Public Resources Code § 21081.6; 14. C.C.R. §15097.

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minimal thresholds required under California law.[150] In fact, the DPEA appears to be more of an attempt to moot an otherwise meritorious case than a legally sufficient CEQA analysis.[151]

In addition to the shortcomings identified in these comments, it is worth noting that the DPEA was clearly rushed, containing repeat sentences and paragraphs,[152] and it is also poorly organized, with a series of disjointed appendices[153] and tables that offer unexplained and unanalyzed figures.[154] In fact, the DPEA is not an analysis so much as an advocacy document, poorly re-packaging easily available information, even if irrelevant, and dismissing outright the areas most in need of analysis. 2-55 cont.

A. THE NOTICE OF PREPARATION AND INITIAL STUDY ARE INADEQUATE

The District's Notice of Preparation and Initial Study suffers from fundamental flaws that render them inadequate.

Notice of Preparation. The District's Notice of Preparation (NOP) dated March 23, 2007 only notices preparation of "Proposed Amended Rule 1309.1 – Priority Reserve."[155] CEQA requires that "[i]mmediately after deciding that an environmental impact report is required for a project, the lead agency shall send to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared."[156] Moreover, this "notice of preparation shall provide... sufficient information describing the project and the potential environmental effects."[157] But the NOP circulated by the District *only* noticed Rule 1309.1, making *no mention whatsoever* of Rule 1315. As a result, the public, responsible agencies, and trustee agencies, which are not listed, have been precluded from adequate notice.[158] Therefore, the DPEA, which covers an unnoticed rule, is invalid as a matter of law. 2-56

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[150] *See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (5th dist. 1994) 27 Cal.App.4th 713 (court invalidates EIR for failure to, among other things, include within the environmental setting a full and fair description, address project alternatives in detail, and perform an adequate cumulative impact analysis).

[151] *See* Respondent South Coast Air Quality Management's Opposition Brief at 2 (the "District has determined to prepare an environmental assessment covering both Rule 1315 and Rule 1309.1... [s]ince this is the very relief sough in the Petition, the case will be rendered moot once the District adopts the environmental assessment.").

[152] *See, e.g.*, DPEA at 4-8.

[153] *See* DPEA, Appendix D.

[154] See DPEA at 3-2 to 3-12.

[155] DPEA, Appendix B.

[156] 14 C.C.R. § 15082(a); Public Resources Code § 21080.4.

[157] 14 C.C.R. § 15082(a)(1).

[158] *See* Public Resources Code § 21080.3(a); 14 C.C.R. § 15063(g); 15206(b)(2)(requiring consultation for a "project that has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located... include[ing] interfering with the attainment or maintenance of state or national air quality standards."); *see also* DPEA at 1-11.

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Initial Study. The District's Initial Study dated March 23, 2007 only addresses amendments to "Proposed Amended Rule 1309.1 – Priority Reserve."[159] The CEQA Guidelines require that, "[f]ollowing preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable."[160] But the Initial Study fails to notice Rule 1315. In fact, the "Project Description" makes *no mention whatsoever* of Rule 1315.[161] As a result, the public, responsible agencies, and trustee agencies have been precluded from adequate consultation.[162] Furthermore, the Initial Study is deficient for omitting an adequate legal description, describing the project inaccurately, failing to recognize Rule 1309.1's place within the large "program," and failing to acknowledge the probable effects of Rule 1315, among others.[163] Therefore, the District's failure to issue an adequate Initial Study invalidates the DPEA as a matter of law. 2-56 cont.

Failure to Consult Necessary Agencies. Lead agencies have the duty to produce "comprehensive" environmental documents. *See Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4th 908, 922. To ensure that environmental documents are adequate, lead agencies must consult with responsible and trustee regarding the substances of the environmental review. 14 C.C.R. §§ 15082, 15086. A responsible agency typically has permitting authority or approval power over some aspect of the overall project under review. Public Resources Code § 21069; 14 C.C.R. §§ 15096, 15381. A trustee agency is defined as a "state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California, " which includes the California Department of Fish and Game, the State Lands Commission, and the State Department of Parks and Recreation. 14 C.C.R. §15386. In fact, CEQA provides that: "Each responsible agency… and [trustee agency] shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency… or [trustee agency] in connection with the proposed project and which… shall be included in the environmental impact report." Public Resources Code § 21080.4(a). The District failed to adequately apprise responsible and trustee agencies of the program under consideration, which resulted in a failure to fulfill its consultation requirements, and provides no list or identifying information on which the public may review the adequacy of any purported consultation. As a result, the DPEA suffers from fundamental flaws and a limited analysis that render it inadequate. 2-57

[159] DPEA, Appendix B.

[160] 14 C.C.R. § 15063.

[161] DPEA, Appendix B at 1-15

[162] *See* Public Resources Code § 21080.3(a); 14 C.C.R. § 15063(g).

[163] *See, e.g., Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180 (court found deficient an initial study).

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B. THE DPEA CONTAINS MANY UNSUBSTANTIATED, DECLARATORY AND CONCLUSORY STATEMENTS LACKING DATA, SCIENTIFIC AUTHORITIES, OR EXPLANATORY INFORMATION

A legally adequate EIR "must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug".[164] In the words of the California Supreme Court, "[c]onclusory comments in support of environmental conclusions are generally inappropriate."[165]

Toxic Air Contaminants. The DPEA provides neither a qualitative nor quantitative analysis of potential toxic air contaminants to be released from approval of its "program," including releases from essential public services (hospitals, schools, fire and police stations), power plant facilities, energy projects of regional significance (liquified natural gas and crude oil facilities), and biosolids treatment facilities.[166] Despite describing the project as "the entire program of rule amendments, including the currently proposed amendments to Rules 1309.1 and 1315, *and potential future proposed amendments* anticipated to Rule 1309.1," the District only discusses the release of toxic air contaminants from power plants under the current Rule 1309.1 amendments.[167] Even then, the District arbitrarily selects only 10 facilities when far more are known to be allowed to access the Priority Reserve. To the extent that this is a program environmental assessment, it must analyze environmental impacts from the whole of the contemplated action. 2-58

The air quality significance threshold for toxic air contaminants is defined as "maximum incremental cancer risk ≥ 10 in 1 million."[168] The District finds that "several proposed revisions… would serve to reduce exposure to air toxics from EGFs" and, therefore, the "proposed amendments would not expose sensitive receptors to substantial pollutant concentrations."[169] This conclusion is fundamentally flawed for three reasons. *First*, the District fails to analyze the *aggregate* impact of the "program" which includes the amendments to its NSR program and *all* associated polluting facilities. Moreover the District focuses on ten EGF facilities even though eleven are currently known, and EGF's are just of a subsection of all of the facilities which will have access to the Priority Reserve under the new amended program. This means that the impact threshold should be calculated based on the *sum* of all of the projects which will access 1309.1 and 1315's credits. *Second*, the District spends two paragraphs simply reciting the operation of Rules 1401 and 1401.1 without providing a qualitative or quantitative basis for understanding how the program will effect toxic 2-59

[164] *Kings County Farm Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692. *See, also Whitman v. Board of Supervisors* (2d Dist. 1979) 88 Cal.pp.3d 397 ("the courts have favored specificity and use of detail in EIRs").

[165] *Laurel Heights*. 47 Cal.3d 376 (1988).

[166] Draft PEA at 4-11.

[167] *Compare* Draft PEA at 2-11 *with* Draft PEA at 4-11.

[168] NOP/IS at 2-10.

[169] Draft PEA at 4-11.

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air contaminants and their foreseeable impacts. *Third*, the District states that the "proposed amendments are expected to *reduce* the use of high-polluting standby emergency diesel fired electric power generators... by minimizing the probability of power outages in the future."[170] This claim is followed by the blanket statement that, therefore, the rules will "reduce potential to further expose sensitive receptors to substantial pollutants concentrations."[171] This contention is without quantitative support, and provides no basis for comparing the relative impacts between the emissions from the facilities that will access the Priority Reserve under the new amendments (including the 11 EGFs) and the emissions from the standby emergency diesel fired generators, making it impossible to engage effective analysis or provide meaningful comment about the impacts, alternatives, or mitigation of the Rule. 2-59 cont.

Diesel Fired Emissions. Throughout the DPEA, the District repeatedly references the need to reduce reliance on diesel-fired electrical power generation.[172] But the District fails to quantify aggregate emissions from diesel-fired generators, despite the prevalence of available and obtainable data.[173] The lack of data in the DPEA precludes a comparative analysis between the District's proposed rules and the status quo for such impacts as air quality and health, among others. It also precludes an adequate alternatives analysis, providing no basis for comparison between the no project alternative and the proposed project. In other words, the critical omission of relevant diesel-fired generator data renders the EIR inadequate.

The California Energy Commission has taken an inventory of the number of diesel back-up generators in the District's jurisdiction, including such relevant information as: (i) description of the engine powering the generator; (ii) primary engine fuel; (iii) engine manufacturer; (iv) engine model number; (v) generator capacity; and (vi) engine rating.[174] And the District fails to mention—much less analyze—that the U.S. EPA promulgated new source performance standards establishing, for the first time, uniform federal standards for emissions from stationary generator sets.[175] These standards result in reductions of diesel generators emissions but, importantly, these regulations do not prevent state and local authorities from imposing even more restrictive standards based on prevailing local air quality conditions – a feasible alternative that the District failed to explore.[176] The District must provide data and analysis of diesel-fired generators, the expected hours of 2-60

[170] Draft PEA at 4-11 (emphasis added).

[171] DPEA at 4-11.

[172] *See, e.g.*, Draft Program Environmental Assessment (DPEA) at 1-1, 1-4, 4-1 4-8 and 6-6.

[173] *See, e.g.*, California Energy Commission, Inventory of Backup Generators in the State of California, Publication No. 500-01-027 (Dec. 2001), *available at* http://www.energy.ca.gov/pier/final_project_reports/500-01-027.html. The District has previously calculated daily emissions from diesel internal combustion engines for other environmental analyses, but fails to do so here. *See* DPEA at 5-15.

[174] California Energy Commission, Inventory of Backup Generators in the State of California, Publication No. 500-01-027 (Dec. 2001), *available at* http://www.energy.ca.gov/pier/final_project_reports/500-01-027.html.

[175] 71 FR 39154

[176] In fact, fuel standards for diesel-fired generators have the potential to result in significant reductions, and the District has the ability to seek such requirements by virtue of its nonattainment status.

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operation of diesel-fired generators during energy shortages, their total emissions, the expected annual emissions from rolling brown/blackouts, etc.

The explicit purpose of the CEC study is to inform these types of analyses:

> "Having assembled and documented this extensive database of [back-up generator] capacity in the state, the information now exists to allow informed decisions regarding whether and how best to make use of this generation resource to mitigate the number and extent of any future power shortages in the state. Decision makers now have the data needed to support the development of potential [back-up generator] deployment programs to alleviate power shortages, with knowledge of how much capacity can be utilized, where this capacity is located, and what are the air emission characteristics of this capacity." With this knowledge, potential [back-up generator] use programs that minimize air quality impacts can be defined, and the acceptability of these impacts judged."[177]

2-60 cont.

The District fails to conduct this analysis, in spite of its reliance on this argument to justify the project.

VI. CONCLUSION

2-61

In summary, the Draft Program Environmental Assessment hastily devised by staff is not sufficient to meet the requirements of the California Environmental Quality Act in that it fails to meet minimum substantive and procedural requirements of CEQA. The DPEA is so flawed that meaningful review of the program and its impacts are precluded. Accordingly, in accordance with CEQA Guidelines section 15088.5(a)(4) the DPEA must be re-drafted and re-circulated.

Sincerely,

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[177] California Energy Commission, Inventory of Backup Generators in the State of California, Publication No. 500-01-027 (Dec. 2001), p.4, *available at* http://www.energy.ca.gov/pier/final_project_reports/500-01-027.html.

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Exhibit List

Exhibit A:	Verified Petition for Writ of Mandate under the California Environmental Quality Act
Exhibit B:	Petitioner's Memorandum of points & Authorities in Support of Petition for Writ of Mandate ("Opening Brief")
Exhibit C:	Respondent South Coast Air Quality Management's Opposition Brief ("Opposition Brief")
Exhibit D:	Real Parties in Interest's Joint Opposition Brief
Exhibit E:	Petitioners' Reply in Support of Writ of Mandate ("Reply Brief")
Exhibit F:	California Energy Commission, Inventory or Back Up Generators in the State of California, Publication No. 500-01-027 (Dec. 2001)
Exhibit G:	California Energy Commission, 2002-2012 Electricity Outlook Report, Publication No. P700-01-004F (Feb 2002)
Exhibit H:	South Coast Green Repower Project: The Community Alternative (June 2007)
Exhibit I:	California Energy Commission, California Energy Demand 2006-2016: Staff Energy Demand Forecast, Revised September 2005, Publication No. CEC-400-2005-034-SF-ED2 (Sept. 2005)
Exhibit J:	Consortium for Electric Reliability Technology Solutions, California's Electricity Generation and Transmission Interconnection Needs Under Alternative Scenarios, Publication No. 500-03-106 (Nov. 2003)
Exhibit K:	South Coast Air Quality Management District, Staff Report for Proposed Rule 1315 – Federal New Source Review Tracking System (Sept. 2006)
Exhibit L:	South Coast Air Quality Management District, Final Staff Report for Proposed Amended Rule 1302 (Definitions) and Proposed Amended Rule 1309.1 (Priority Reserve) (Sept. 2006)

[As a supplement to the preceding comment letter, Staff received a series of six emails that contained the referenced exhibits. To avoid unnecessary duplication, staff combined these emails into a single comment letter as follows.]

From: Grabiel, Tim [tgrabiel@nrdc.org]
Sent: Friday, June 29, 2007 9:44 AM to 9:46 AM
To: Michael Krause
Cc: Shams Hasan
Subject: Re: Draft PEA for Rule 1309.1 (Exhibit List and Exhibits A-L)

Attached please find the Exhibit List and Exhibits A-L to comments on the draft Program Environmental Assessment for Proposed Amended Rule 1309.1 (Priority Reserve) and Proposed Re-adopted Rule 1315 (Federal New Source Tracking System) submitted by California Communities Against Toxics, Coalition for a Safe Environment, Communities for a Better Environment, and Natural Resources Defense Council.

Exhibits will be forwarded in a series of six electronic communications. If you have any problems opening the attached documents, please do not hesitate to contact me.

Tim Grabiel
Attorney, Environmental Justice Project
Natural Resources Defense Council (NRDC)
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Tel: (310) 434-2300
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COMMENT LETTER NO. 2
CALIFORNIA COMMUNITIES AGAINST TOXICS (CCAT);
COALITION FOR A SAFE ENVIRONMENT (CSE);
COMMUNITIES FOR A BETTER ENVIRONMENT (CBE); AND
NATURAL RESOURCES DEFENSE COUNCIL (NRDC)

Jane Williams (CCAT); Jesse Marquez (CSE);
Bahram Fazeli (CBE); & Tim Grabiel (NRDC)
June 29, 2007

Response 2-1

Consistent with CEQA Guidelines §15088, responses to all comments received on the Draft PEA have been prepared. The referenced materials, including the specific exhibits submitted by Tim Grabiel, have been incorporated into the record for the proposed project. With the exception of Exhibit H, no comments in this comment letter reference any of the other exhibits.

Response 2-2

This comment contains general opinions on the perceived procedural and substantive deficiencies expressed by the commentators on the Draft PEA. More detailed opinions on each of the points contained in this comment are made in subsequent comments on the Draft PEA. The SCAQMD strongly disagrees with the opinion expressed in the comment and asserts the Draft PEA complies with all relevant procedural and substantive requirements of CEQA. More detailed responses to each point raised in this comment have been prepared for each subsequent detailed comment made by the commentators. In the following responses, proposed project and proposed program are used interchangeable and refer to current and future proposed amendments to Rule 1309.1, readoption of Rule 1315, and future proposed amendments to Rule 1302 to add publicly-owned biosolids treatment facility to the definition of essential public service. Known permits that will rely on this rule are listed in Table 2-3 on page 2-6 of the Draft PEA.

Response 2-3

This comment provides a general comment on the perceived statutory and regulatory deficiencies expressed by the commentators on the Draft PEA. More detailed comments on each of the points contained in this comment are made in subsequent comments on the Draft PEA. The SCAQMD strongly disagrees with the opinion expressed in the comment and asserts the Draft PEA complies with all relevant procedural and substantive requirements of CEQA. Further, the Draft PEA provides sufficient detail to allow the public more than an adequate opportunity to review the program, as well as potential direct and indirect impacts from the program. The PEA is not "fundamentally and basically inadequate," but rather provides a thorough analysis of all direct and indirect adverse environmental impacts. Therefore, the SCAQMD strongly disagrees with the opinion that the Draft PEA must be recirculated pursuant to CEQA Guidelines §15088.5(a)(4). More detailed responses to each point raised in this comment

have been prepared for each subsequent detailed comment made by the commentators.

Response 2-4

The commentators state that the District fails to describe the benefits of the project to justify its undertaking. Article 9 of the CEQA Guidelines contains the substantive requirements for EIRs (the Draft PEA is a substitute for a Program EIR, prepared pursuant to CEQA Guidelines §15252(a)). CEQA Guidelines §15121(a) states in part, "An EIR is an information document which will inform public agency decision makers the public generally of the significant environmental effect of a project…" Similarly, CEQA Guidelines §15126.2(a) states in part, "The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project." CEQA Guidelines 15382 states in part, "Significant effect on the environment" means a substantial, or potentially substantial, **adverse** [emphasis added] change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The benefits of a project are more appropriately included in a statement of overriding considerations (CEQA Guidelines §15093). Accordingly a statement of overriding considerations has been prepared as part of the public hearing board agenda materials for the proposed project.

The commentators state that the SCAQMD's support for the stated need for additional electric generating capacity "is a statement by an individual who seems to be associated with a proponent of one of the projects..." The justification for additional energy demand cited in this comment from the Draft PEA was from the California Independent System Operator (ISO). The California ISO is a not-for-profit public-benefit corporation charged with operating the majority of California's high-voltage wholesale power grid. Balancing the demand for electricity with an equal supply of megawatts, the ISO is the impartial link between power plants and the utilities that serve more than 30 million consumers in California. The ISO provides equal access to the grid for all qualified users and strategically plans for the transmission needs of this vital infrastructure. Consequently, the commentators' opinion that the need for additional energy generation capacity was made by a person who seems to be associated with a project seeking access to the priority reserve is in error.

Response 2-5

The information cited from the Draft PEA is based on the last power curtailment or rolling blackout that occurred on May 8, 2001. This blackout was a 400 megawatt power curtailment and the peak daily outage lasted two and one-third hours. For this specific example, the analysis assumed that 40 engines would operate on a peak basis during the emergency situation. This analysis focused on a small subset of emergency diesel electricity generators. For a more extensive or lengthy power outage, as many as 600 backup emergency generators or more could operate, therefore, resulting in the operation of substantially more emergency generators with associated emissions.

Avoiding diesel emissions is not the only purpose of the proposed project. One of the project objectives, as stated on page 2-17 and 2-18 of the Draft PEA, is to facilitate permitting for new power generation to ease potential future power crises. There are many adverse effects of rolling blackouts and brownouts during a power crisis, besides the operation of diesel generators. For example, business and industry may be disrupted; health-related equipment may be interfered with, etc. Avoiding power crises is a legitimate project objective. As discussed in more detail in the following responses, sources responsible for electricity planning more power and, in particular more power from conventional sources, is needed.

Further, another more important parameter to consider is the emissions generated on a per MW basis from diesel generators compared to natural gas-fired EGFs that would seek access to the Priority Reserve under PAR 1309.1. Table 2-1 shows PM10 and NOx emission requirements in PAR 1309.1 compared to the emission limits in effect at the time existing emergency diesel generators were permitted. As can be seen in Table 2-1, PM10 emissions from existing emergency diesel generators are approximately two orders of magnitude greater than the PM10 emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to. Similarly, NOx emissions from existing emergency diesel generators are approximately three orders of magnitude greater than the NOx emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to.

Table 2-1

PAR 1309.1 Emission Requirements Per MW-hr		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
Zone 1	NG Only & < 0.06 lb./MW-hr	0.08 lb./MW-hr
Zone 2; EJA or Zone 3 <=500 MW	NG Only & < 0.06 lb./MW-hr	0.08 lb./MW-hr
EJA or Zone 3 > 500 MW	NG Only & < 0.03 lb./MW-hr	0.05 lb./MW-hr
Emergency Diesel Generators (Tier 1) BACT 1996-2002 (g/hp-hr)		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
<750 hp (1996 - 2002)	1.16 lb./MW-hr	21.0 lb./MW-hr
>=750 hp (1996 - 2006)	1.16 lb./MW-hr	21.0 lb./MW-hr
Emergency Diesel Generators – Pre-1996 (g/hp-hr)		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
>100 hp (AP-42)	3.04 lb./MW-hr	42.48 lb./MW-hr

[a] Lb/MW-Hr (33.5% engine efficiency, 97% generator efficiency)

According to SCAQMD records, there are a total of 9,779 emergency engines. Of these, there are approximately 4,780 were permits were filed between 1996 and 2002 and approximately 2,740 permits were filed before 1996. The remainder, 2059 were filed after 2002. These numbers apply to all emergency diesel generators, including those that are used for purposes other than generating electricity. Emission factors, however, apply to both electricity generating and non-electricity generating engines.

While the disparity in criteria pollutant emissions between diesel-powered generators and modern natural gas-fired EGFs is astounding, what is not reflected in this comparison is the fact that diesel generators emit diesel particulate matter, which is a potent carcinogen. Such units would subject residents residing in their immediate vicinity to undue cancer risks that are orders of magnitude greater than for natural gas fired EGFs accessing the Priority Reserve (see response #2-59).

It is remarkable that the commentators could state, "It is unclear that such a thing [rolling blackouts and brownouts] has ever happened before…" Table 2-2 shows a brief summary of some of the major rolling blackout events that occurred during California's energy crisis in the years 2000 – 2001.

Table 2-2

Date	Activity
June 14, 2000	Blackouts affect 97,000 customers in San Francisco Bay area during a heat wave.
January 17-18, 2001	Blackouts affect several hundred thousand customers.
January 17, 2001	Governor Davis declares a state of emergency.
March 19-20, 2001	Blackouts affect 1.5 million customers.
April 2001	Pacific Gas & Electric Co. files for bankruptcy.
May 7-8, 2001	Blackouts affect upwards of 167,000 customers.

Source: http://en.wikipedia.org/wiki/California_electricity_crisis

The commentators' state further that the possibility of blackouts in the future is remote, but no information or other data are provided to support this statement. On August 15, 2006, the California Public Utilities Commission (CPUC) issued an Assigned Commissioner's Ruling (ACR) addressing electric reliability needs in southern California for summer 2007. Commissioner Michael Peevey states:

> "In light of recent events, I find it is necessary to take additional action. The heat storm that hit California in July 2006, and the surprising growth in electricity demand throughout the state that become evident even before the heat storm, have exposed certain vulnerabilities in the electric generation and transmission infrastructure that require immediate attention to assure reliability in 2007, **particularly in parts of southern California** [emphasis added]."

Commissioner Peevey states further that there is a need for "…an additional 300 megawatts (MW) of program capacity for the summer 2007 season.

In its 2005 Integrated Energy Policy Report[1], CEC states:

> "Electricity supplies are not keeping up with demand. Construction of new power plants is not proceeding as planned, and the flow of new permit applications has noticeably decreased. Today California has more than 7,000 MW of permitted power plants that have not moved into construction. Adding to the problem, investor-owned utility (IOU) procurement focuses primarily upon near- and mid-term contracts, which perpetuates reliance upon the existing fleet of aging power plants."

Consumption is forecast to grow between 1.2 and 1.5 percent annually, from 270,927 GW-hrs in 2004 to between 310,716 and 323,372 GW-hrs by the end of the forecast period in 2016... The highest consumption growth is forecast for the Sacramento Municipal Utility District (SMUD) control area and **Southern California** portions of the CA ISO control area, reflecting strong population growth in those areas. By 2016, California's utilities will need to procure approximately 24,000 MW of peak resources to replace expiring contracts and retiring power plants and meet peak demand growth.

Further, according to the CEC[2], energy and peak demand growth rates hover around two percent per year in California. Using average weather (once-in-two-year temperature levels) as the norm for making a forecast, about 1,000 megawatts of new generation capacity, or demand reduction effects, must be added or occur, relatively, each year just to stay even with demand growth rates. Power plants were not being built in the 1990s to keep pace with the forecast demand. As much as another 1,600 megawatts (3.5 percent) in demand would occur in a one-year-in-five hot temperature occurrence and under extreme conditions demand can increase by roughly 4,000 megawatts above what would be expected under normal weather conditions… A 5,000 megawatts (almost 10 percent) increase with a one-year-in-forty temperature event such as experienced in the summer of 1998.

The aforementioned information demonstrates the need for additional energy supplies in California, especially in southern California.

Response 2-6

In this comment the commentators cite CEQA Guidelines §§15124(b) and (c) regarding CEQA requirements for a project description. (In footnote 7 the commentators incorrectly attribute the sections cited to the Public Resources Code rather than the implementing guidelines, which are part of the California Code of Regulations.) The SCAQMD is aware of the CEQA Guidelines requirements relative to the project description and asserts that the PEA for the proposed

[1] California Energy Commission. 2005. Integrated Energy Policy Report. http://www.energy.ca.gov/2005publications/CEC-100-2005-007/CEC-100-2005-007-CMF.PDF

[2] Source: http://www.energy.ca.gov/electricity/commission_demand_forecast.html

project complies with all relevant CEQA requirements relating to the project description.

The commentators then cite the relevant text from the document that details precisely what the program consists, but then states that the SCAQMD "fails to provide the public or other decision makers with an accurate, stable, and finite description of the program." The SCAQMD strongly disagrees with the opinion expressed in this comment. The Draft PEA on pages 2-11 through 2-11 provides a six-page description of what the program entails, as admitted by the commentators in the comment. The project description precisely states that the program includes amending Rule 1309.1 to allow EGFs access to the Priority Reserve, as well as summarizing some of the other primary components of the amendments. The PEA also describes potential future amendments to Rule 1309.1 currently under consideration to allow EPRS facilities access to the Priority Reserve and potential future amendments to add publicly-owned biosolids treatment facility to the definition of essential public service in Rule 1302. Further, the PEA states that the program evaluated in the PEA also consists of readopting Rule 1315. Finally, the actual text of PAR 1309.1 and PRR 1315 are included in Appendix A of the PEA. Based on the preceding information, it is unclear how much more "accurate, stable, and finite" the project description can be.

Response 2-7

The commentators also ask in this comment, "If the District is amending the New Source Review Program?" Further, the commentators state that SCAQMD fails to describe how the new program complies with SB 288. First, the program evaluated in the PEA is described in detail in Chapter 2 of the PEA and consists of current and future amendments specifically to Rules 1309.1 and 1302 and readoption of Rule 1315. No other amendments to any other provisions of the SCAQMD's New Source Review Program, e.g., BACT requirements, offset requirements, modeling, etc., are currently under consideration.

SB 288, California Health and Safety Code (HSC) §§42500 – 42507 states in part, "On December 31, 2002, the U.S. E.P.A., under the direction of the President of the United States, promulgated regulations that substantially weaken the basic federal new source review program (67 Fed.Reg. 80186-80289 (Dec. 31, 2002))." (§42500z(e)). Further, §42504(a) states, "No air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002."

Following the adoption of Rule 1315 and the amendment of Rule 1309.1 in September 2006, various groups filed a petition with CARB under SB 288. Recently, CARB's legal counsel ruled as a matter of law that Rule 1315 and amended Rule 1309.1 did not violate SB 288. The proposed re-adoption of Rule 1315 will not change existing Rule 1315 at all. The currently proposed amendments to Rule 1309.1 are more stringent than the version adopted in September 2006, which has already been found to comply with SB 288. Therefore, proposed re-adopted Rule 1315 and amended Rule 1309.1 do not violate SB 288.

Response 2-8

The commentators ask in this comment if the program consists of amendments to Rule 1309.1 and add additional conditions for EGFs to access the Priority Reserve? The entire program discussed in the PEA includes this amendment as well as potential future amendments to allow EPRSs and biosolids treatment facilities access to the Priority Reserve. See also Chapter 2 of the PEA and response #2-6. The commentators then ask how PRR 1315 fits into the program. These same commentators submitted comments prior to adoption of Rule 1315 in September 2006, stating that the SCAQMD was piecemealing the CEQA analysis by not addressing the environmental impacts of PAR 1309.1, 1302 and 1315 together. To specifically address previous comments regarding piecemealing of amendments to Rule 1309.1 and adoption of Rule 1315, the SCAQMD evaluated Rule 1315 as part of the program evaluated in the PEA for the proposed project. Rule 1315 does not change the exemptions contained in Rule 1304.

The PEA specifically states that the currently proposed amendments to Rule 1309.1 would allow temporary access to the Priority Reserve for EGFs. Further, potential future amendments considered in the PEA would allow temporary access to the Priority Reserve for EPRSs. Finally, other potential future amendments considered in the PEA would add publicly-owned biosolids treatment facility to the definition of essential public service, which means they would have permanent access to the Priority Reserve. No other types of facilities are currently under consideration for access to the Priority Reserve.

In footnote #10 the commentators express the opinion, "…conditions to access the Priority Reserve is [sic] more appropriately a mitigation measure, not part of the program or project." The commentators do not provide any rationale why the conditions to access the Priority Reserve are more appropriate as mitigation measures rather than requirements of PAR 1309.1. The SCAQMD disagrees with the opinion expressed in this comment as the conditions represent requirements that must be complied with before the operator of an affected facility can access credits in the Priority Reserve, are included in the proposed amendments and are part of the project. Further, consistent with CEQA Guidelines §15126.49(a)(2), which states, "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, **regulation** [emphasis added], or project design."

Response 2-9

This comment asks if the purpose of the program to "increase the availability of ERCs for EGFs in the district?" This is the primary purpose of the currently proposed amendments to Rule 1309.1, which make up part of the program analyzed in the PEA. PAR 1309.1 would allow EGFs to access the Priority Reserve, which means that they would have access to existing credits that are not currently available to them. See Chapter 2 and response 2-6 for additional information on the description of the program. The purpose of PRR 1315, as stated in the rule, is to specify procedures agreed to by the SCAQMD and the EPA under which the SCAQMD can demonstrate its offset requirements are

equivalent to the federal nonattainment NSR offset requirements. As stated in response #2-8, Rule 1315 is addressed as part of the program specifically in response to previous comments submitted by these commentators that the SCAQMD was piecemealing the CEQA analysis by not addressing the environmental impacts of PAR 1309.1, 1302 and 1315 together. The SCAQMD continues to assert that PAR 1309.1 and PRR 1315 do not rely on one another and, therefore, are not related. See response #2-7 with regard to how the proposed project affects the SCAQMD's New Source Review program.

Response 2-10

The SCAQMD strongly disagrees with the opinion expressed in this comment that the Draft PEA lacks focus, etc. The Draft PEA complies with all relevant CEQA requirements and provides the public with a robust and detailed project description. See response #2-6. It is assumed that the reference to options refers to project alternatives. Project alternatives are described in Chapter 6 of the PEA. Impacts and mitigation measures are evaluated and described in Chapters 4 and 5 of the PEA. As already stated in response #2-3, the SCAQMD strongly disagrees with the opinion that the Draft PEA must be recirculated pursuant to CEQA Guidelines §15088.5(a)(4).

Response 2-11

The commentators state that a viable program could be, "To ensure that sufficient clean energy resources are available to meet the needs of the residents, visitors, and businesses of the South Coast Air Basin." First, by this statement the commentators appear to agree that existing energy supplies in the Basin are not sufficient to meet increasing future demand. Second, the current and future amendments to Rule 1309.1 are consistent with this statement since it is expected the any EGFs that access the Priority Reserve and constructed and operated in the future will be substantially cleaner than existing sources of electricity especially, emergency generators.

Response 2-12

The commentators express the opinions in this comment that the SCAQMD fails to provide a clear project description and that the SCAQMD fails "to provide adequate project objectives. The SCAQMD strongly disagrees with the opinions expressed in this comment. See response #2-6 regarding the project description. The project objectives provided for both PAR 1309.1 and PRR 1315 are consistent with CEQA Guidelines §15124(b), which states, in part, "The statement of objectives should include the underlying purpose of the project." In particular, the "series of justifications for the Rules" provide the underlying purpose of the project, as indicated by the commentators.

Response 2-13

This comment cites in part CEQA Guidelines §15121. As previously indicated, the SCAQMD is aware of the CEQA requirements for preparing an EIR. The PEA is a substitute document for a program EIR and complies with all relevant requirements. In this comment the commentators also express the opinion that the proposed projects' impacts were not adequately analyzed and significant impacts were not mitigated nor were alternatives adopted. The SCAQMD strongly

disagrees with the opinions expressed in this comment. Impacts from the proposed project and feasible mitigation measures were analyzed in Chapters 4 and 5 of the PEA.

The commentators also state that alternatives were not adopted. The primary requirements regarding alternatives are in CEQA Guidelines §15126.6, which states in part, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553 and Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376)." The PEA complies with all relevant requirements pertaining to project alternatives. Alternatives and the relative merits of the alternatives are discussed in Chapter 6 of the PEA.

Response 2-14

In this comment the commentators express the opinions that the SCAQMD fails "to address the true scope of its environmental impacts," refuses "to analyze the impacts of Rule 1315, and fails "to analyze the entire proposed program." The SCAQMD strongly disagrees with the opinions expressed in this comment. First, it is unclear what is meant by "failure to address the true scope of environmental impacts. A comprehensive analysis of the direct impacts resulting from the current and future proposed amendments to 1309.1 is included in Chapter 4 of the PEA. These direct impacts are the use of existing credits in the Priority Reserve by facilities that would not otherwise have access to these existing credits and are evaluated in Chapter 4 of the PEA. Indirect impacts from the siting, construction, and operation of facilities that access the Priority Reserve that would not otherwise have access to the existing credits are evaluated in Chapter 5 of the PEA. The SCAQMD continues to assert that PRR 1315 is not a project because it codifies existing administrative procedures regarding tracking credits. However, the SCAQMD did not refuse to analyze impacts of Rule 1315 in response to comments submitted by the commentators prior to adoption of Rule 1315 in September 2006; the SCAQMD evaluated PRR 1315 as part of the program. See also response #2-8. Although the SCAQMD asserts that PRR 1315 is not a project, nor does it create any significant adverse impacts, the SCAQMD has conservatively assumed that PRR 1315 could create significant adverse air quality impacts. This assumption is specifically in response to assertions made by the environmental groups in the lawsuit challenging the adoption of Rule 1315. The analysis of PRR 1315 is included in Chapter 4 of the PEA. Finally, the SCAQMD analyzed the impacts of the entire program, including EPRSs and biosolids facilities.

Response 2-15

In this comment, the commentators express the opinion that treating the impacts of the rules as separate from each other and separate from the impacts of constructing and operating EGFs circumvents the requirements under CEQA. First, direct impacts from implementing PAR 1309.1 and PRR 1315 are addressed in Chapter 4 of the PEA. The evaluation of the direct air quality impacts of 1309.1 is discussed separately from the direct air quality impact from PRR 1315 in Chapter 4 of the PEA because these are different types of impacts. Such separate discussion, however, did not minimize the environmental impacts of the rules. SCAQMD concluded that the direct impacts of both PAR 1309.1 and PRR 1315 were potentially significant for VOC, NOx, SOx, CO and PM10 and SCAQMD did not use the separate discussion of each rule as a way to avoid concluding that impacts were significant.

The SCAQMD typically discusses construction impacts separately from operational impacts because they occur at different times and do not have an additive effect. The SCAQMD considers the use of additional credits as the "direct" impact of PAR 1309.1, and other impacts of construction and operation of EGFs to be "indirect" impacts since they depend on other factors besides the amendment of PAR 1309.1. These two types of impacts do not have additive effects, so no impacts are obscured or minimized by considering direct impacts separately from indirect impacts, and this treatment does not "circumvent" CEQA.

Response 2-16

This comment cites out of context a statement from the summary in Chapter 1 of the exemption from CEQA for Rule 1315 that was previously adopted in September 2006. As indicated in response #2-14, the SCAQMD continues to assert that PRR 1315 is not a project, nor does it create any significant adverse impacts, however, the SCAQMD has conservatively assumed that PRR 1315 could create significant adverse air quality impacts (see discussion on pages 4-15 through 4-17 of the Draft PEA). This conclusion is specifically in response to assertions made by the environmental groups in the lawsuit challenging the adoption of Rule 1315. The analysis of PRR 1315 is included in Chapter 4 of the PEA.

Response 2-17

In this comment the commentators express the opinions that PRR 1315 creates and redistributes emission credits (as summarized in Table 2), makes significant changes to SCAQMD policy, and disrupts the previous balance struck under the SCAQMD's NSR program. The commentators assert that this includes weakening the NSR offset requirements by retroactively and prospectively changing the rules governing the generation and distribution of credits for SCAQMD's internal accounts in two key ways: 1) by changing the NSR offset requirements; and 2) by turning previous air quality gains into pollution credits for use as offsets. The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraph.

PRR 1315 neither establishes a retroactive policy change nor makes any changes to offset requirements. PRR 1315 merely formalizes an accounting system that establishes federally directed rules under which credits are federally recognized as surplus. Under these rules, certain credits will not be federally recognized while other credits will be. Some of those credits include credits not previously tracked. Those previously untracked credit sources could have been tracked but were not because SCAQMD's accounting demonstrated programmatic equivalency between federal and local NSR programs even without those sources of credits. This constitutes a change in refining the tracking procedure by staff, not a change to SCAQMD policy. Specifically, credits that could have been tracked but previously were not include the first three of the five credit sources listed in Table 2 of comment # 2-17 (Minor Source Orphan Shutdowns and Reductions, Minor Source Emissions Offsets, and State and Federal Offset Ratio Differential). The last two of the five credit sources listed in Table 2 (Payback of Offset Debt and Emissions Reductions from BACT Discount) are, likewise, not new sources of credits, and, furthermore, were in fact previously tracked. Emission Reductions from BACT Discount, for example, are completely eliminated excepted in extremely rare instances with case-by-case showings by SCAQMD that the specific BACT Discount is surplus and U.S EPA's approval of such showings. Moreover, Table 2 of this comment considers only credits available for use in tracking offset equivalency. It does not consider the <u>reductions</u> in credits resulting from the new tracking system. This is explained in the discussion on pages 4-16 and 4-17 of the Draft PEA, which indicates that the availability of offsets was reduced for all pollutants in 1990 for all pollutants except for NOx in 2002. Nevertheless, the SCAQMD determined to take the conservative approach and determine that PRR 1315 has a significant adverse direct air quality impact for VOC, NOx, SOx, CO and PM10 (page 4-17 of the Draft PEA). As can be seen in Table 4-3 (page 4-16 of the Draft PEA), there is considerable variability from year to year in the amount of potential credits that could be used as a result of activity in a given year, but for all pollutants, there are some years where the increase exceeds the SCAQMD's mass daily regional significance thresholds and, therefore, has been deemed a significant adverse direct air quality impact (page 4-17 of the Draft PEA).

Response 2-18

In this comment the commentators express the opinion that, prompted by EPA concern that the SCAQMD was distributing invalid credits, the SCAQMD reviewed all pre-1990 credits, but was unable to demonstrate that any of its pre-1990 credits were valid, resulting in the elimination of all pre-1990 credits and causing significant reductions to its internal ERC accounts. The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraph.

PRR 1315 grew out of EPA's request to SCAQMD to formalize its NSR tracking system by rule. Following discussions with U.S. EPA regarding their concerns about the availability of records for pre-1990 credits based on their existing policy and a review of pre-1990 credits, SCAQMD voluntarily eliminated a portion, not all, of its pre-1990 beginning balance. Specifically, the reduction from the pre-1990 beginning balance is 58 percent for VOC, 7 percent for NOx, 56 percent for

SOx, 76 percent for CO, and 92 percent for PM10, with an overall reduction of 58 percent. Furthermore, the reason for eliminating a portion of the credits was not because they were invalid credits, but rather since SCAQMD did not presently have all of the records it decided to volunteer to eliminate that portion. However, this does not mean these credits were "invalid." Nevertheless, these changes resulted in substantial net reductions in SCAQMD's balance. The SCAQMD asserts that these credits were, in fact, valid because they were validated after the 1990 amendments to the NSR rules (Regulation XIII).

Response 2-19

In this comment the commentators express the opinion that he new credit generation provisions of PRR 1315 convert "previous clean air gains" into "pollution rights" and constitute a change in SCAQMD policy, not accounting. The crediting of "the 'surplus' 0.2 offset ratio differential" from ERC use (the difference between the local 1.2-to-1.0 offset ratio for CO, PM10, and SOx ERC use and the federally-required 1.0-to-1.0 offset ratio for these contaminants) is inappropriate because "the 0.2 offset ratio differential has already been credited to the District's [State Implementation Plan (SIP)]-required air quality advancements and…is no longer surplus." The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraph.

PRR1315 does not make any changes to any provisions of Rule 1309.1 – Priority Reserve except that it includes a mechanism to discontinue funding of the Priority Reserve in the event that there is an actual or projected shortfall in SCAQMD's Rule 1315 offset accounts. Furthermore, it does not change the Rule 1303 – Requirements, Rule 1304 – Exemptions, or Rule 1309.2 – Offset Budget in any way, although it does include an option for the Executive Officer to propose amendments to Rule 1304, Rule 1309.1, and/or Rule 1309.2 to eliminate certain offset exemptions or certain sources' eligibility to receive offsets from the Offset Budget or Priority Reserve if there is an actual shortfall. Therefore, PRR 1315 does not change the requirements applicable to facilities subject to NSR nor the compliance options available to them except to potentially reduce the availability of exemptions and/or compliance options. PRR 1315 does recognize that certain types of previously-unused credits, including the "0.2 offset ratio differential," are federally surplus for purposes of demonstrating programmatic equivalency between federal and local NSR requirements. However, PRR 1315 does not change the requirements or obligations of permit applicants or permit holders. Furthermore, these types of credits were always available to the Executive Officer for purposes of demonstrating equivalency, but simply were not tracked and quantified simply because the account balances that then existed were high enough that doing so was unnecessary and would not have been the best use of staff time. Now that other provisions of PRR 1315 result in the elimination of significant portions of the previous account balances, it has become appropriate for staff to track and quantify such sources of credits. There was no agency policy to freeze the universe of federally surplus credits for purposes of demonstrating equivalency. SCAQMD staff is now doing additional work to identify other sources of federally surplus audits for equivalency purposes. PRR 1315 makes both the provisions which eliminate previously-existing credits and the provisions specifying the "new" (previously-unused but always available)

sources of credits retroactive. The net result is significant reductions in the offset account balances (42 percent overall at the end of July 2002, for example) and arguably an enhanced protection of air quality. As explained on page 4-16 of the Draft PEA, the changes in tracking procedures resulted in a net reduction in balances for pollutants in 1990 and for all pollutants except NOx in 2002, Also as shown in Table 4-3 in the PEA, annual changes in credit availability vary from year to year. Nevertheless, SCAQMD deemed the direct air quality impact of PRR 1315 significant for all tracked pollutants (page 4-17 of the Draft PEA). With respect to SB 288, CARB's legal counsel has recently concluded that Rule 1315, as adopted in September 2006, does not violate SB 288. Since PRR 1315, analyzed in the PEA, is identical, it also does not violate SB 288. Furthermore, no credit has been taken in the SIP for any of the so-called "new" sources of credits to SCAQMD's offset accounts and EPA has also agreed with SCAQMD in our discussions that such credits are indeed surplus.

Response 2-20

In this comment the commentators express the opinion that by debiting Priority Reserve use from SCAQMD's CO, PM10, and SOx offset accounts at 1.0-to-1.0 rather than at 1.2-to-1.0 pursuant to PRR 1315 results in recapturing the 0.2 portion of Priority Reserve offsets for these contaminants and redepositing them into the Priority Reserve for redistribution again and again, ad infinitum. The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraphs.

The purpose of the federal NSR tracking system and PRR 1315 is to demonstrate programmatic equivalency between the federal and local NSR programs[3]. In doing so, the tracking system formalized in PRR 1315 accounts for the differences in offset requirements between the two programs as a series of credits to and debits from SCAQMD's offset accounts established specifically for this purpose. Therefore, PRR 1315 specifies particular permit actions which result in debits from SCAQMD's offset accounts and the federal offset ratios applicable to these debits as well as the various emission reductions which result in credits to SCAQMD's offset accounts and their quantification. In particular, for the case of debits, it states that "the applicable offset ratios for offsets tracked by the Executive Officer…is 1.2-to-1.0 for extreme nonattainment air contaminants and their precursors and is 1.0-to-1.0 for all other nonattainment air contaminants" because these are the federally-required offset ratios applicable to emission increases at major sources and, therefore, are precisely the appropriate offset ratios for demonstrating equivalency between the two programs.

The funding of offsets to the Priority Reserve and the use of those Priority Reserve offsets is governed by Rule 1309.1 and is separate from the equivalency determinations which are the subject of PRR 1315. The commenter mistakenly suggests that, in the case of a 12-pound of PM10 per day disbursement from the Priority Reserve to an EGF, 2 pounds per day would be returned to the Priority

[3] SCAQMD's NSR program is deemed equivalent to the federal NSR program in aggregate if the overall net offsets it provides are at least equal to those which would be required by the federal program for each nonattainment contaminant.

Reserve. This is not correct. The balance in the Priority Reserve would be reduced by 12 (not 10) pounds per day in this scenario. (This is true regardless of the facility's status as a federal major or minor source.) As a result, there will be 12 pounds less available for potential use in the Priority Reserve. However, for purposes of demonstrating equivalency to federal NSR requirements, the accounting is different. That is because under federal NSR requirements, the SCAQMD's requirements are more stringent in some areas but less stringent in others, thus, creating the need to demonstrate equivalency.

Using the same hypothetical, if the hypothetical EGF is a minor source, it is exempt from federal NSR requirements and the use of the Priority Reserve is not federally required and will not be debited by PRR 1315 because federal rules require only a 10-pound debit due a required 1.0-to-1.0 offset ratio. On the other hand, if it is a major source, then the use of the Priority Reserve offsets will result in a debit of 10 pounds per day from SCAQMD's PM10 offset account pursuant to PRR 1315. Either way, the entire 12 pounds of PM10 per day have been debited from the Priority Reserve and are no longer available to sources that have access to the Priority Reserve. The same mistaken understanding is reflected in the commentators' analysis of Table 2-4: 5,996 pounds of CO, 5,303 pounds of PM10, and 437 pounds of SOx per day will be deducted from Priority Reserve assuming permits are actually issued consistent with the emissions estimated in that table. There will be no "recapturing and regenerating" of 999 pounds of CO, 884 pounds of PM10, or 73 pounds of SOx per day to be "placed back in the Priority Reserve for distribution again" as the commenter incorrectly asserts. The Priority Reserve and SCAQMD's federal offset accounts as established by PRR 1315 are separate and distinct entities even though adoption of PRR1315 has added some additional safeguards to ensure adequate credits are available in SCAQMD's offset accounts.

The commentators' claim that the SCAQMD provided "no environmental analysis" for the asserted impacts of PRR 1315 is flatly wrong. These potential impacts, including the impacts of "recapturing" offsets in excess of 1-to-1, are thoroughly analyzed in Chapter 4, pages 4-14 through 4-17 of the PEA. Specifically, Table 4-3 includes the difference between the prior accounting system and PRR 1315 for prior years and includes the "recapture" of offsets in excess of 1-to-1. SCAQMD assumed on page 4-17 that PRR 1315 has a potentially significant impact on VOC, NOx, SOx, CO and PM10.

Response 2-21

In this comment the commentators express the opinion that PRR 1315 retroactively collects "16-year-old air quality benefits for use today" and shifts SCAQMD "from an existing NSR program that advances air quality goals by applying the benefit of minor source shutdowns to air quality improvements, to a practice of foregoing those benefits." The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraphs.

The claim that PRR 1315 seeks to use 16-year-old emission reductions for current offsets is inaccurate and misleading; the proposed readopted rule formalizes an accounting which uses the oldest credits first and generally uses credits in or near

the timeframe in which they are generated. In fact, it includes elements which reduce the value of unused credits over time:

- PRR 1315(c)(1) specifies that the portion of pre-1990 credits ("initial account balances") that remain unused at the end of calendar year 2005 shall be discarded unused; and
- PRR 1315(c)(4) specifies that all credits generated from orphan shutdowns or orphan reductions "shall be discounted by the Executive Officer to ensure that they remain surplus at the time of use" (this requirement is not necessary for credits deriving from ERCs because such credits are discounted to local BACT—equivalent to federal LAER—at the time of generation, which is a federally-approved surrogate for a surplus at the time of use discount).

Furthermore, PRR does not establish "a practice of foregoing" the benefits of minor source shutdowns, it simply includes consideration of those benefits in demonstrating programmatic equivalency between federal and local NSR requirements. Nevertheless, the net effect of using minor source orphan shutdowns is included in the 1990 and 2002 balances discounted as described on page 4-16 of the Draft PEA (net reduction in 1990 and net reduction for all pollutants tracked except NOx in 2002). These effects are also shown in Table 4-3 on page 4-16 of the Draft PEA. As noted above, the SCAQMD conservatively concludes that the direct air quality impacts exceed the regional significance thresholds for all tracked pollutants.

Response 2-22

In this comment the commentators express the opinion that the SCAQMD has failed to "recognize these types of impacts [detailed in the following paragraphs], has not provided any mitigation measures to reduce their impacts." The SCAQMD strongly disagrees with the opinions expressed in this comment as indicated in the following paragraphs.

With regard to mitigation measures, refer to responses #2-10 and #2-30 #2-42, and #2-45.

With regard to the opinion that PRR 1315 will "expand the universe of pollution credits," as stated in response #2-14, PRR 1315 is not a credit generating rule. Moreover, the direct air quality impacts of PRR 1315 are discussed on pages 4-14 through 4-17 of the Draft PEA. Since it is wholly unknown what facilities (other than PAR 1309.1 facilities) will be included in the equivalency account under PRR 1315, it is impossible to analyze indirect impacts of PRR1315. Impacts of publicly-owned biosolids treatment facilities are discussed in Chapter 4 (direct air quality impacts) and Chapter 5 (indirect impacts).

In this comment the commentators express the opinion that the PEA does not "analyze the effects on process of existing pollution credits" or "the chilling effect on businesses" because of the influx of credits reducing ERC demand and price… and the growth-inducing impacts thereof," etc. Costs and economic effects of the program are not topics required to be analyzed under CEQA. CEQA Guidelines §15131(a) states, "Economic or social effects of a project shall not be treated as

significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes." CEQA Guidelines §15131(b) states further, "Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. It is too speculative to determine the impacts of making offsets available to EGFs from the Priority Reserve on future third-party market ERC prices and supply. EGFs have to perform a due diligence effort to obtain credits from the third-party market prior to accessing the Priority Reserve. The proposed amendments limit the access to the Priority Reserve to EGFs only. The Priority Reserve is run separately from the third-party market. It is unlikely the setting of the Priority Reserve would affect the third-party market as pricing, demand, and supply in both markets differ significantly. Consequently, the opinion expressed above by the commentators are mere speculation and need be addressed further (CEQA Guidelines §15145) here or in the PEA.

With regard to Rule 1304- exempt facilities, as noted in response #2-8, Rule 1315 does not change the exemptions contained in Rule 1304. Further, as noted in response #2-37, PAR 1309.1 does not include proposals to allow 1304-exempt facilities access to the Priority Reserve. Rule 1304 exempts specified facilities from modeling and offset requirements. As a result, facilities specified in Rule 1304 do not need access to the Priority Reserve. The proposed project does not change or amend Rule 1304 in any way. To the extent the commentators are referring to the fact that Rule 1304-exempt facilities are included in the NSR tracking rule, Rule 1315, any impacts are included in the analysis of impacts for PRR 1315. Since it is unknown what facilities will use Rule 1304 exemptions in the future, it is impossible to analyze indirect impacts of such facilities.

Rule 1309.2 was adopted in 2002 and allows the SCAQMD to create an offset bank to be accessible to facilities that are not eligible for exemptions under Rule 1304 or credits under Rule 1309.1. The bank may only be created if U.S. EPA approves the rule. U.S. EPA has not approved the rule and it is unknown whether or when it will. Rule 1309.2 is not being changed in any way. The SCAQMD assumes the commentators are contending that the adoption of PRR 1315 makes approval of Rule 1309.2 more likely. Even if Rule 1309.2 is approved, any credits obtained by facilities under that rule will be tracked and an equivalency showing made under PRR 1315. Thus, any direct impacts (increased emissions) are already included in the analysis of impacts for PRR 1315. The SCAQMD presented the range of potential increases of emissions in Table 4-3 on page 4-16 of the Draft PEA. It is unknown what, if any, facilities would access Rule 1309.2 if it is ever approved. Therefore, it is impossible to analyze indirect impacts from such facilities. It is not clear what is meant by "the disruption of the previous NSR balance." As noted in the discussion of PRR 1315, the "previous NSR balance" is reduced for all pollutants except NOx under PRR 1315. The analysis recognized (page 4-15 of the Draft PEA) that NOx was increased and identified its impacts as significant.

With regard to the comment on the effect of PRR on the offset ratio, refer to responses #2-19 and #2-20.

With regard to the comment on the SCAQMD and state NSR programs, refer to response #2-7.

Finally, the opinion expressed in this comment that the SCAQMD failed to analyze Rule 1315 alone compels the District to re-draft and recirculate the DPEA" is incorrect as indicated in response #2-20. Further, as indicated in responses #2-3 and #2-10, the SCAQMD strongly disagrees with the opinion that the Draft PEA must be recirculated pursuant to CEQA Guidelines §15088.5(a)(4).

Response 2-23

This comment expresses the opinion that the proposed project will create significant adverse aesthetics impacts in the Basin and that the SCAQMD must analyze the aesthetics impacts of the facilities, where the facilities will be sited and the impacts for public review and comment. The location of the known facilities expected to access the Priority Reserve are included in Tables 2-3, 2-5, and 2-6. Potential indirect aesthetics impacts in the available documents for these facilities are described in Chapter 5 and Appendix D of the PEA. As indicated in the PEA, With the exception of the Cabrillo Port Project, construction and operation impacts that could affect aesthetics resources were concluded to be less than significant or could be mitigated to less than significant. Construction and operation impacts to aesthetics resources were concluded to be significant for the Cabrillo Port Project, but were not evaluated in the CEQA document prepared by the lead agency for the Riverside Energy Project.

The commentators also claim that the proposed project will increase smog (ozone) and haze, causing aesthetic impacts. Due to the complex mixture of sources in the Basin and the impacts of pollutant transport, it is extremely difficult to calculate the amount and location of ozone that will result from emissions from an affected facility obtaining access to credits under PAR 1309.1. Previous modeling analyses have failed to show a substantial impact to regional ozone formation from a single emissions source.

PM10 emissions (99 percent of PM10 from stationary combustion sources are considered to be PM2.5[4]) are estimated to be 198 pounds per day for EPRSs (Table 2-6 on page 2-10 of the Draft PEA) and 4,919 pounds per day for in-district EGFs (Table 2-3 on page 2-6 of the Draft PEA), for a total of 4,617 pounds per day. While these emissions amount to about one percent of the Basin's total, they do not all occur in the same location. Furthermore, PM10 is one of four major emissions that lead to visibility reduction. Affected facilities are not projected to increase regional emissions of SOx, or VOCs, which are major contributors to particulate smog and haze. If the visibility reduction was assumed to result solely from PM10, then the impact would be nominal. Thus, it would be speculative to analyze any impact on aesthetics resulting from haze.

[4] Final –Methodology to Calculate Particulate Matter (PM) 2.5 and PM 2.5 Significance Thresholds (SCAQMD, 2006; http://www.aqmd.gov/ceqa/handbook/PM2_5/finalmeth.doc.

Response 2-24

The analysis of health effects in Chapter 5 uses the Vernon facility because it is the largest of the EGFs currently identified that would likely be eligible to access the Priority Reserve under PAR 1309.1. This means that health effects from all other facilities would be less than the adult mortality figure cited from the PEA. As indicated in the PEA, there are 11 power plants that are proposed to be constructed utilizing the credits made available by this project, and the SCAQMD only has modeling data for three of the 11 plants. Further, specific health effects can only be quantified for populations with a known size and age. At this time, it is not known what populations will be affected and what the magnitude of the effects will be. This is in part due to uncertainties regarding the construction of the power plants. Although it is likely that some of the plants will be constructed, it cannot be known with any certainty which particular plants in fact will be built, and accordingly, which populations will be affected by plant emissions. In addition, any site-specific exposures will depend on stack design, local meteorological condition, receptor location and distance, and any other final design specification and operating parameters for that facility. The final specifications and parameters for the plants are unknown at this time. Furthermore, with regard to NOx emissions as a precursor to ozone formation, it is technically impossible to estimate, on a project basis, the quantity and location of NOx contribution to ozone formation by the proposed project because of the complexity of VOC and NOx interactions throughout the air basin. It should be noted that the PM2.5 attainment strategy of the 2007 AQMP is expected to reduce PM2.5 exposure-based premature mortality by approximately 1500 cases annually by 2015. The SCAQMD, however, did not take credit for the reduction in adult mortality estimated to occur in the related control measures in the 2007 AQMP.

The SCAQMD also disagrees with the opinion expressed in this comment that the PEA did not provide information that balances the adult mortality estimates against the effects of the rolling blackouts. As noted elsewhere in this PEA rolling blackouts and brownouts can create public safety effects such as interfering with the operation of health related equipment at hospitals, nursing homes, convalescent facilities, etc., interfering with public health and service providers by increasing the response times during emergencies; increasing the potential for roadway accidents in the event that traffic lights stop operating; and adverse health effects due to lack of air conditioning during blackouts and high heat. In addition, the Statement of Overriding considerations prepared pursuant to CEQA Guidelines §15093 for PAR 1309.1 and PRR 1315 CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

Response 2-25

The SCAQMD strongly disagrees with the opinion expressed in this comment that Rule 1315 would instantly generate "hundreds of thousands of pounds of new emission credits, with many hundreds of thousands more expected to come as this policy into the future." As indicated in the PEA, the SCAQMD disagrees with this argument, because the additional sources of credits that have contributed to the SCAQMD's offset bank as recalculated under Rule 1315 have always been

surplus and available for use by the SCAQMD; they were not tracked, however, because the SCAQMD had an ample supply of credits in its accounts for all pollutants (Rule 1315 Staff Report, p. 3). The "110.7 tons of daily emissions" is inaccurate because it considers only increases in credits as recalculated under PRR 1315, but not the decreases. Table 5 on Page 15 of the September 2006 staff report depicts the change in available running balances as of 2002, comparing the balance available before the rule adoption with the balance available after the rule adoption. This table shows net reductions for all pollutants except NOx, and for the total pounds of pollutants for the sole purpose of demonstrating equivalency. Thus, Rule 1315 resulted in a 36 percent decrease in VOC, a 43 percent decrease in SOx, a 68 percent decrease in CO, and an 81 percent decrease in PM10, which is the pollutant most involved in Rule 1309.1's power plant amendments. This table also shows a 39 percent increase in NOx; however, NOx is not even available to power plants under Rule 1309.1.

The commentators also argue that for the years following the adoption of Rule 1315, there would be a large increase in the amount of credits generated in each year. Again, PRR 1315 does not generate credits, but merely tracks them for purposes of demonstrating equivalency. Moreover, as stated in the PEA, the commentators ignore the fact that Rule 1315 also requires removing credits generated prior to 1990 for all years after 2005, and retroactively removed any use of BACT discount of ERCs as sources of credits even though use of these credits was specifically approved by EPA (Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review, October 24, 1996), thus again reducing the available balance of credits for some or all pollutants for the purpose of demonstrating equivalency. To test plaintiffs' theory, the SCAQMD calculated the difference between net activity (credits minus debits) that would have been traded under pre-Rule 1315 procedures compared with the net activity under post-Rule 1315 procedures for the years 1997 through 2002. The results of this calculation showed that for some years, there would be an increase in net activity for a given pollutant, and for some years, there would be a decrease in net activity for a given pollutant (see Table 4-3 in the PEA).

Furthermore, as discussed above, Table 5 on Page 15 of the September 2006 staff report clearly shows that the amount of offsets from SCAQMD's offset accounts was reduced for all pollutants in 1990 (seven percent for NOx and 56 percent to 92 percent for the other four pollutants) and for all pollutants except NOx in 2002 as a result of implementation of Rule 1315. That is, with the exception of NOx, the increases in annual net activity shown in Table 4-3 of the PEA do not translate into higher offset account balances in any year through 2002 and are unlikely to do so for the foreseeable future. Also, as indicated earlier, NOx is not even a pollutant that is available to power plants under existing or proposed Rule 1309.1. Finally, because historically the availability of offsets in SCAQMD's offset accounts has always been greater than the demand for those offsets, an increase in the amount for NOx, and even hypothetically for other pollutants for the purpose of demonstrating equivalency, does not imply that there will be an increase in use of such offsets. Nevertheless, as stated on page 4-17 of the Draft PEA, the

SCAQMD concluded that the impact of PRR 1315 is significant for all traced pollutants.

The comment also provides approximately a page of health effects from criteria pollutants. The SCAQMD is aware of these health effects, providing a more substantial discussion of the health effects of criteria pollutants in Chapter 3 of the PEA as the commentators note in footnote 60.

The commentators express the opinion that the SCAQMD "fails to include data on the expected exacerbation of current state and federal standards." The SCAQMD strongly disagrees with the opinion expressed in this comment. As indicated in response #2-24, the PEA identifies 11 power plants that are proposed to be constructed utilizing the credits made available by this project, and the SCAQMD only has modeling data for three of the 11 plants. Further, specific health effects, ambient concentrations of pollutants can only be quantified if specific information about the project is known. For example, site-specific ambient concentrations will depend on stack design, local meteorological condition, receptor location and distance, and any other final design specification and operating parameters for that facility. The final specifications and parameters for the plants are unknown at this time. However, SCAQMD Rule 1303(b) requires that emissions from these projects be modeled and permits will be denied if these emissions cause or significantly contribute to a localized air quality violation. Therefore, the SCAQMD is assured that significant localized impacts will not occur. Furthermore, with regard to NOx emissions as a precursor to ozone formation, it is technically impossible to estimate, on a project basis, the quantity and location of NOx contribution to ozone formation by the proposed project because of the complexity of VOC and NOx interactions throughout the air basin. Therefore, health impacts of any potential increase in ozone cannot be estimated.

The comment also includes discussions of NOx, SOx, and CO. As explained on page 5-13 of the Draft PEA, the district currently meets the national ambient air quality standards for SO2, NO2, and CO. This means ambient levels of these criteria pollutants are lower than the levels U.S. EPA has determined to be "requisite to protect public health" with an "ample margin of safety" (Clean Air Act, §109). It is not expected that emissions from the proposed project will cause federal standards to be violated (see Rule 1303(b)). Significant localized impacts are avoided by Rule 1303(b), which prohibits issuance of a permit unless the applicant substantiates with modeling that the equipment will not cause a violation, or make significantly worse an existing violation according to Rule 1303 Appendix A or other analysis approved by the Executive Officer or designee, of any state or national ambient air quality standards at any receptor location in the district.

The commentators also state incorrectly that the Draft PEA "purports to analyze indirect impacts. The PEA includes a comprehensive analysis of the individual indirect environmental effects of the projects where information is publicly in Chapter 5 and Appendix D. The aggregate environmental effects of the projects are shown in Table 5-2. Moreover, as stated on page 5-2 of the Draft PEA, CEC

typically identifies a range of six to eight miles for cumulative impact analyses. Due to the locations of the affected EGFs (Figure 2-2 on page 2-7 and Table 2-3 on page 2-6 of the Draft PEA), it is not likely that impacts from the other projects would overlap, so the "aggregate" impacts would not overlap. An exception is for direct regional air quality impacts, the "aggregate" direct regional air quality impacts, which are described in Table 4-2 on page 4-10 of the Draft PEA.

Finally, the commentators state incorrectly that the Draft PEA "fails to disclose distribution of the health impacts and their localized potential. In fact, the PEA identifies in Figure 2-2 and Tables 2-3, 2-5, and 2-6 of the PEA, the locations of all known facilities expected to access the Priority Reserve as a result of current and future amendments to Rule 1309.1. Chapter 5 and Appendix D of the PEA identify impacts from projects, including localized impacts, where information is publicly available. It is expected that impacts from the facilities will occur primarily in the vicinity of the projects as indicated in the information in Appendix D.

Response 2-26

The commentators criticized the SCAQMD for concluding the project is not expected to conflict with energy conservation plans, use of non-renewable resources in a wasteful manner, etc. The SCAQMD, however, made these conclusions in the Initial Study (IS) that was circulated for public review with the Notice of Preparation (NOP) for the proposed project. Three of the four commentators received notice that these documents were available for public review and comment. Notice of the availability of the NOP/IS was published in the Los Angeles Times on March 23, 2007, and the NOP/IS were available online starting March 23, 2007 on the SCAQMD's CEQA webpages at the following URL: http://www.aqmd.gov/ceqa/aqmd.html. The commentators did not submit comments on the IS/NOP.

California's Energy Action Plan II [5] (EAP II), describes a coordinated implementation plan for state energy policies that have been articulated through the Governor's Executive Orders, instructions to agencies, public positions, and appointees' statements; the CEC's Integrated Energy Policy Report (IEPR); CPUC and CEC processes; the agencies' policy forums; and legislative direction. EAP II highlights the importance of taking actions in the near term to mitigate California's contributions to climate change from the electricity, natural gas and transportation sectors. EAP II continues the strong support for the loading order – endorsed by Governor Schwarzenegger – that describes the priority sequence for actions to address increasing energy needs. The loading order identifies energy efficiency and demand response as the State's preferred means of meeting growing energy needs. After cost-effective efficiency and demand response, EAP II relies on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, EAP II **supports clean and efficient fossil-fired generation** [emphasis added]. Moreover, the EAP II states on page 7 that

[5] Source: http://www.energy.ca.gov/energy_action_plan/2005-09-21_EAP2_FINAL.DOC

despite encouraging renewables and energy efficiency, additional investment in conventional power generation is needed." In its comments on PAR 1309.1, the CEC urged the SCAQMD not to prohibit locating conventional power plants in any part of the district. Therefore, PAR 1309.1 is not inconsistent with state energy plans. Moreover, PAR 1309.1 furthers the use of renewable energy by requiring project proponents to demonstrate that renewable energy cannot be used in lieu of the power to be generated by their facility, in order to access any credits. This requirement goes beyond any policies currently under consideration by the CEC or CPUC. As already noted in response #2-5, California is not keeping up with future demand for electricity. As a result, the state is relying on a diverse portfolio of strategies to supply future energy demand while addressing the need to reduce greenhouse gas emissions. Thus, development of new conventionally-fueled power plants is not inconsistent with state energy plans.

The possibility that PAR 1309.1 may indirectly result in the operation of new EGFs is not inconsistent with the above state policy for the following reasons. The stringent emission control requirements that affected facilities would be subject to in order to access the priority reserve, requirements more stringent than BACT, etc., serve to increase the efficiency, especially of EGFs. The greater the efficiency, the lower the emissions of criteria pollutants and GHGs.

Related to energy efficiency, SB1368 was adopted last year and one of its provisions states the following, "On or before February 1, 2007, the commission, through a rulemaking proceeding, and in consultation with the Energy Commission and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities, at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation." On January 25, 2007, CPUC adopted an interim greenhouse gas emission performance standard of 1,100 pounds of CO2 per megawatt-hour. Further, on May 23, 2007, the California Energy Commission (CEC) adopted regulations that establish and implement a 1,100 pounds per MW-hr Emissions Performance Standard (EPS) (see CEC order No. 07-523-7) [Docket No. 06-OIR-1]). As indicated in Table 5-3 in Chapter 5 of the PEA, the combined cycle power plants are less than CPUC's and CEC's performance standard (all are less than 900 pounds per MW-hr) and even most of the simple cycle power plants are less (all but two are at 1,079 pounds per MW-hr). As can be seen from the preceding information, all but two of the EGFs identified in the PEA meet or exceed the energy performance standards for CO2. Although two turbine units at one facility exceed the standard, the overall average CO2 per MW-hr from the whole project does not exceed the emissions performance standard. Moreover, the units that do not meet the CEC performance standard are not "baseload" units and are, thus, not subject to the standard. PAR 1309.1 is thus completely consistent with state energy efficiency standards. Operation of these new EGFs as opposed to old inefficient power generating facilities promotes energy efficiency and is not a disincentive for energy efficiency as claimed by the commentators.

Finally, the commentators express the opinion that the definition of renewable energy from PAR 1309.1(c)(5)(B) is internally inconsistent. The requirement in PAR 1309.1(c)(5) refers to both renewable **and alternative energy**. Thus, PAR 1309.1(c)(5) goes beyond requiring an EGF to show that renewable energy is not a viable alternative, it must also show that alternative energy is not a viable option in order to access the Priority Reserve. A fuel cell is an electrochemical energy conversion device. It produces electricity from external supplies of fuel (on the anode side) and oxidant (on the cathode side). These react in the presence of an electrolyte. Generally, the reactants flow in and reaction products flow out while the electrolyte remains in the cell. Fuel cells are consistent with the concept of alternative energy because they are essentially zero-emitting with regard to criteria pollutant emissions. While not the only source, the most likely source of fuel for fuel cells could be natural gas as indicated by the commentators. Indirect energy impacts from operating natural gas-fired EGFs were evaluated in Chapter 5 and Appendix D of the PEA. Since fuel cells would likely operate using natural gas, and the conventional EGFs also operate on natural gas, energy impacts and impacts of use of natural gas of installing fuel cells instead of a conventional EGF are considered to be within the scope of the analysis of indirect energy impacts in the PEA. Finally, because fuel cells are considered to be an emerging technology for providing energy to the grid, actual installation of these technologies in the timeframe required by PAR 1309.1 (i.e., the years 2005 through 2008) is not considered to be a reasonably foreseeable impact and, therefore, is considered speculative at this time.

Response 2-27

As acknowledged by the commentators, at the September 2006 public hearing to adopt the current version of Rule 1309.1, the Governing Board directed rule development staff to address the issues raised by the community and environmental groups and individuals. The currently proposed amendments to adopt PAR 1309.1 were developed to respond to the Governing Board's direction. PAR 1309.1 contains provisions designed to discourage facilities from siting in areas of high exposure to PM2.5 or toxics and of low income. These incentives include higher mitigation fees and stricter emission standards in designated environmental justice areas. It is unclear what the commentators are referring to when they say the PEA fails to acknowledge the known environmental justice impacts of the proposed project. Figure 2-2 on page 2-7 of the Draft PEA shows the EJA, PM2.5 and CRA zones in which the operators of the known EGFs are proposing to locate their facilities. Further, the analysis of direct and indirect impacts from implementing PAR 1309.1 (and PRR 1315) incorporates a "worst-case" approach. This entails the premise that whenever the analysis requires that assumptions be made, those assumptions that result in the greatest adverse impacts are typically chosen. This method likely overestimates the actual direct and indirect impacts from the proposed project. To the extent that affected facilities are located in low income communities of color, direct and indirect adverse impacts as described in Chapter 5 and Appendix D could affect residents in those communities.

Response 2-28

The SCAQMD is aware that the zones identified in the rule do not correspond to either the state or federal PM2.5 ambient air quality standards. The reason neither the state nor the federal standards are used is that the entire Basin is classified as nonattainment for both standards. This does not mean the zones are not "health-based." The three zones were selected so that the cleanest area, zone 1, would have the least restrictive requirements, while the most polluted area, zone 3, would have the most restrictive requirements. The zones do correspond to differing levels of health impacts from background levels of PM2.5. The PM2.5 concentrations chosen for each zone were selected to provide increasingly greater disincentives for affected facilities from locating in areas with increasingly worse PM2.5 concentrations. In addition, the stricter standards in more polluted areas will reduce the potential adverse impacts from the affected facilities that still choose to locate in the more polluted areas.

Response 2-29

In this comment the commentators express the opinion that the PEA does not analyze direct or indirect impacts from publicly-owned biosolids treatment facilities or EPRSs. This opinion is plainly incorrect. Information on biosolids projects and EPRSs has been provided to the extent available. Although, information on future demand for credits from publicly-owned biosolids treatment facilities was provided by the local sanitation district (see Table 4-2), specific projects were not identified. As a result, direct air quality impacts from these facilities were estimated based on the information provided by the sanitation district. To provide information on indirect effects from siting, constructing and operation a biosolids treatment facility, the SCAQMD used publicly available information for a similar type of project (Nursery Products) to disclose the types of indirect impacts that would be expected from these types of projects. Information on the types of indirect impacts that would be expected to occur from siting, constructing, operating publicly-owned biosolids treatment facilities can be found in Chapter 5 and Appendix D of the PEA.

Similarly, there are several EPRS projects under consideration in the southern California area for which the demand for credits and, therefore, direct air quality impacts can be estimated (see Tables 2-6 and 4-2. The only publicly available information on potential indirect impacts from siting, constructing, and operating the EPRS projects listed in Table 2-6 is for the SES Long Beach LNG terminal project. Indirect impacts reported for this project are disclosed in Chapter 5 and Appendix D of the PEA. Although the Cabrillo Port LNG terminal project is not located within the SCAQMD's jurisdiction, it was used as a surrogate for the Woodside/Ocean Way LNG terminal project because of the similarity of the project descriptions for these two projects (the LNG terminals would be constructed offshore). Using the Cabrillo Port LNG terminal project as a surrogate for the Woodside/Ocean Way LNG terminal project, the indirect impacts anticipated for this project are disclosed in Chapter 5 and Appendix D of the PEA.

Response 2-30

The commentators expresses the opinion in this comment that the SCAQMD has "failed to mention, estimate, or analyze" global warming impacts of other projects that the SCAQMD "intends to allow access to the Priority Reserve." The analysis in the PEA identifies known projects that would qualify for access to the Priority Reserve, but also points out that not all projects that might see access to the Priority Reserve are known and cannot be known at this time. Indeed, the commentators do not identify additional facilities besides those identified in the PEA that might seek access to the Priority Reserve in the future. There are no projects besides EGFs, biosolids facilities, and EPRSs that the SCAQMD intends to allow additional access to credits as part of the program. The global warming impacts of affected facilities that may access the Priority Reserve are disclosed to the extent information is available for the projects listed in Table 5-3 on page 5-8 of the Draft PEA. Information regarding additional projects that may access the Priority Reserve is not yet known. Further, the PEA provides information on the indirect impacts that may be generated from projects seeking access to the Priority Reserve, for all projects where such information is available. Indirect impacts for those projects that are identified in the PEA, but where information is currently unavailable, are considered to be speculative at this time. Consistent with CEQA Guidelines §15145, the PEA avoids evaluating speculative information. The absence of such speculative information in the PEA would not affect the ability of future projects to obtain credits from the Priority Reserve provided they otherwise satisfy applicable conditions and requirements, including undergoing an environmental analysis pursuant to CEQA.

As for the CO2 emissions of identified projects, these are minimized as explained in the following discussion. Moreover, although not called a "mitigation measure," the project itself includes mitigation of CO2 emissions by requiring facilities accessing credits to demonstrate that renewable energy, which emits less CO2 emissions, cannot be used in place of the power generated by these facilities. If the project does not satisfy this requirement, it may not receive any credits.

As noted in response #2-26, the stringent emission control requirements that affected facilities would be subject to in order to access the priority reserve, requirements more stringent than BACT, etc., serve to increase the efficiency, especially of EGFs. The greater the efficiency, the lower the emissions of criteria pollutants and GHGs. Further, as indicated in Table 5-3 in Chapter 5 of the PEA, the combined cycle power plants are less than CPUC's and CEC's performance standard (all are less than 900 pounds per MW-hr) and even most of the simple cycle power plants are less (all but two are at 1,079 pounds per MW-hr). As can be seen from the preceding information, all but two of the EGFs identified in the PEA meet or exceed the energy performance standards for CO2. Although two turbine units at one facility exceed the standard, the overall average CO2 per MW-hr from the whole project does not exceed the emissions performance standard. These turbines are not subject to the CPUC and CEC standard because they are not "baseload" equipment. Operation of these new EGFs as opposed to old inefficient power generating facilities promotes energy efficiency and serves to reduce GHG emissions compared to older power generating equipment. Thus, CO2 emissions are reduced to the maximum extent feasible as part of the project

itself in addition to the requirement to demonstrate that renewables are not a viable option.

The PEA also notes that it is likely that EPRS and publicly-owned biosolids treatment projects will also emit GHGs, thus, contributing to global climate change. Further, that actual combustion sources, equipment, and fuels expected for EPRS and biosolids treatment facilities are less well known, so quantification of GHG emissions from these sources is problematic. Because of these uncertainties, the SCAQMD qualitatively assumes that GHG emissions from EPRSs and biosolids treatment facilities could be substantial, thus, making the significant GHG emission impacts substantially worse.

For additional information on the analysis of GHG emissions, refer to response #2-49.

Response 2-31

In this comment the commentators express the opinion that the SCAQMD "forgets" to analyze cumulative impacts, but then acknowledges in the first full paragraph on page 18 of the comment letter that the SCAQMD does address cumulative impacts. Cumulative impacts are discussed in Chapters 4 and 5 of the PEA. On page 4-18 in Chapter 4 of the Draft PEA the SCAQMD concludes that direct air quality impacts are cumulatively considerable and, therefore, cumulatively significant. Page 4-18 of the Draft PEA discusses the cumulative impacts of the direct air quality impacts only because this was the only environmental topic where the project's incremental effect was considered to be cumulatively considerable, as defined in CEQA Guidelines §15065(a)(3). The SCAQMD does indeed include a list of all affected facilities currently identified that are likely to access the Priority Reserve (see pages 2-6 and 2-10) and includes a table aggregating all direct air quality impacts (Table 4-2 for PAR 1309.1 and Table 4-10 for PRR 1315). The SCAQMD states further that indirect cumulative impacts from construction and operation of the projects identified in Chapter 5 are also considered to be significant. The reference to Chapter 5 is included because Chapter 5, page 5-2 of the Draft PEA, includes a discussion of the cumulative indirect impacts of the proposed project. Contrary to the comment, Table 5-2 contains the list of projects where information is currently available that may contribute to cumulative impacts. Projects that have not been identified, such as certain types of EPRS projects, are not included, as it would be speculative to attempt to analyze them. As stated on page 5-2 of the Draft PEA, Cumulative impacts of the individual projects on the list are described in Appendix D. According to the criteria used by CEC for EGFs, these cumulative impacts are not likely to overlap due to the distances between affected EGFs, except for direct regional air quality impacts, as already noted here. Regional air quality impacts are considered to be direct impacts from the proposed project. Direct cumulative air quality impacts (emission reduction credits to be withdrawn from the Priority Reserve) are listed in Table 4-2 (for PAR 1309.1) and Table 4-3 (for PRR 1315) indicating the range of potential increase for each pollutant.

Finally, in Chapter 5, the PEA states, "The individual CEQA documents for each project address cumulative impacts as required by CEQA and as indicated in the

tables in Appendix D." Further, for the purposes of this indirect impacts analysis relative to cumulative impacts, the SCAQMD is relying on the cumulative impacts conclusions reached for each project that are stated in the individual CEQA documents."

Response 2-32

The commentators express the opinion in this comment that the SCAQMD's "cumulative impacts analysis fails to include "future projects' that may be 'probable.'" As noted in response #2-30, the analysis in the PEA identifies known projects that would qualify for access to the Priority Reserve, but also points out that not all projects that might see access to the Priority Reserve are known and cannot be known at this time. Indeed, the commentators do not identify additional facilities besides those identified in the PEA that might seek access to the Priority Reserve in the future. Further, the PEA provides information on the indirect impacts that may be generated from projects seeking access to the Priority Reserve, for all projects where such information is available. Indirect impacts for those projects that are identified in the PEA, but where information is currently unavailable, are considered to be speculative at this time. Similarly, indirect impacts from future projects that are not known or identified at this time and where information clearly is not available are not reasonably foreseeable impacts. Consistent with CEQA Guidelines §15145, the PEA avoids evaluating speculative information for projects where information is not available or for future projects that are not known at this time. The absence of such speculative information in the PEA would not affect the ability of future projects to obtain credits from the Priority Reserve provided they otherwise satisfy applicable conditions and requirements, including undergoing an environmental analysis pursuant to CEQA.

Footnote 78 cryptically states, "Compare DPEA at 2-10, *with* DPEA, Chapter 5 and Appendix D. Apparently this footnote refers to the fact that there are four proposed EPRSs listed in Table 2-6, compared to two LNG projects evaluated in Chapter 5 and Appendix D of the PEA. It should be noted that no information is currently available for the following three projects because they are in very early stages of project development and, therefore, may not necessarily proceed to the environmental analysis phase: Esperanza LNG Receiving Terminal; Pacific LA Marine Terminal LLC Crude Oil Receiving Terminal; and Woodside/Ocean Way LNG Terminal Project. Chapter 5 and Appendix D include analyses of the SES Long Beach LNG Import Terminal and Cabrillo Port LNG Import Terminal project[6]. These projects were included in the analysis of indirect impacts because they are the only proposed LNG projects with information currently available. It should be noted, however, that it is currently unlikely that these projects will be built because, in both cases, the lead agencies have declined to approve the projects or certify the associated CEQA documents.

[6] Although the Cabrillo Port LNG Import Terminal Project is not located in the SCAQMD's jurisdiction, it is included in the analysis of indirect impacts as a surrogate project for the LNG projects located in the district, but where information is currently not available.

Response 2-33

In this comment the commentators selectively summarize some of the requirements for alternatives from CEQA Guidelines §15126.6. First, the SCAQMD is aware of the CEQA requirements for identifying and comparing the relative merits of project alternatives. As such, the SCAQMD asserts the PEA complies with all relevant requirements regarding preparation of project alternatives.

Relative to identifying and comparing the relative merits of project alternatives, CEQA Guidelines §15126.6(a) states in part, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. **An EIR need not consider every conceivable alternative to a project** [emphasis added] Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation…" Further, "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." In addition, "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR.' (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 566 [276 Call. Rptr. 410]). The SCAQMD understands that it bears the burden of formulating alternatives not the public, but the court has recognized that, relative to formulating alternatives, "agencies cannot be expected to read the minds of project opponents…" (Save Our Residential Environment v. City of West Hollywood (2d Dist. 1992) 9 Cal. App. 4th 1745, 1754 [Cal. Rptr. 2d 308]).

With regard to the comment on the project description, the commentators are referred to response #2-6.

In this comment the commentators express the opinion that the alternatives identified in the PEA "are not real alternatives. The SCAQMD strongly disagrees with this opinion. First, SCAQMD Rule 110 (the rule which implements the SCAQMD's certified regulatory program) does not impose any greater requirements for a discussion of project alternatives in an environmental assessment than is required for an EIR under CEQA. As with other new rule or rule amendment projects, proposed project alternatives were developed by modifying specific components of the proposed amendments. The rationale for selecting and modifying specific components of the proposed amendments to generate feasible alternatives for the analysis is based on CEQA's requirement to present "realistic" alternatives; that is, alternatives that can actually be implemented. The alternatives discussed are not mere "pricing schemes," but include options that would deny access to credits in EJ areas and the most heavily polluted areas, which addresses the commentators' primary concerns about environmental justice.

Three of the four commentators received notice that the NOP/IS were available for public review and comment. Notice of the availability of the NOP/IS was published in the Los Angeles Times on March 23, 2007, and the NOP/IS was

available online starting March 23, 2007 on the SCAQMD's CEQA webpages at the following URL: http://www.aqmd.gov/ceqa/aqmd.html. The commentators did not submit comments on the IS/NOP. In the IS, the SCAQMD solicited recommendations from the public on potential alternatives to be considered in the Draft PEA. None of the commentators, either individually submitted comments during the NOP/IS comment period recommending specific alternatives that could have been evaluated in the PEA.

Response 2-34

The commentators states that the SCAQMD should have considered alternatives such as (i) diesel-fired retrofits, (ii) diesel-fired generator fuel requirements, or (iii) more restrictive standards for diesel-fired generators. The PEA did not include a diesel-fired generator alternative such as those suggested by the commentators because the SCAQMD is currently in the process of amending Rule 1110.2 – Emissions from Gaseous – and Liquid-fueled Internal Combustion Engines (see the NOP/IS for the proposed amendments at the following URL: http://www.aqmd.gov/ceqa/documents/2007/aqmd/is_nop/1101.2_IS.pdf). Rule 1110.2 regulates NOx, CO, and VOC emissions from any spark- or compression-ignited internal combustion engine, not including engines used for self-propulsion. The proposed amendments would establish more restrictive standards for emissions from affected engines, including energy generating engines to meet emission standards equivalent to BACT; require new electrical generating engines to meet the same requirements as large central power plants, and clarify portable engine requirements. PAR 1110.2 may require existing equipment to be retrofitted or replaced with new engines to meet the more stringent emission limits. Since 2004, stationary source equipment have been required to use ultra-low sulfur diesel. Ultra-low sulfur diesel reduces SOx and PM10 combustion emissions compared to conventional diesel fuel. Moreover, the SCAQMD has adopted Rule 1470, establishing emission limits for new emergency standby engines and engines used in demand – response programs during periods of electricity shortages. Based on this information, the components of the diesel-fired generator alternative recommended have either been adopted or are occurring as part of other SCAQMD rulemaking and, therefore, is not considered a viable alternative to the program under consideration in the PEA.

Response 2-35

In this comment, the commentators recommend "limited-transfer alternatives" that would reduce the number of credits available. The commentator does not state whether or not the total number of credits should be limited or whether or not the number of credits per quarter should be limited. In either case, significant adverse impacts would be less than for the proposed project, but direct significant adverse impacts would not be eliminated if the amount of available credits exceeds the SCAQMD's daily significance threshold. An alternative that limits credits to amounts less than the SCAQMD's daily significance thresholds would not be considered a viable alternative as it would not achieve any of the objectives of the proposed program since it would not assist any, or very few, affected facilities with complying with emission offset requirements pursuant to Rule 1303.

This comment also recommends limiting the number of types of facilities that may gain access to the Priority Reserve. If adopted, the current proposal would only allow EGFs access to the Priority. The Governing Board has the option of declining to approve access to the Priority Reserve for additional types of facilities. If the Governing decided not to allow access to the Priority Reserve in the future for facilities analyzed in the PEA, thus, reducing the scope of the program, would be within the scope of impacts analyzed for the project alternatives in the future. It should be noted that Alternatives D and E restrict access to the Priority Reserve for all facilities locating in environmental justice area (EJA) or cancer risk area (CRA) zones. Alternative D would provide an exception for municipal EGFs, thus, allowing them to access the Priority Reserve if locating in either EJA or CRA zones.

This comment also recommends precluding transfers [of credits] to facilities that rely on fossil fuel for electrical generation. It is presumed here that this comment means to allow transfers for facilities that do not rely on fossil fuel combustion to generate electricity, such as wind, solar, etc. This is not a viable alternative because these type of power generating technologies do not rely on combustion to generate power and, therefore, would not need credits. That is, these types of power generating technologies can already be built without accessing the Priority Reserve. Moreover, agencies responsible for planning for electricity needs have indicated that generation of new power is needed <u>in addition to</u> projects generating renewable energy[7]. As listed on pages 2-17 and 2-18 of the Draft PEA, the proposed project objectives include allowing more access to the Priority Reserve so that new power generation can be permitted in compliance with Rule 1303, thus, easing potential future power crises in California. This objective would not be met by an alternative, which prohibited access to credits for any fossil fuel burning plant.

Response 2-36

In this comment, the commentators recommend "alternative to credit generation" alternatives. This recommendation incorrectly assumes that PRR 1315 is a credit generation rule. As indicated in responses #2-17, #2-19, #2-20, and #2-21, PRR 1315 specifies procedures to be followed by the Executive Officer to make annual demonstrations of equivalency to verify that specific provisions in the SCAQMD's NSR program related to sources that are either exempt from offsets or which obtain their offsets from the SCAQMD's offset accounts and meet in aggregate the federal nonattainment NSR offset requirements. As such, credit generation is not a component of the proposed program, specifically it is not a component of PRR 1315, therefore, an alternative to credit generation is neither required nor necessary since it is not part of the current or future proposed projects currently under consideration. An alternative that continued the SCAQMD's prior NSR tracking would not be feasible since U.S. EPA had determined that such a system as no longer acceptable. Also, an alternative that changed the tracking system prospectively only, would not be feasible since U.S. EPA required the SCAQMD to retroactively adjust its accounts. Failing to also retroactively adjust accounts to include available surplus credits would not be a

[7] Source: http://www.energy.ca.gov/energy_action_plan/2005-09-21_EAP2_FINAL.DOC

feasible alternative because it would not meet the project objective (page 2-18 of the Draft PEA) of taking credit for all surplus reductions available under federal law. Finally, such an approval might create a "negative balance" in the SCAQMD's accounts, casting doubt on permits that have already been issued, if the SCAQMD could not establish equivalency for a given time period. This would be an unacceptable result, further rendering this alternative infeasible.

Response 2-37

In this comment, the commentators recommend "limited facility access alternatives," stating that the program under consideration includes biosolids, EPRSs, and 1304-exempt facilities in addition to EGFs. PAR 1309.1 does not include proposals to allow 1304-exempt facilities access to the Priority Reserve. Rule 1304 exempts specified facilities from modeling and offset requirements. As a result, facilities specified in Rule 1304 do not need access to the Priority Reserve. Rule 1304 is not being amended and is not part of the proposed project. Any impact of Rule 1304 exempt projects is included in the analysis for PRR 1315, which provides the equivalency tracking for exempt projects.

The commentators also express the opinion in this comment that the SCAQMD only analyzes alternative power plant pricing schemes. This opinion is incorrect. Alternative C does implement Zone 3 pricing for all facilities proposing to site in an EJA or CRA zones. However, as noted in response #2-35, both Alternatives D and E would restrict access to the Priority Reserve for affected facilities proposed to be sited in EJA or CRA zones, although Alternative D would provide an exception for municipal EGFs, thus, allowing them to access the Priority Reserve if locating in either EJA or CRA zones. Thus, the alternatives analysis in Chapter 6 includes two limited facility access alternatives.

Response 2-38

In this comment the commentators express the opinion that the SCAQMD did not evaluate a proper no project alternative because it did not evaluate the impacts of " a no project or program.'" Further, that the baseline is not the existing Rule 1309. 1 and Rule 1315 since they were "adopted illegally. As described on pages 6-3 and 6-4 of the Draft PEA, the No Project Alternative depends on the result of the court challenge to the September 2006 amendments to Rule 1309.1 and Rule 1315. If the rules are upheld, the project alternative would be the September amendments and rule. If not, the No Project Alternative is the pre-September versions of Rule 1309.1 and no Rule 1315. The effects of both possibilities for the No Project Alternative are described on pages 6-7 and 6-8 of the Draft PEA. Moreover, in describing the impacts of the proposed project (Chapters 4 and 5 of the PEA) <u>all</u> of the impacts of the EGFs were considered to be impacts of the proposed project, i.e., new impacts not included in the baseline. Therefore, the analysis treats the baseline as the situation existing before the September 2006 amendments to Rule 1309.1 and Rule 1315, as the commentators request.

Contrary to the commentators' claim, the PEA thoroughly analyzed the impacts of PR 1315, publicly-owned biosolids treatment facilities, and EPRS projects as new impacts of the proposed project, assuming a baseline that would not allow access

by such projects and a baseline of pre-Rule 1315 conditions (see Table 4-3 on page 4-16 of the Draft PEA).

Relative to the baseline for the proposed project, CEQA Guidelines §15125(a) states in part, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant."

The PEA recognizes that the court could overturn the September 2006 adoption of both Rules 1309.1 and 1315, which would result in a no project alternative of the pre-September 2006 version of Rule 1309.1 and revision of Rule 1315. As indicated in the PEA, in this situation, the direct and potentially indirect impacts from the proposed program would be eliminated or reduced in the event that affected facilities are unable to obtain sufficient credits to comply with the Rule 1303 offset requirements. However, potential impacts, as noted in the PEA, from the possibility of rolling blackouts and brownouts, are identified as reasonably foreseeable outcomes of not adopting the proposed project.

Response 2-39

In this comment the commentators recommend "renewable electrical generation alternatives." The commentators express the opinion that "Southern California can meet most if not all, of its new energy demand by using a combination of energy efficiency, solar, and wind technology" and cite Exhibit H to support this opinion. Exhibit H, *South Coast Green Repowering Project: The Community Alternative*, was prepared for the commentators and has not been peer reviewed by any energy agency or other third party reviewer with energy expertise. Further, Exhibit H is written with the assumption that the SCAQMD has authority for approving the siting, construction, and operation of EGFs. This assumption is not correct, this authority rests with the CPUC, CEC, and local municipal utilities. Pursuant to CEQA Guidelines §15040 (b), "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws."

These agencies, in particular CPUC and CEC, are responsible for determining future demand and the need for future supplies, not the SCAQMD. As indicated in Chapter 5 and Appendix D, the CEC is the lead agency for all EGFs currently identified that may seek access to the Priority Reserve. It is up to the CEC to determine if these EGFs are necessary to meet future demand in California, not the SCAQMD. PAR 1309.1 is being promulgated to assist EGFs with meeting SCAQMD Rule 1303 offset requirements, in an attempt to avoid future energy crises like the one that occurred in 2000 – 2001. If the CEC concludes that the EGFs identified in Table 2-3 of the PEA are not necessary, that agency must decide whether or not to approve those projects. According to the Energy Action Plan II (a joint product of CEC and CPUC), the Renewables Portfolio Standard (RPS) requirements, as originally established, require 20 percent of electricity sales to come from renewable sources by 2017. It is up to the CPUC and CEC to implement strategies to comply with this requirement, not the SCAQMD.

However, the EAP II, page 7 states, "Even with the emphasis on energy efficiency, demand response, renewable resources, and distributed generation, investments in conventional power plants will be needed. The State will work to establish a regulatory climate that encourages investment in environmentally-sound conventional electricity generation resources." Since this is the official position of the state agencies responsible for energy planning in California, the SCAQMD believes any alternative that would exclusively rely on renewable energy and energy efficiency is infeasible. Finally, as noted in response #2-35, renewable power generating technologies do not typically rely on combustion to generate power and, therefore, would not need credits. That is, these types of power generating technologies can already be built without accessing the Priority Reserve. There is nothing currently preventing these types of facilities from being built. Indeed, since of these types of facilities do not typically need to purchase offsets, they avoid the cost of purchasing credits that are currently in short supply or submitting permits to the SCAQMD.

In this comment the commentators state that the SCAQMD "must explore opportunities to support renewable energy alternatives in a meaningful way with the regulatory tools at its disposal." The SCAQMD has done this as part of the proposed project. In an effort to promote renewable energy sources within its jurisdictional authority, PAR 1309.1 contains the following requirement.

(5) Notwithstanding Rule 1303(b)(2)(A), the applicant for an In-District EGF that files a complete application for which credits are sought in calendar year 2005, 2006, 2007, or 2008 demonstrates to the satisfaction of the Executive Officer both of the following:

(A) That the proposed purchase of credits from the Priority Reserve together with credits otherwise obtained, is at an offset ratio of 1.2 to 1.0, and

(B) That renewable/alternative energy (for the purpose of this rule, renewable/alternative energy is hydropower, wind and wave power, solar and geothermal energy, and fossil fuel-based energy provided the emissions are no more than those from a fuel cell) in lieu of natural gas fired EGF is not a viable option for the power to be generated at that site…(emphasis added).

In addition, as part of the adopting Resolution for the proposed project, staff will be making recommendations to the Governing Board that include, but are not limited to the following:

- **Set aside $4,000,000.00 to identify and pilot the most advanced PM2.5 add-on control technologies that would further reduce PM2.5 emissions from EGFs; and**
- **Set aside $1,000,000.00 from the mitigation fees collected to conduct a comprehensive energy resource planning analysis for the next 10 years and identify avenues to maximize renewable energy production in the Basin;**

- **Set aside $10,000,000.00 to research health impacts associated with PM2.5 exposure; and**

- **Direct staff to prepare a plan for Board approval by September 2007, to discuss the balance of the mitigation fees to be collected for pollution reduction projects, including renewable energy projects.**

Response 2-40

In this comment the commentators state, "The City of Los Angeles and many municipalities in the Basin can adopt measures to retrofit large residential facilities, enhance residential and non-residential HVAC performance standards," etc., suggesting that the SCAQMD should have included and energy efficiency alternative. There is nothing in the propose project that precludes or prohibits these public agencies from adopting energy efficiency programs. As noted in Chapter 6 of the PEA, "The authority to impose energy conservation measures under state law is expressly within the jurisdiction of the California Energy Commission (CEC), the California Public Utilities Commission (CPUC) and other local utilities." Further, pursuant to CEQA Guidelines §15040 (b), "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." Therefore, since the SCAQMD has no authority to require or implement energy conservation measures and such measures are under the authority of the CEC, the CPUC and other local utilities, such an alternative is considered to be an infeasible alternative to PAR 1309.1. Moreover, as stated in response #2-39, CEC and CPUC promulgated the EAP II, which states that despite increased energy efficiency programs, investments in conventional power plants will be needed. As described on page 2-18 of the Draft PEA, one project objective is to facilitate new power generation to contribute to easing the effects of potential future power crises. Based on CEC and CPUC analyses, therefore, any project alternative that relies solely on energy efficiency to meet future power needs is considered to be infeasible.

This comment states further that making credits available at below market rates "removes a major incentive for utilities and other industry [sic] to become more efficient. The SCAQMD disagrees with the opinion expressed in this comment. The prices for credits are based on recent market rates. The stringent emission control requirements that affected facilities would be subject to in order to access the priority reserve (see Table 2-1 above), more stringent than BACT requirements, etc., serve to increase the efficiency, especially of EGFs. The greater the efficiency, the lower the emissions of criteria pollutants and GHGs. Further, as indicated in Table 5-3 in Chapter 5 of the PEA, the combined cycle power plants are less than CPUC's and CEC's performance standard (all are less than 900 pounds per MW-hr) and even most of the simple cycle power plants are less (all but two are at 1,079 pounds per MW-hr). For additional information on the energy efficiency of EGFs seeking access to the Priority, see response # 2-26. Operation of these new EGFs as opposed to old inefficient power generating facilities promotes energy efficiency and is not a disincentive for energy efficiency as claimed by the commentators.

Response 2-41

In this comment the commentators recommend a "community choice aggregation alternative." Further, the commentators state that the SCAQMD "must explore opportunities to support community choice aggregate programs using the regulatory tools at its disposal. California State Assembly Bill 117 (AB 117), passed and signed into law in 2002, gave California cities and counties the ability to aggregate the electric loads of residents, businesses and public facilities to facilitate the purchase and sale of electrical energy in a more competitive market. According to Burke, et al.[8], as of 2005, "Though the law was passed in 2002, no cities or counties have yet implemented such a Community Choice Aggregation (CCA). Several dozen local governments have expressed interest in forming a CCA, but the future role of CCAs in California's energy markets is still uncertain." Further, "CCAs would also incur known costs, such as costs for feasibility studies, political opportunity costs, and administrative costs. A host of unknown costs and obstacles, including many issues to be heard in Phase II proceedings, will play a role in determining the model's viability. The demonstrated and predicted benefits lead us to conclude that CCAs hold the potential for a substantial improvement in the energy market and increased efficiency. Nonetheless, the viability of AB 117 revolves largely around several key uncertainties and the actions of those involved. The keys involve cost-shifting and the extent to which CCA customers may be mandated to cover costs incurred by the investor-owned utilities. Resolution of these issues will depend partly on CPUC findings regarding the awarding of Energy Efficiency funds and In-kind power to CCAs. To summarize, the role of Community Choice Aggregation in the future of California's deregulated energy markets will be largely determined by the as yet unresolved uncertainties."

As indicated above, the authority to impose community choice aggregation programs under state law is expressly within the jurisdiction of the California cities and counties." Pursuant to CEQA Guidelines §15040 (b), "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." . In addition, according to Burke, et al. "the viability of AB 117 revolves largely around several key uncertainties and the actions of those involved." Therefore, since the SCAQMD has no authority to require or implement community choice aggregation programs and such programs are under the authority of California cities and counties, such an alternative is considered to be an infeasible alternative to PAR 1309.1. To the extent providing encouragement for renewable energy will facilitate implementing CCAs, SCAQMD has included this as part of the proposed project by requiring applicants for credits to demonstrate that renewables are not a viable alternative for the power to be generated (see response #2-41). Also, as discussed in response #2-39, CEC and CPUC analysis states that despite renewables and energy efficiency, additional investment in conventional power plants is needed. An alternative that is limited furthering CCAs is, therefore, not considered to be a feasible alternative and does not meet the project objective of facilitating new

[8] Burke, Garance, Chris Finn, and Andrea Murphy. June 13, 2005. Community Choice Aggregation: The Viability of AB 117 and Its Role in California's Energy Markets. An analysis for the California Public Utilities Commission. The Goldman School of Public Policy. University of California, Berkeley

power generation to ease potential future power crises (page 2-18 of the Draft PEA).

With regard to comment that the proposed project will "make credits," refer to response #2-25.

Response 2-42

In this comment the commentators express the opinion that the SCAQMD "failed to adequately describe and require mitigation measures for the project's significant environmental impacts." Further, the commentators state that the SCAQMD "failed" to assess and mitigate impacts for aesthetics, health, air quality, global warming, and energy. The SCAQMD strongly disagrees with this opinion as explained in the following paragraphs.

First, the commentators do not specify whether or not they are referring to direct or indirect impacts to the environmental topic areas identified in the comment. If referring to direct impacts, direct air quality impacts from the proposed project were analyzed in chapter 4 as explained below. In the Initial Study prepared for the proposed project (see Appendix A of the PEA), the SCAQMD concluded that the proposed project would not create direct impacts to aesthetics, and energy. Substantial evidence was provided in the IS to support these conclusions. Three of the four commentators received notice that the NOP/IS were available for public review and comment. Notice of the availability of the NOP/IS was published in the Los Angeles Times on March 23, 2007, and the NOP/IS were available online starting March 23, 2007 on the SCAQMD's CEQA webpages at the following URL: http://www.aqmd.gov/ceqa/aqmd.html. The commentators did not submit comments on the IS/NOP. No comments were received on the NOP/IS disputing these conclusions.

Chapter 4 describes the direct air quality impacts anticipated from the use of credits. As indicated in Chapter 4, use of credits under PAR 1309.1 that would not otherwise occur is equated to an emission increase. Further, use of credits will occur in amounts that exceed the SCAQMD's mass daily significance thresholds. As a result, the SCAQMD concluded that direct air quality impacts were significant.

As noted in the PEA, eligible facilities are expected to pay mitigation fees which will be used to fund appropriate emission reduction projects. The type of pollutant credits withdrawn for the Priority Reserve will determine which clean air projects will be funded. Previous mitigation fees collected from allowing access to the Priority Reserve were used to fund the following types of projects. Similar types of projects may also be funded with fees collected from PAR 1309.1:

- Promotion of renewable energy such as solar collectors, wind turbines, biogas generators, geothermal energy generation, biosolids energy production (all pollutants);
- Construct anaerobic digesters (VOC, PM, NH3);

- Development of better energy storage capacity (all pollutants);
- Capturing energy losses during transmissions (all pollutants);
- Retrofit diesel powered school buses with particulate traps or oxidation catalysts (NOx, VOC, PM10);
- Replace existing diesel school buses with new alternative-fueled school buses (i.e., CNG engines) (NOx, PM10);
- Repower off-road heavy-duty diesel equipment with new lower-emission diesel engines and equip with particulate traps (PM, NOx);
- Replace portable diesel generators with microturbines (PM, NOx);
- Provide low-sulfur diesel fuel to local passenger locomotives (SOx, PM10); and
- Expand liquefied natural gas refueling infrastructure (NOx, PM10, SOx).

Other programs and projects designed to reduce emissions may include:

- Install fuel cells (e.g., phosphoric acid fuel cell, molten carbonate fuel cell[9]) in any mobile or stationary application (all pollutants);
- Purchase of fuel cells and electrification usage with ships at the dock (all pollutants);
- Retrofit other diesel mobile sources with particulate traps or oxidation catalysts (PM10, NOx);
- Conversion of other diesel engines to alternative fuels (PM10, NOx, SOx);
- Conversion of lawn and garden equipment to battery and electric (NOx, PM, VOC, CO);
- Regional emission reduction programs (i.e., interpollutant – ammonia, NOx, etc);
- Demonstration or deployments of new emission reducing technology (all pollutants); and
- Promotion of energy efficiency and energy conservation measures (all pollutants).

Finally, the PEA noted that, while the mitigation fee will be used to fund appropriate clean air projects, the emission reduction from these project may not necessarily provide emission reductions equal to the number of Credits withdrawn from the Priority Reserve. Since the amount of emission reduction will not be known until the specific clean air project is chosen, the amount of emission not reduced could exceed the SCAQMD's significance thresholds and, therefore, the air quality impact would remain significant.

[9] Fuel Cell Energy (www.fce.com)

With regard to indirect impacts from the projects that may access the Priority Reserve and where information is currently available, impacts to all environmental topic areas on the environmental checklist (Appendix G of the CEQA Guidelines) were addressed in Chapter 5 and Appendix D of the PEA. Chapter 5 of the PEA also addresses GHG emissions and climate change as well as health impacts. Further, mitigation measures for indirect impacts from siting, constructing, and, operating the facilities expected to access the Priority Reserve, the SCAQMD is not the lead agency for any of the projects expected to access the Priority Reserve, as noted in Chapter 5 of the PEA. The responsibility for imposing mitigation measures rests with the lead agencies for these projects. In addition to identifying impacts from affected projects where information is known, Appendix D also identifies any mitigation measures imposed by the lead agencies for these projects. Further, Table 5-4 lists the types of mitigation strategies to reduce GHG emissions that could be considered by the lead agencies for the projects anticipated to access the Priority Reserve and tailored to fit the individual characteristics of these projects. See also response #2-30.

Contrary to the commentators' claim, the SCAQMD did assess direct impacts on aesthetics and energy in the IS. These impacts were not identified as significant, did not require further analysis in the Draft PEA, and did not require mitigation. Further, the SCAQMD analyzed in the PEA potential direct and indirect effects of the proposed project on air quality (pages 4-6 through 4-18 of the Draft PEA) and indirect effects of the proposed project on health (pages 5-13 through 5-16 of the Draft PEA and global warming (pages 5-7 through 5-13 of the Draft PEA). All of these impacts are generated by emissions for the affected facilities that will access the Priority Reserve.

PAR 1309.1 was designed to minimize emissions to the extent feasible, thus, mitigation all of these impacts to the extent feasible. PAR 1309.1 includes a requirement that facilities demonstrate that renewable energy is not a viable alternative for the power from that affected facility (see response #2-39). Rule 1309.1 also includes stringent emissions limits in pounds per megawatt-hour, based on the most efficient available generation sources. PAR 1309.1 includes stringent emission limits on pounds of PM10 per megawatt-hour and modeled impacts, based on the cleanest equipment and includes limits on the operating hours of simple cycle equipment to ensure cleaner, more efficient combined cycle equipment is used where feasible (i.e., for baseload generation). Combined cycle equipment is not lower emitting if used as "peaker" equipment.

This comment also cites sections from the Public Resources Code and the CEQA Guidelines regarding CEQA requirements for identifying feasible mitigation measures. The SCAQMD is aware of these requirements and asserts that the PEA complies with all relevant requirements regarding identifying, where available, and implementing mitigation measures for the project.

Response 2-43

This comment is identical to comment #2-22. Therefore, refer to response #2-22.

Response 2-44

The quote cited in this comment notes an inconsistency between the actual conclusion regarding direct air quality impacts from PRR 1315 and the incorrect statement in the PEA under "Project-specific Mitigation," which indicates that the impacts of PRR 1315 were insignificant. The sentence quoted has been deleted from the Final PEA and replaced with the following, "The SCAQMD continues to believe that Rule 1315 is not in itself a "project", because it does not cause either a direct change in the environment or a reasonably foreseeable indirect change in the environment. However, the SCAQMD has determined to take the most conservative approach and to assume that the project (PRR 1315) will have a significant impact on all the following pollutants: VOC, NOx, SOx, CO, and PM10. Because no feasible mitigation measures have been identified to reduce this impact to less than significant, this impact remains significant." This correction is not a change to a conclusion because, previously on pages 4-15 through 4-17 of the Draft PEA the SCAQMD had already assumed that direct air quality impacts from PRR 1315 would be significant. The incorrect statement was initially included in the document because the SCAQMD had taken the position that PRR 1315 was not a project. When the SCAQMD determined instead to take the conservative approach and identify direct air quality impacts from PRR 1315 significant, this statement was mistakenly not removed. However, the text was clear that SCAQMD had decided to take the conservative approach, identifying direct air quality impacts as significant. Moreover, the analysis was not affected by the error. SCAQMD identified potential daily impacts for each pollutant in Table 4-3. Since it is unknown what projects would make use of the equivalency provisions of PRR 1315, it is not possible to identify their indirect impacts. The SCAQMD is unable to identify any alternatives or mitigation measures that would be both acceptable to U.S. EPA and consistent with the project objective (page 2-18) of taking credit for all surplus reductions available under federal law.

The direct air quality impacts of PRR 1315, and the supposedly "expanding the universe of credits" are discussed on pages 4-14 through 4-17 of the Draft PEA. As discussed in response #2-43, impacts of Rule 1304-exempt facilities and Rule 1309.2 facilities (if there ever are any) are included in the scope of the analysis of direct impacts from PRR 1315. So are the impacts of "recapturing" the 0.2 differential between the 1.2 to 1.0 and 1.0 to 1.0 offset ratios. PRR 1315 has no impact whatsoever on state offset requirements. State requirements are tracked and accounted for separately from federal offset requirements and do not depend on PRR 1315.

With regard to the opinion that PRR 1315 will "expand the universe of pollution credits," as stated in response #2-14, PRR 1315 is not a credit generating rule.

It is too speculative to determine the impacts of making offsets available to EGFs from the Priority Reserve on future third-party market ERC prices and supply. EGFs have to perform a due diligence effort to obtain Credits from the third-party market prior to accessing the Priority Reserve. The proposed amendments limit the access to the Priority Reserve to EGFs only. The Priority Reserve is run separately from the third-party market. It is unlikely the setting of the Priority

Reserve would affect the third-party market as pricing, demand, and supply in both markets differ significantly.

With regard to the effects of potential approval of Rule 1309.2 by EPA, see responses #2-19, #2-22, and #2-43.

With regard to Rule 1304 exempt facilities, as noted in response #2-8, Rule 1315 does not change the exemptions contained in Rule 1304. Further, as noted in response #2-37, PAR 1309.1 does not include proposals to allow 1304-exempt facilities access to the Priority Reserve. Rule 1304 exempts specified facilities from modeling and offset requirements. As a result, facilities specified in Rule 1304 do not need access to the Priority Reserve.

With regard to the offset ratio for eligible EGFs, refer to responses #2-19 and #2-20.

Response 2-45

In this comment the commentators express the opinion that the SCAQMD "fails to incorporate mitigation measures" for [direct air quality] impacts from add publicly-owned biosolids treatment facilities to the definition of essential public services. As for other essential public services, operators of publicly-owned biosolids treatment facilities accessing the Priority Reserve would be required to comply with the following requirements in Rule 1309.1

(A) has provided all required offsets available by modifying sources to Best Available Retrofit Control Technology (BARCT) levels at the same facility; or

(B) demonstrates to the satisfaction of the Executive Officer or designee that the applicant owns or operates no sources within the facility which could be modified to BARCT levels to provide offsets.

Therefore, the rule already would require publicly-owned biosolids treatment facilities to mitigate air quality impacts to the maximum extent feasible.

As indicated in the PEA for the proposed project, however, in spite of the above requirements, adding publicly-owned biosolids treatment facilities to the definition of essential public service will contribute to direct air quality impacts. Since no mitigation fees will be required of these facilities and the fact that mitigation fees collected for other facilities accessing the Priority Reserve may not produce sufficient credits to completely replace the credits used, the SCAQMD concluded that direct air quality impacts would be significant. SCAQMD concludes that requiring mitigation fees for publicly-owned and operate biosolids treatment facilities would not be feasible because such facilities are operated under limited public budgets. As such, the SCAQMD did not fail to include mitigation measures, no feasible mitigation measures beyond using the mitigation fees for emissions reduction projects were identified that could further reduce direct air quality impacts. Indeed, the commentators do not identify or

recommend any mitigation measures that could further reduce direct air quality impacts.

Response 2-46

In this comment the commentators note that the SCAQMD concluded in the PEA that direct air quality impacts from the proposed project would be significant because, although the mitigation fee will be used to fund appropriate clean air projects, the emission reduction from these projects may not necessarily provide emission reductions equal to the number of credits withdrawn from the Priority Reserve. The commentators then cite Kings County Farm Bureau v. the City of Hanford (5th Dist. 1990) 221 Cal. App. 3d 692 [270 Cal Rptr. 650], stating that the court held that it is inadequate to offer a mitigation measure and fail to fully evaluate its feasibility. The commentators are misrepresenting the Kings County Farm Bureau case in this comment. In that case the lead agency concluded that no significant impact would occur from the consumption of groundwater by the project (a coal-fired power plant), even though the aquifer underlying the project area had steadily been over drafted for period of years. Further, the primary "mitigation measure" to ensure that the aquifer was recharged was a so-called "mitigation agreement" by which the applicant agreed to give the local water district money to purchase water from unknown sources. The court found the EIR's treatment of groundwater issues to be deficient for two reasons: first, the document did not disclose whether the respondent city, in finding the project-specific groundwater impacts to be insignificant, had relied on the "mitigation agreement"; and second, there was no evidence in the record showing that any replacement water was, or would be, available for purchase. The court noted that, "To the extent that the [mitigation] agreement was an independent basis for finding no significant impact, the failure to evaluate whether the agreement was feasible and to what extent water would be available for purchase was fatal to a meaningful evaluation by the [decisionmakers] and the public." Clearly the situation in the Kings County Farm Bureau case is completely different than the situation for the proposed project because in that case, the lead agency relied on a single primary mitigation measure, did not evaluate whether the mitigation measure was feasible, but concluded that impacts from the project would be insignificant. For the proposed project, the SCAQMD identifies 18 types of projects or programs that the mitigation fees could be applied to in order to generate emission reductions to mitigate impacts from the proposed project. Unlike the lead agency in the King's County Farm Bureau case, the SCAQMD concluded that in spite of providing funding for these 18 types of projects or programs, direct air quality impacts would remain significant. Therefore, the SCAQMD did not rely on insufficient mitigation measures to conclude that impacts were insignificant. Under the commentators approach, agencies could never use mitigation measures that reduce impacts, but not to insignificance. Such an approach would be contrary to CEQA Guidelines§15126.4, which requires an EIR to describe feasible mitigation measures that could minimize significant adverse impacts

Similarly, the commentators cite Endangered Habitat League v. County of Orange (4th Dist. 2005) 131 Cal App. 4th 777, 785 [32 Cal. Rptr. 3d 177], stating "…even where a developer's contribution to roadway improvements is reasonable, a fee

program is insufficient mitigation where, even with that contribution, a county will not have sufficient funds to mitigate the effects…" Again, this case is not relevant to the proposed project because the lead agency concluded that the fees would mitigate roadway improvement impacts to insignificant, even though the lead agency could not demonstrate there would be sufficient funds to mitigate the effects on traffic. This case is not relevant because, as noted above, the SCAQMD concluded that in spite of providing funding for 18 types of projects or programs, direct air quality impacts would remain significant.

With regard to Rule 1304 exempt facilities, as noted in response #2-8, Rule 1315 does not change the exemptions contained in Rule 1304. Further, as noted in response #2-37, PAR 1309.1 does not include proposals to allow 1304-exempt facilities access to the Priority Reserve. Rule 1304 exempts specified facilities from modeling and offset requirements. As a result, facilities specified in Rule 1304 do not need access to the Priority Reserve. In addition, any impacts of Rule 1304-exempt facilities are already included in the analysis of impacts from PRR 1315.

With regard to the effects of potential approval of Rule 1309.2 by EPA, see response to comment #2-43.

With regard to impacts and mitigation from adding publicly-owned biosolids treatment facilities to the definition of essential public service, refer to response #2-45.

Response 2-47

In this comment the commentators express the opinion that the mitigation fee reductions are not linked to the same emission or locality. The SCAQMD strongly disagrees with this opinion as explained in the following paragraphs.

First, since mitigate measures are designed to reduce "impacts" of the proposed project, mitigation fees may be used to reduce impacts in the affected area of the project, even if it is not the exact same locality. Also, fees can be used to reduce precursors (pollutants that combine in the atmosphere to form the targeted pollutants) of the pollutants causing the impacts, since reducing precursors will also reduce impacts.

As indicated in response #2-42 and as noted in the PEA, eligible facilities are expected to pay mitigation fees which will be used to fund appropriate emission reduction projects. The type of pollutant credits withdrawn for the Priority Reserve will determine which clean air projects will be funded. What this means is that, to the extent feasible, mitigation fees paid for PM10 credits will fund PM10 (or their precursors) emission reduction projects, fees paid for VOC credits will be used to fund VOC emission reduction projects, projects to reduce ozone (VOCs contribute to ozone formation), etc. The types of emission reduction projects and programs to be funded are shown in Chapter 4 of the PEA and are reiterated in response #2-42. As shown in response #2-42, the pollutant(s) anticipated to be reduced by each project or program are also shown.

Table 4-2 in the PEA shows the amounts of credits for each affected pollutant that exceed the SCAQMD's regional significance threshold, thus, creating significant adverse direct regional air quality impacts. The emission reduction projects and programs shown in Chapter 4 of the PEA and in response #2-42 are expected to result in mass daily emission reductions that will improve regional air quality. The fact that the emission reductions from these types of projects and programs may occur from mobile sources to mitigate regional stationary source air quality impacts is irrelevant because the effect is to mitigate significant direct regional air quality impacts with mitigation measures that produce regional air quality benefits.

Response 2-48

In this comment the commentators express the opinions that the SCAQMD does not provide a single mitigation measure to reduce significant [direct] air quality impacts and that the SCAMD could require specific mitigation measures specified to reduce air quality impacts. The SCAQMD strongly disagrees with the opinions expressed in this comment as explained in the following paragraphs.

With regard to mitigation measures, the commentators are referred to responses #2-10, #2-30, #2-42, #2-45, and #2-46.

The commentators state that the SCAQMD could require that facilities accessing the Priority Reserve install BACT or BARCT requirements at all of their facilities. For those types of facilities currently undergoing permit processing that are likely to access the Priority Reserve, EGFs, PAR 1309.1(b)(4) imposes more stringent requirements than best available control technology (BACT). It is not feasible to require projects accessing the Priority Reserve to use BACT at all their existing facilities because BACT (H & S Code §40405) is applicable to <u>new</u> equipment. SCAQMD has already required all power plants subject to the RECLAIM program to install best available retrofit control technology (BARCT) (H & S Code §40406) through Rule 2009. All power plants subject to this rule have complied. Similarly, PAR 1309.1 would require power plants accessing the Priority Reserve to ensure that all of their district facilities meet BARCT. Essential public services are already required to comply with BARCT pursuant to Rule 1309.1(b)(3). Consequently, if future amendments add publicly-owned biosolids treatment facility to the definition of essential public service, they will have to comply with BARCT requirements if accessing the Priority Reserve. It is expected that any future amendments to allow EPRSs access to the Priority Reserve will also require that equipment operate at BACT or BARCT levels.

The commentator's state that the SCAQMD should mandate renewable energy development that will displace high-polluting energy on the grid. Response #2-39 identifies actions as part of the proposed project to encourage renewable energy. Power plants must already demonstrate that renewable are not a viable alternative before they can access credits. Also as indicated in response #2-39, the CPUC and CEC are responsible for determining future demand and the need for future supplies, including renewable energy, not the SCAQMD. As indicated in Chapter 5 and Appendix D, the CEC is the lead agency for all EGFs currently identified that may seek access to the Priority Reserve. It is up to the CEC to determine if

these EGFs are necessary to meet future demand in California, not the SCAQMD. Pursuant to CEQA Guidelines §15040 (b), "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." See also responses #2-26, #2-30, and #2-40. Finally, as noted in response #2-35, renewable power generating technologies do not typically rely on combustion to generate power and, therefore, would not need credits. That is, these types of power generating technologies can already be built without accessing the Priority Reserve. There is nothing currently preventing these types of facilities from being built. Indeed, since of these types of facilities do not typically need to comply with offset requirements, they avoid the cost of purchasing credits that are currently in short supply or submitting permits to the SCAQMD. Finally, as noted in previous responses, CEC and CPUC, the agencies responsible for energy planning in California, have specified in the EAP II (page 7) that despite emphasis on renewable, investment in additional conventional power generation is needed. Any mitigation measure that precluded conventional power generation would be infeasible and would not meet the project objective of seeking to ease the effects of any future power crises (pages 2-17 and 2-18 of the Draft PEA).

In this comment the commentators also suggest that one mitigation measure could be to limit the number of energy projects required to prevent excessive rolling brownouts/blackouts, etc. The SCAQMD is a single purpose agency responsible for adopting and enforcing air pollution control rules in order to attain all state and national ambient air quality standards. As such, it does not have the capabilities or expertise of prediction future rolling brownouts and blackouts. As a result, the SCAQMD is unable to predict the number of energy projects necessary to prevent rolling blackouts and brownouts.

Limiting the number of facilities seeking access to the Priority Reserve would likely result in significant adverse impacts that would be less than for the proposed project, but direct significant adverse impacts would not be eliminated if the amount of available credits exceeds the SCAQMD's daily significance threshold. A mitigation measure that limits credits to amounts less than the SCAQMD's daily significance thresholds would not be considered a viable alternative as it would not achieve any of the objectives of the proposed program since it would not assist any, or very few, affected facilities with complying with emission offset requirements pursuant to Rule 1303.

Further, if adopted, the current proposal would only allow EGFs access to the Priority. The Governing Board has the option of declining to approve access to the Priority Reserve for additional types of facilities. If the Governing decided not to allow access to the Priority Reserve in the future for facilities analyzed in the PEA, thus, reducing the scope of the program, would be within the scope of impacts analyzed for the project alternatives in the future. It should be noted that Alternatives D and E restrict access to the Priority Reserve for all facilities locating in environmental justice area (EJA) or cancer risk area (CRA) zones. Alternative D would provide an exception for municipal EGFs, thus, allowing them to access the Priority Reserve if locating in either EJA or CRA zones.

Response 2-49

In this comment the commentators express the opinion the SCAQMD "refuses to directly address the impacts these rules will have on global warming." Further, the SCAQMD offers "a scant discussion of the general impacts of global warming." The SCAQMD strongly disagrees with this opinion as indicated in the following paragraphs.

The effects of global climate change, global warming, resulting from the emissions of GHGs is comprehensively discussed and analyzed in the PEA. Background information on global climate change is discussed in detail in Chapter 3 of the PEA, including information on AB 32. As noted in Chapter 3 of the PEA, as reported by the California Energy Commission (CEC), California contributes 1.4 percent of the global and 6.2 percent of the national GHGs emissions (CEC,2004). The GHG inventory for California is presented in Table 3-3 (CEC, 2005). Approximately 80 percent of GHGs in California are from fossil fuel combustion (see Table 3-3). Table 3-3 provides the most comprehensive inventory of GHGs in California, in CO2 emission equivalents, currently available.

Chapter 5 includes a comprehensive quantitative analysis of GHG emissions from the EGFs where operating information is currently available (see Table 5-3 of the PEA). The PEA states that there are currently no emission significance thresholds or other tools available to assess GHG and climate change impacts, the SCAQMD does not currently have a "significance threshold" to determine whether a project will have a significant impact on global warming or climate change. In the absence of regulatory guidance, and before the resolution of various legal challenges for global climate change analysis and the selection of a significance threshold, SCAQMD CEQA documents can only address GHG emissions on a base-by-case basis using methods and individual judgment based on existing CEQA guidance. Further, in spite of the lack of significance thresholds, the PEA concludes that the proposed projects taken together overall will contribute to greenhouse gas emissions in California as well as related potential adverse health effects. Given the position of the legislature on AB 32, which states that global warming poses serious threats to health and the environment, and the requirements of CEQA for the lead agency to determine whether a project will have a significant impact, the overall effect of 35.4 billion pounds of projected annual CO2 emissions is considered sizeable. Thus, the indirect GHG emissions impacts from the proposed project were concluded to be significant. This determination is based on the lack of clear scientific or other criteria for determining the level of significance of all the projects' contribution to the already degraded air quality in state of California and the world at large.

The SCAQMD estimated that GHG emissions from identified EGFs that would likely access the Priority Reserve would amount to approximately five percent of the most recent inventory of GHGs in California (in CO2 equivalents) (page 5-9 of the Draft PEA). As reported by the California Energy Commission (CEC), California contributes 1.4 percent of the global and 6.2 percent of the national GHGs emissions (CEC,2004) (page 3-21 of the Draft PEA). The SCAQMD is not aware of any studies that would be able to predict the actual effect on global

climate, let alone California's statewide climate from such emissions. Thus, it is not possible to say, as requested by the commentators, "how the proposed rule and amendments will specifically contribute to this [global climate change] crisis." It is not possible to say that indirect GHG emissions from the proposed project, for example, in any particular amount will produce measurable impacts on agriculture, forestry, etc. Nevertheless, given the legislative policy of the state, SCAQMD concluded that GHG emissions impacts are significant (page 5-9 of the Draft PEA).

The PEA also notes that it is likely that EPRS and publicly-owned biosolids treatment projects will also emit GHGs, thus, contributing to global climate change. However, it is not clear what projects or how many projects will qualify for credits as EPRS or publicly-owned biosolids treatment facilities. Further, that actual combustion sources, equipment, and fuels expected for EPRS and biosolids treatment facilities are less well known, so quantification of GHG emissions from these sources is problematic and would be speculative. Because of these uncertainties, the SCAQMD qualitatively assumes that GHG emissions from EPRSs and biosolids treatment facilities could be substantial, thus, making the significant GHG emission impacts substantially worse.

For additional information on the analysis of GHG emissions, refer to response #2-30.

Response 2-50

In this comment the commentators express the opinion that the PEA "fails to adequately address" the consequences of high GHG emissions. This opinion is incorrect. Pleas refer to response #2-49 regarding the analysis in the PEA of global climate change, AB 32, and GHG emissions. For additional information on the analysis of GHG emissions, refer to response #2-30.

This comment also expresses the opinion that the PEA does not include mitigation for GHG emissions. This opinion is incorrect. Refer to responses #2-10, #2-30, #2-42, #2-45, and #2-46 regarding mitigation measures for the proposed project. It should be noted that the control technologies cited in this comment are for the control of NOx emissions, which are not one of the six major GHG pollutants. To the extent NOx emissions may include nitrous oxide, NOx will be controlled to the extent feasible at all EGFs, which are expected to control NOx emissions as required by PAR 1309.1 using such technologies as SCR, etc. SCONOX is described in the CARB report as of limited applicability, while Xonon has been demonstrated only on turbines smaller than those likely to be used by the identified EGFs. As noted in response #2-48, for those types of facilities currently undergoing permit processing that are likely to access the Priority Reserve, EGFs, PAR 1309.1(b)(4) imposes more stringent requirements than BACT. Essential public services are already required to comply with BARCT pursuant to Rule 1309.1(b)(3). Consequently, if future amendments add publicly-owned biosolids treatment facility to the definition of essential public service, they will have to comply with BARCT requirements if accessing the Priority Reserve. It is expected that any future amendments to allow EPRSs access to the Priority Reserve will also require that equipment operate at BACT or BARCT

levels. It is expected that the technologies cited in this comment will be used to comply with PAR 1309.1 NOx control requirements for EGFs and BACT or BARCT requirements for other types of affected facilities.

PAR 1309.1 already includes mitigation for GHG emissions by requiring each EGF to demonstrate that renewables (which may not emit GHGs), such as solar or wind power, are not viable options for the power to be produced at the specific facility. If renewable are viable options, the conventional EGF may not be built and, therefore, will not emit GHGs. Thus, this provision already mitigates GHG emissions.

The commentators criticize the fact that the PEA discusses additional mitigations for GHG impacts generally, since these measures are within the authority of CEC, CPUC, and CARB. This discussion of additional GHG mitigation measures goes beyond what is required by CEQA, and is provided to make the PEA more informative relative to GHGs generally. The SCAQMD has not used these measures as a way to avoid adopting measures within <u>its</u> authority. As discussed above and on page 5-10 of the Draft PEA, PAR 1309.1 already requires all feasible mitigations by reducing emissions to less than BACT levels and by prohibiting issuance of credits where renewable are viable option.

Response 2-51

In this comment the commentators express the opinion that the SCAQMD "disregards CEQA requirements to discuss proposed mitigation measures for these projects." This opinion is incorrect. Refer to responses #2-10, #2-30, #2-42, #2-45, and #2-46 regarding mitigation measures for the proposed project.

The comment also cites the definition of mitigation in CEQA Guidelines §15370, not the actual requirements for addressing mitigation measures in EIRs contained in CEQA Guidelines §15126.4. The SCAQMD is aware of the requirements for mitigation measures for EIRs (and EIR-equivalent documents) contained in CEQA Guidelines §15126.4 and asserts that the PEA complies with all relevant requirements regarding addressing mitigation measures.

GHG emissions and health impacts are derived from, or directly related to the air pollutant emissions of the proposed project. As stated earlier, air pollution emissions are already mitigated to the maximum extent feasible by: (1) prohibiting access to credits where renewable, which many not emit air contaminants, are a viable option; (2) requiring each pollutant to be controlled to BACT levels or less, including specific energy efficiency limits in pounds per megawatt-hour; and (3) imposing a mitigation fee, which will be used to reduce air pollution impacts from PAR 1309.1 pollutants, their precursors, etc., in the areas affected by these emissions. In addition, staff will be recommending in the adopting resolution for PAR 1309.1 that some of the mitigation fees be spent on analyzing opportunities to increase use of renewable (long-term mitigation) and to develop PM2.5 control technology for EGFs, which currently does not exist. The latter project may result in reduced PM2.5 emissions in the future, reducing the calculated mortality impacts from exposure to PM2.5 emissions from EGFs.

Response 2-52

The commentators state that "the proposed mitigation measures stem from requirements that these facilities must fulfill in order to be sited." The footnote for this statement refers to CARB's website that provides general information on "authority to construct." It is unclear what the intent of this comment is. It is clear that affected facilities seeking access to the Priority Reserve require an authority to construct from the SCAQMD. This does not alter the fact that the SCAQMD is not lead agency for these projects, in particular the projects identified in Chapter 2 and evaluated Appendix D because it is not the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines §15051(b)). Further, pursuant to CEQA Guidelines §15050, "Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project. This agency shall be called the Lead Agency." It is the responsibility of the lead agency to adhere to the requirements for preparing the CEQA document, including identifying feasible mitigation measures. Appendix D provides information where available for those projects expected to seek access to the Priority Reserve pursuant to PAR 1309.1. The information is from CEQA documents prepared by other public agencies acting as the lead agencies for the affected projects.

CEQA Guidelines § 15096 contains requirements for responsible agencies. CEQA Guidelines §15096(g)(1) states, "When considering alternatives and mitigation measures, a Responsible Agency is more limited than a Lead Agency. A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." As noted in response #2-51, the SCAQMD has required mitigation measures that go beyond what is typically required for a responsible agency. For example, consistent with this requirement for responsible agencies, the SCAQMD, as noted in response #2-48, for those types of facilities currently undergoing permit processing that are likely to access the Priority Reserve, EGFs, PAR 1309.1(b)(4) imposes more stringent requirements than BACT. Essential public services are already required to comply with BARCT pursuant to Rule 1309.1(b)(3). Consequently, if future amendments add publicly-owned biosolids treatment facility to the definition of essential public service, they will have to comply with BARCT requirements if accessing the Priority Reserve. It is expected that any future amendments to allow EPRSs access to the Priority Reserve will also require that equipment operate at BACT or BARCT levels. See also Table 2-1 in response #2-5.

The commentators state that for some of the power plant projects evaluated in Appendix D, the lead agencies did not address certain impacts and, thus, do not offer mitigation and then cites as an example the El Segundo Repower project. The SCAQMD cannot speculate as to why the lead agency did or did not evaluate some environmental topic areas and not others. In the particular case of the El Segundo Repower project, the lead agency was the CEC. The CEC has a certified regulatory program, as does the SCAQMD. The document evaluated appeared to be the equivalent of an EIR in which case it likely that the CEC had concluded in an NOP/IS equivalent process that the proposed project would not generate

significant adverse impacts in some environmental topic areas. As a result, these areas were not further evaluated in the EIR equivalent document. This approach is consistent with substantive and procedural requirements in CEQA.

Response 2-53

In this comment the commentators express the opinion that the SCAQMD does not "offer" mitigation measures when considering health effects from the Vernon Plant. As in the case of the other projects evaluated in Chapter 5 and Appendix D of the PEA, the SCAQMD is not the lead agency for the Vernon Plant. As indicated in response 2-52, the CEC is the lead agency for this project and is the agency responsible for implementing mitigation measures. Nevertheless, the SCAQMD has required the maximum feasible mitigations for air quality impacts as part of the project description, including the PM2.5 emission that cause the health impacts, referred to in the comment.

Specifically in reference to PM2.5, as indicated in responses #2-48 and 2#2-52, EGFs accessing the Priority Reserve pursuant to PAR 1309.1 would have to comply with PM10 control requirements that are more stringent than BACT. Based on a review of AQMP inventories for combustion sources the PM2.5 fraction of PM10 is 99 percent[10]. This means that PM2.5 emission requirements for EGFs accessing the Priority Reserve are more stringent than is currently the case for other sources subject to the SCAQMD's NSR program. This serves to reduce the health effects from all EGFs, including the Vernon Plant. The commentators are simply wrong when they allege no mitigation is required. Mitigation is included as part of the proposed project by requiring BACT or lower controls for PM10 (which is 99 percent PM2.5) and by imposing the mitigation fee, which will be used to reduce pollution in the areas affected by the affected projects.

In addition, the revised air quality modeling analysis staff conducted indicated that the maximum annual average PM2.5 concentration impact from the three proposed gas-fired EGFs was 0.44288 ug/m3. This analysis is conservatively based on emission rate estimates provided by the applicant early in the permit application process and, as such, these rates may be substantially higher than the actual emission rates from the project. Furthermore, it assumes that the Vernon project would be constructed at the size originally proposed by the applicant (943 MW). It is unclear whether or not the proposed project will be able to meet the additional emission limitations proposed in PAR 1309.1 for projects greater than 500 MW locating in Zone 3 and environmental justice areas. Those additional requirements, if satisfied, assure the maximum feasible mitigation of emissions from affected facilities. In the event the proposed project needs to be scaled down, the resulting emission impacts will be less than those estimated in staff's modeling analysis.

Relative to calculating the potential for health impacts, a calculation was performed on the modeled air quality impacts and changes in mortality. For this

[10] Final –Methodology to Calculate Particulate Matter (PM) 2.5 and PM 2.5 Significance Thresholds (SCAQMD, 2006; http://www.aqmd.gov/ceqa/handbook/PM2_5/finalmeth.doc.

calculation, it was assumed that all the PM10 is all PM2.5, and the study by Pope (Pope at al., 2002) was used to estimate the change in mortality rate associated with a change in PM2.5. This methodology is the same methodology used in the 2007 AQMP Socioeconomic Report to evaluate the number of avoided premature deaths from exposure to PM2.5. From the Pope study, a 10 ug/m3 change in PM2.5 is associated with a six percent change in mortality. This was applied in a concentration-response equation to determine the relative change in mortality associated with the estimated changes in annual PM levels. The Pope study, was one of three studies used to evaluate the number of avoided premature deaths from exposure to PM2.5 in the 2007 AQMP Socioeconomic Report. The study by Jerrett (Jerrett et al., 2005), the second of the three studies in the 2007 AQMP Socioeconomic Report, found a 17 percent change in mortality rate for a 10 ug/m3 change in PM2.5. The study by Laden (Laden et al., 2006), the third of three studies in the 2007 AQMP Socioeconomic Report found changes in mortality from a 10 ug/m3 increase in PM2.5 falling in between the values for the Pope and Jerrett studies which would result in an intermediate value for mortality. Regardless of which study is relied on, the health effects of this project were deemed significant.

Finally, the analysis of potential adverse health impacts from exposure to PM2.5, like the analyses for other types of environmental impacts, typically incorporates a conservative or reasonable "worst case" approach. This entails the premise that whenever the analysis requires that assumptions be made, those assumptions that result in the greatest adverse impacts are typically chosen. This method likely overestimates the actual direct and indirect impacts from the proposed project.

Response 2-54

In this comment the commentators express the opinion that the SCAQMD must provide a mitigation monitoring plan and that it must be in the PEA. Neither the Public Resources Code §21081.6 nor the CEQA Guidelines require that a mitigation monitoring plan be included in an EIR. Further, CEQA Guidelines 15097(a) states in part, "…In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. With regard to direct air quality impacts, as noted in responses #2-48, #2-50, #2-51, #2-52, and #2-53, the SCAQMD has required mitigation of these impacts as requirements in PAR 1309.1. Because these mitigations are part of PAR 1309.1 requirements, no mitigation measures beyond these stringent requirements were identified, therefore, a mitigation monitoring plan is not required.

As noted in Appendix D of the PEA, for many of the projects the lead agencies identified mitigation measures to reduce impacts for these projects at the project-specific level. As lead agency it is up to these lead agencies to identify and implement mitigation for those projects where they have assumed the role of lead agency. Further, it is the responsibility of these lead agencies to prepare mitigation monitoring plans, as appropriate, pursuant to CEQA Guidelines

§15097 to ensure that mitigation measures for the projects where they are lead agency are implemented.

Response 2-55

In this comment the commentators express the opinion that the PEA is "inadequate because of its procedural failures," yet the commentators do not identify any specific procedural requirements that the SCAQMD failed to adhere to. Instead, the commentators complain about "repeat sentences and paragraphs" and "disjointed appendices." There is one instance in the Draft PEA in which information in one paragraph was repeated in the following paragraph. This information has been deleted in the Final PEA. In other instances, information has been repeated intentionally to emphasize a particular point being made.

It is unclear what is meant by disjointed appendices. By their very nature appendices include different types of technical information or other detail, so there is reason or requirement for one appendix to be related to or join to another appendix as implied by the comment. Putting technical information or other relevant information in appendices is, in fact, consistent with CEQA Guidelines §15147, which states in part, "Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR."

Far from being a "grudging and pro forma nod" to CEQA, the PEA breaks new ground in CEQA analysis and consequent availability of information to the public by performing two distinct analyses for emerging topics of importance that have rarely been analyzed in CEQA documents: (1) quantification, identification as significant, and mitigation of GHG emissions; and (2) quantification, identification as significant, and mitigation of health impacts from exposure to PM2.5 emissions from EGFs that may access credits under PAR 1309.1. The latter analysis was included in an effort to disclose the maximum information possible, even though a standard methodology has not been developed or peer reviewed.

Response 2-56

In this comment the commentators express the opinion that the SCAQMD's NOP/IS "suffers from fundamental flaws that render them inadequate." The SCAQMD strongly disagrees with this opinion. As noted in previous responses, three of the four commentators received notice that these documents were available for public review and comment. Notice of the availability of the NOP/IS was published in the Los Angeles Times on March 23, 2007, and the NOP/IS were available online starting March 23, 2007 on the SCAQMD's CEQA webpages at the following URL: http://www.aqmd.gov/ceqa/aqmd.html. The commentators did not submit comments on the IS/NOP.

The commentators also state incorrectly that the NOP/IS made "no mention whatsoever of Rule 1315" and that this omission "invalidates" the Draft PEA In response to item XVIII. (b) of the environmental checklist (Chapter 2 of the IS), which states, "Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the

incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?" the SCAQMD checked "Potentially Significant Impact.. In the discussion of cumulative impacts for this item, the SCAQMD specifically indicates that Rule 1315 will be included in the analysis of cumulative impacts in the Draft PEA.

Subsequent to release of the NOP/IS, the SCAQMD decided to include Rule 1315 as part of the proposed project under consideration because the requirements for analyzing cumulative impacts are not as stringent as the requirements for analyzing the project under consideration, as indicated by CEQA Guidelines §15130(b), which states in part, "The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, **but the discussion need not provide as great detail as is provided for the effects attributable to the project alone** [emphasis added]." To ensure that the analysis of Rule 1315 was as comprehensive as the analysis for PAR 1309.1, it was added to the project description for the program under consideration in the PEA rather than analyzed as a cumulative impact. Thus, the NOP/IS is not inadequate.

The commentators also fail to cite any authority for the proposition that, even if an IS were to be considered inadequate, it would have any adverse effect on the subsequent EIR. The case cited by the commentators, Christward Ministry v. Superior Court (4th Dist.1986) 184 Cal. App. 3d 180 [228 Cal. Rptr. 868], need correct cite, was a case where the IS served as a negative declaration, and the court concluded that the environmental analysis was insufficient. In Leonoff v. Monterey County Board of supervisors (6th Dist. 1990) Cal. App.3d 1337 [272 Cal Rptr. 372], the court stated, "It is not the case, as objectors contend, that a negative declaration is necessarily invalid if based on a defective initial study." Additional cases upholding negative declarations despite inadequate initial studies are Gentry v. City of Murrieta (4th Dist. 1995) 36 Cal App. 4th 1359 [43 Cal. Rptr. 2d 170] and Silveira v. Las Gallinas Valley Sanitary District. (1st Dist. 1997) 54 Cal App. 4th 980 [63 Cal. Rptr. 2d 244]. These cases uphold the adequacy of a negative declaration based on evidence added to the record after public review and comment. If such information can use rely on an inadequate IS, then certainly information that is circulated to the public, such as the PEA in this case, would not be invalidated by an inadequate IS. However, as already asserted above, the IS for the proposed project is not inadequate and complies with all relevant CEQA requirements.

The commentators' reference to responsible and trustee agencies, which allegedly did not receive adequate consultation because PRR 1315 was discussed under item XVIII. B. of the environmental checklist under cumulative impacts instead of the project description, fails to identify any agency that was adversely affected. Moreover, because the IS did mention PRR 1315 as a project whose cumulative impacts would be analyzed, there was adequate notice that PRR 1315 would be analyzed.

Response 2-57

In this comment the commentators express the opinion that the SCAQMD "failed to adequately apprise responsible and trustee agencies of the program under consideration. The SCAQMD disagrees with the opinion expressed in this comment that SCAQMD failed to consult with responsible agencies. In the case of the proposed project there are no responsible agencies because no other agencies have approval authority over the program under consideration in the PEA. CARB and U.S. EPA have approval authority over whether or not SCAQMD rules can be incorporated into the SIP, but they do not approve the project. In any event, CARB and U.S. EPA have been provided with copies of all CEQA documents related to the proposed project. Other public agencies may have approval authority over subsequent projects that comply with the requirements of the proposed project, but this does not qualify them as a responsible agency for the proposed project.

According to CEQA Guidelines §15386, "'Trustee Agency' means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies include:

(a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department;

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;

(c) The State Department of Parks and Recreation with regard to units of the State Park System;

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

As indicated in the NOP/IS for the proposed project and Chapter 4, the proposed project will not adversely affect natural resources which are held in trust for the people of the State of California. Thus, there are no trustee agencies for the proposed project. If the projects listed in Table 5-2 and evaluated in Appendix D of the PEA may adversely affect natural resources which are held in trust for the people of the State of California, it is the responsibility of the lead agencies for these projects to "adequately apprise" the appropriate trustee agencies of their projects.

Finally, in spite of the above, the SCAQMD did apprise the California Department of Fish and Game of the proposed project.

Response 2-58

In this comment the commentator expresses the opinion that Draft PEA "provides neither a qualitative nor quantitative analysis of potential toxic air contaminants to be released from approval of its 'program,' including releases from essential public services (hospitals, schools, fire and police stations), power plant facilities, energy projects of regional significance,…and biosolids treatment facilities."

This opinion is in error, as explained in the following paragraphs. First, however, it should be noted that the proposed program does not change any existing requirements for hospitals, schools, or fire and police stations.

The analysis of air toxics is a localized analysis that is prepared as part of project level analysis, not at the program level. It is not possible to analyze the toxics impacts of individual projects without detailed knowledge of the project-specific emissions, stack height, surrounding topography, local meteorology, location of receptors, etc. In spite of this, the PEA discusses the air toxics requirements in Chapter 4 of the PEA. As stated in comment #2-59, SCAQMD's significance threshold for cancer risk is greater than or equal to 10 in one million (10×10^{-6}). A facility must demonstrate that its cancer risk is less than this amount (with BACT for toxics or TBACT) in order to receive approval for the project) As noted in Chapter 4, Rule 1401 - New Source Review for Toxic Air Contaminants, still applies to all new, modified or relocated sources. Rule 1401 protects nearby receptors from toxic air contaminants by limiting both cancer and non-cancer exposure from new toxic sources. For new or modified EGFs or other types of projects, the requirements of Rule 1401 would have to be satisfied before any permit is issued. Rule 1401 limits cancer risk for new facilities. Further, PAR 1309.1 also has several proposed provisions that would serve to reduce exposure to air toxics from EGFs. First, operators of EGFs proposing to locate their facilities in Zone 3 or EJA at greater than 500 MW must demonstrate that the facility's cancer risk is less than one-half in one-million (0.5 x 10-6), the noncancer risk, both acute and chronic, hazard index is less than 0.1, and cancer burden is less than 0.05. Secondly, operators of EGFs proposing to locate their facilities in Zone 2, or Zone 3/EJA at less than 500 MW must demonstrate that the facility's cancer risk is less than one in one-million (1×10^{-6}), the noncancer risk, both acute and chronic, hazard index is less than 0.5, and cancer burden is less than 0.1. These risk levels are substantially more health protective than Rule 1401 or the SCAQMD's significance threshold of 10 in one million (10×10^{-6}). Due to the distances between known facilities (Figure 2-2 on page 2-7 of the Draft PEA), it is unlikely that toxic impacts would overlap.

As indicated in responses #2-14, #2-25, #2-29, and #2-30 the PEA includes an analysis of indirect impacts from siting, constructing, and operating facilities that would be able to access the Priority Reserve as part of the proposed program. As appropriate, the CEQA documents for the projects evaluated in Chapter 5 and Appendix D analyze air toxics impacts from these projects.

As noted in response #2-32, the PEA provides information on the indirect impacts that may be generated from projects seeking access to the Priority Reserve, for all projects where such information is available. It is simply not true that the SCAQMD "arbitrarily selected only 10 facilities when far more are known to be allowed access to the Priority Reserve." The SCAQMD does not currently have facility-specific information for all of the projects, including three of the EGFs. Moreover, it is untrue that "far more are known" to be able to access the Priority Reserve. The SCAQMD has identified in Table 2-6 the EPRSs that potentially may access the Priority Reserve. The SCAQMD does not know how many

potential publicly-owned biosolids treatment facilities may access the Priority Reserve.

Indirect impacts for those projects that are identified in the PEA, but where information is currently unavailable, are considered to be speculative at this time. Similarly, indirect impacts from future projects that are not known or identified at this time and where information clearly is not available are not reasonably foreseeable impacts. Consistent with CEQA Guidelines §15145, the PEA avoids evaluating speculative information for projects where information is not available or for future projects that are not known at this time. The absence of such speculative information in the PEA would not affect the ability of future projects to obtain credits from the Priority Reserve provided they otherwise satisfy applicable conditions and requirements, including undergoing an environmental analysis pursuant to CEQA.

Response 2-59

In contrast to comment 2-58, in this comment the commentators agree that the Draft PEA does indeed address air toxics. The comment expresses the opinion, however, that the analysis is flawed for three reasons. First, the comment asserts that the SCAQMD "fails to analyze the aggregate impact of the program," that is cumulative impacts. As noted in response #2-31, In Chapter 4 of the Draft PEA the SCAQMD concludes that direct air quality impacts are cumulatively considerable and, therefore, cumulatively significant. The SCAQMD states further that indirect cumulative impacts from construction and operation of the projects identified in Chapter five are also considered to be significant. However, the SCAQMD's thresholds of significance for air toxics are based on the maximum cancer risk. The maximum risk from each facility is separate from every other facility and unlikely to overlap (see response #2-58). The sum of all the "projects" is not appropriate for measuring localized impacts that do not overlap. In Chapter 5, the PEA states, "The individual CEQA documents for each project address cumulative impacts as required by CEQA and as indicated in the tables in Appendix D." Further, In any event, for the purposes of this indirect impacts analysis relative to cumulative impacts, the SCAQMD is relying on the cumulative impacts conclusions reached for each project that are stated in the individual CEQA documents."

Second, the comment states that SCAQMD does not provide "a qualitative or quantitative basis for understanding how the program will effect [sic] toxic air contaminants." As indicated in responses #2-14, #2-25, #2-29, and #2-30, and #2-58 the PEA includes an analysis of indirect impacts from siting, constructing, and operating facilities that would be able to access the Priority Reserve as part of the proposed program. As appropriate, the CEQA documents for the projects evaluated in Chapter 5 and Appendix D analyze air toxics impacts from these projects. Also, as noted in responses #2-32 and #2-58, the PEA provides information on the indirect impacts that may be generated from projects seeking access to the Priority Reserve, for all projects where such information is available, but avoids speculation of impacts where such information is not available. Finally, PAR 1309.1 will help assure that air toxic impacts from EGFs are minimized by limiting cancer in zone 2 and for projects less than 500 MW in zone

3 and EJAs to less than one in one million (1 x 10^{-6}) with a cancer burden less than 0.1. For projects greater than 500 MW in zone 3 or an EJA, the maximum cancer risk is limited to 0.5 in one million (0.5 x 10^{-6}) and a cancer burden of 0.05. These limits are substantially more stringent than Rule 1401, which would apply to EGFs not accessing the Priority Reserve. Rule 1401 limits maximum cancer risk for equipment subject to the rule to 10 in one million (10 x 10^{-6}) and a cancer burden of 0.5

Third, the comment states that the SCAQMD does not provide quantitative support for the contention that the proposed amendments are expected to reduce the use of high-polluting standby emergency generators. Prior to adoption of the September 2006 amendments to Rule 1309.1, these same environmental groups were critical of the SCAQMD because allowing EGFs access to the Priority Reserve would allow siting, construction, and operation of EGFs. In the PEA prepared for the proposed program, the SCAQMD has analyzed the indirect impacts from these facilities. To the extent that these facilities are built, which is not certain at this time, as much as 4,975 MW of power generating capacity could go online. As noted in response #2-5, according to the 2005 Integrated Energy Policy Report[11], CEC states, "Electricity supplies are not keeping up with demand. Further, Consumption is forecast to grow between 1.2 and 1.5 percent annually, from 270,927 GW-hrs in 2004 to between 310,716 and 323,372 GW-hrs by the end of the forecast period in 2016... The highest consumption growth is forecast for the Sacramento Municipal Utility District (SMUD) control area and Southern California portions of the CA ISO control area, reflecting strong population growth in those areas. By 2016, California's utilities will need to procure approximately 24,000 MW of peak resources to replace expiring contracts and retiring power plants and meet peak demand growth." In addition, according to the CEC [12], energy and peak demand growth rates hover around two percent per year in California. Using average weather (once-in-two-year temperature levels) as the norm for making a forecast, about 1,000 megawatts of new generation capacity, or demand reduction effects, must be added or occur, relatively, each year just to stay even with demand growth rates. As can be seen by these projections, an additional 4,975 MW of power generating capacity (assuming all of the EGFs are built) will help meet future energy demand. See also page 2-5 of the Draft PEA describing peak demand as 38 percent higher than during the 2000 to 2001 energy crises. These data demonstrate that the EGFs, which may be allowed to access the Priority Reserve, are needed to avert future energy crises. To the extent there are additional supplies of energy in the future, there will be a corresponding reduction in the need to operate highly polluting emergency standby diesel generator and, therefore, a concomitant avoidance of emissions of carcinogenic diesel particulate emissions from these units.

Response 2-60

In this comment the commentators express the opinion that the SCAQMD "fails to quantify the aggregate emissions from diesel-fired generators" and that these

[11] California Energy Commission. 2005. Integrated Energy Policy Report. http://www.energy.ca.gov/2005publications/CEC-100-2005-007/CEC-100-2005-007-CMF.PDF

[12] Source: http://www.energy.ca.gov/electricity/commission_demand_forecast.html

data are necessary to provide a comparison between the proposed project and the status quo. This opinion demonstrates a confusion between one of the objectives of the proposed project, required pursuant to CEQA Guidelines §15124(b), and CEQA's requirement for analyzing impacts from a project, required pursuant to CEQA Guidelines §15126.2. As indicated in Chapter 2, one of the objectives of the proposed project is to "add power generation capacity in California to reduce the likelihood of blackouts and/or the need to run old high-polluting standby diesel generators, which avoids an increase in criteria pollutant and toxic emissions." Nowhere in the CEQA Guidelines is there a requirement to quantify the objectives of the project or compare the objectives to the impacts of the proposed project. In spite of this the PEA provides an example of the emission that occurred on an example rolling blackout in the SCAQMD. Further, as expressed in response #2-5, another more important parameter to consider is the emissions generated on a per MW basis from diesel generators compared to natural gas-fired EGFs that would seek access to the Priority Reserve under PAR 1309.1. Table 2-1 above (see response #2-5) shows PM10 and NOx emission requirements in PAR 1309.1 compared to the emission limits in effect at the time existing emergency diesel generators were permitted. As can be seen in Table 2-1, PM10 emissions from existing emergency diesel generators are approximately two orders of magnitude greater than the PM10 emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to. Similarly, NOx emissions from existing emergency diesel generators are approximately three orders of magnitude greater than the NOx emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to.

SCAQMD staff has calculated that cancer risks from operation of diesel backup generators with the highest facility maximum incremental cancer risk (MICR) was estimated at 124 in a million (124×10^{-6}) (SCAQMD, 2006[13]). If an emergency results in substantial operation of emergency backup generators, they would easily exceed the cancer risks that facilities accessing the Priority Reserve would have to adhere to. For criteria pollutants, specifically NOx, emissions from diesel backup generators are potentially orders of magnitude more polluting than from new EGFs accessing the Priority Reserve (see response #2-5).

It is impossible to calculate the total annual emissions from operating diesel backup generators in the future since the SCAQMD cannot predict when, where, or for how long rolling blackouts or brownouts will occur. Further, the SCAQMD has not relied solely on the desire to prevent the use of diesel backup generators as a justification for the proposed project. The project objectives (pages 2-17 and 2-18 of the Draft PEA) include facilitating permitting for new EGFs, which will contribute to easing potential future power crises. The CEC and CPUC have published the EAP II, which states at page 7 that despite renewable and energy efficiency programs, additional conventional power plants will be needed. There are additional adverse effects from power crises beyond the operation of diesel backup generators. These include descriptions of health-related equipment, potential traffic accidents if signals are inoperative, heat-

[13] http://www.aqmd.gov/ceqa/documents/2006/aqmd/finalEA/1470_FEA.doc.

related illness and death if air conditional is not functioning, inability of business to operate and at a less productive capacity food to homeowners whose refrigerators are unable to cool foods, etc.

This comment also suggests that a "feasible alternative" would be additional or more stringent requirements on diesel backup generators. However, the SCAQMD has already adopted Rule 1470, which codifies CARB's "air toxics control measure" and has been determined by CARB to "reduce emissions to the lowest level allowable" (H & S Code §39666(c)). Also, the SCAQMD is in the process of amending Rule 1110.2, which would further limit emissions from diesel powered generators. Finally, reducing emissions from diesel backup generator is not the only reason for PAR 1309.1, as stated on pages 2-17 and 2-18 of the Draft EA. One project objective is to "facilitate permit process for new power generation in California, which will contribute to easing potential future power crises in California." There are adverse effects from power crises that are in addition to the operation of diesel backup generators. Some of these effects include interfering with the operation of health-related equipment, and increasing the possibility of traffic accidents if signals are not working. People may suffer heat-related illnesses or death if air conditioning is interrupted. Businesses may be unable to operate. Residents may be unable to cook, food may spoil if the refrigerators is not operating, etc. PAR 1309.1 is intended to help aver all adverse impacts of future power crises.

With regard to the U.S. EPA new source performance standards, these are irrelevant to the proposed project. According to the Federal Register where these standards are published, the proposed exhaust emission standards mentioned by the commentators would apply starting in 2011 and 2012 for different sizes of new land-based, spark-ignition engines at or below 19 kilowatts (kW). These small engines are used primarily in lawn and garden applications. Further, evaporative emission standards for vessels and equipment using any of these engines would apply[14]. The proposed project does not include any requirements for these types of engines. Further, as indicated here, they affect new engines starting in the years 2011 and 2012, but do not contain any requirements for existing engines, For additional information on emergency power generating equipment refer to response #2-34.

Response 2-61

The commentators conclude by reiterating that the Draft PEA "fails to meet minimum substantive and procedural requirements of CEQA." As indicated in the preceding responses, SCAQMD strongly disagrees with this opinion and asserts that the PEA complies with all relevant substantive and procedural requirements of CEQA. Therefore, recirculation pursuant to CEQA Guidelines §15088.5(a)(4) is neither warranted nor required.

[14] Source: http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art20.html

CENTER *for* BIOLOGICAL DIVERSITY

VIA ELECTRONIC MAIL: mkrause@aqmd.gov

June 29, 2007

Mr. Michael Krause
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4182

Re: **COMMENTS AND REQUEST FOR EXTENSION OF COMMENT PERIOD ON DRAFT PROGRAM ENVIRONMENTAL ASSESSMENT FOR PROPOSED AMENDMENTS TO RULE 1309.1 – PRIORITY RESERVE AND RE-ADOPTION OF RULE 1315 – FEDERAL NEW SOURCE REVIEW TRACKING SYSTEM**

Dear Mr. Krause,

The Center for Biological Diversity ("Center") has recently received notice of the above-referenced project. The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's Climate, Air, and Energy Program works to reduce U.S. greenhouse gas emissions and other air pollution to protect biological diversity, our environment, and public health. The Center has over 35,000 members throughout California and the western United States.

The Center respectfully requests a 30 day extension of the public comment period because we have to date had insufficient time to review the Draft Program Environmental Assessment for this significant project. We intend to submit additional comments during this time period, and hope that you will fully consider and respond to them. In particular, we are concerned that the environmental document has not fully disclosed, analyzed, and incorporated alternatives and avoidance and mitigation measures to reduce the project's significant greenhouse gas and other air pollution impacts. 3-1

We look forward to hearing your response to our request for an extension of the comment period. If you have any questions, please do not hesitate to contact me at (760) 366-2232 x302 or ksiegel@biologicaldiversity.org.

Sincerely,

Kassie Siegel
Center for Biological Diversity

Tucson · Phoenix · San Francisco · San Diego · Los Angeles · Joshua Tree · Silver City · Portland · Washington, DC

Kassie R. Siegel · Climate, Air, and Energy Program Director · P.O. Box 549 · Joshua Tree, CA 92252-0549
tel: (760) 366-2232 ext. 302 *fax:* (760) 366-2669 ksiegel@biologicaldiversity.org *www.BiologicalDiversity.org*

COMMENT LETTER NO. 3
CENTER FOR BIOLOGICAL DIVERSITY

Kassie Siegel
June 29, 2007

Response 3-1

With regard to your request for a 30-day extension of the public comment period, the SCAQMD is sensitive to requests for additional time to review CEQA documents for projects where it is the lead agency. If time permits, in some cases, additional time for public review may be granted. In the case of the PEA for PAR 1309.1 and PRR 1315, the document has been available for a full 45 days, consistent with Public Resources Code §21091(a). Further, the proposed project is scheduled for public hearing on July 13, 2007. Consequently, I regret to inform you that the SCAQMD is unable to extend the comment period per your request. SCAQMD staff will make every effort to respond to comments received after the close of the comment period and include such comments and responses to comments in the Final PEA if they are received in a timely manner.

The SCAQMD disagrees with the opinion expressed in this comment that the Draft PEA "has not fully disclosed, analyzed, and incorporated alternatives and avoidance and mitigation measures to reduce the project's significant greenhouse gas and other air pollution impacts. The PEA contains a robust discussion of direct and indirect impacts, including indirect greenhouse gas and other pollution impacts in Chapters 4 and 5 and Appendix D. In particular, the PEA quantifies greenhouse gas emissions from each of the identified EGFs anticipated to seek access to the Priority Reserve. In addition, PAR 1309.1 requires operators of each EGF seeking access to the Priority Reserve to demonstrate that renewable energy sources are not a viable option for producing energy by that project. Although no CEQA mitigation measure measures were identified for direct air quality impacts, PAR 1309.1 contains a mitigation fee requirement when purchasing credits from the Priority Reserve. As part of the adoption of PAR 1309.1, staff will be making the following recommendations to the Governing Board as part of the adoption resolution with regard to use of the mitigation fees:

- Invest at a minimum one-third of the mitigation fees in renewable energy projects
- Set aside $4,000,000 to identify and pilot the most advanced PM2.5 add-on control technologies that would further reduce PM2.5 emissions from EGFs
- Set aside $1,000,000 from the mitigation fees collected to conduct a comprehensive energy resource planning analysis for the next 10 years and identify avenues to maximize renewable energy production in the Basin.
- Set aside $10,000,000.00 to research health impacts associated with PM2.5 exposure; and
- Direct staff to prepare a plan for Board approval by September 2007, to discuss the balance of the mitigation fees to be collected for pollution reduction projects, including renewable energy projects.

With regard to mitigating indirect greenhouse gas (GHG) emissions, the SCAQMD is not the lead agency relative to siting, constructing, or operating facilities expected to access the Priority Reserve. Consequently, the responsibility for imposing mitigation measures to reduce GHG emissions rests with the lead agency. Table 5-4 in Chapter 5 of the PEA identifies strategies that could be imposed by the lead agencies to reduce GHG emissions from affected facilities.

Finally, the stringent emission control requirements that affected facilities would be subject to in order to access the priority reserve, BACT requirements, etc., serve to increase the efficiency, especially of EGFs. The greater the efficiency, the lower the emissions of criteria pollutants and GHGs. Related to energy efficiency, SB1368 was adopted last year and one of its provisions states the following, "On or before February 1, 2007, the commission, through a rulemaking proceeding, and in consultation with the Energy Commission and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of load-serving entities, at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation." On January 25, 2007, CPUC adopted an interim greenhouse gas emission performance standard of 1,100 pounds of CO2 per megawatt-hour. Further, on May 23, 2007, the California Energy Commission (CEC) adopted regulations that establish and implement a 1,100 pounds per MW-hr Emissions Performance Standard (EPS) (see CEC order No. 07-523-7) [Docket No. 06- OIR-1]). As indicated in Table 5-3 in Chapter 5 of the PEA, the combined cycle power plants are less than CPUC's and CEC's performance standard (all are less than 900 pounds per MW-hr) and even most of the simple cycle power plants are less (all but two are at 1,079 pounds per MW-hr). As can be seen from the preceding information, all but two of the EGFs identified in the PEA meet or exceed the energy performance standards for CO2. Although two turbine units at one facility exceed the standard, the overall average CO2 per MW-hr from the whole project does not exceed the emissions performance standard.

Michael J. Carroll
Direct Dial: 714.755.8105

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File No. 043158-0000

June 29, 2007

Mr. Michael Krause
Air Quality Specialist
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4182

Re: Comments on Draft Program Environmental Assessment for Proposed Amended Rule 1309.1 - Priority Reserve and Re-Adopted Rule 1315 - Federal New Source Review Tracking System

Dear Mr. Krause:

Latham & Watkins LLP submits the following comments on the Draft Program Environmental Assessment for Proposed Amended Rule 1309.1 - Priority Reserve and Re-Adopted Rule 1315 - Federal New Source Review Tracking System ("Draft EA"), which was released for public review on May 16, 2007, and on the Notice of Completion ("NOC") of the same date.

We offer the following comments regarding specific aspects of the Draft EA and NOC:

1. Page 2-5: We request that the following materials (enclosed herein), which underscore the severity of the ongoing energy crisis in California, be added to the administrative record:

- California Energy Commission ("CEC") 2005 Integrated Energy Policy Report (November 2005).
- California Independent System Operator ("CAISO") Table titled "Cumulative Totals of Restricted Maintenance Operations, Alert, Warning, Emergency and Power Watch Notices Issued from 1998 to Present" (Revision Date 2/23/2007).
- CEC Staff Report, Staff Forecast of 2007 Peak Demand (June 2006).

4-1

2. Page 4-8: The Draft EA should include not only the daily emissions from diesel-fired standby generators, but also their emissions per unit of energy generated. A per-unit-of-energy-generated comparison would reinforce the Draft EA's acknowledgement that diesel-fired standby generators are substantially higher polluting than natural gas-fired turbines. Also, the paragraph that spans pages 4-8 and 4-9 repeats the data of the immediately preceding paragraph.

4-2

3. Page 5-9: On May 23, 2007, the California Energy Commission ("CEC") adopted regulations that establish and implement a 1,100 lbs. CO2 per MW-hr Emission Performance

4-3

OC\898169.1

LATHAM & WATKINS LLP

Standard ("EPS"). *See* CEC Order No. 07-0523-7 (Docket No. 06-OIR-1). The Draft EA should add this information to its discussion of the EPS adopted by the California Public Utilities Commission. 4-3 cont.

Thank you for considering these comments. Please do not hesitate to call me if you have any questions.

Sincerely,

Mike Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP

Enclosures

OC\898169.1

COMMENT LETTER NO. 4
LATHAM & WATKINS LLP

Michael J. Carroll
June 29, 2007

Response 4-1

The requested materials have been incorporated into the administrative record.

Response 4-2

The information cited from the Draft PEA is based on the last power curtailment or rolling blackout that occurred on May 8, 2001. This blackout was a 400 megawatt power curtailment and the peak daily outage lasted two and one-third hours. For this specific example, the analysis assumed that 40 engines would operate on a peak basis during the emergency situation. This analysis focused on a small subset of emergency diesel electricity generators. For a more extensive or lengthy power outage, as many as 600 engines could operate, therefore, resulting in the operation of substantially more emergency generators with associated emissions.

As noted by the commentator, another perhaps more important parameter to consider is the emissions generated on a per MW basis from diesel generators compared to natural gas-fired EGFs that would seek access to the Priority Reserve under PAR 1309.1. Table 4-1 shows that PM10 and NOx emission requirements in PAR 1309.1 compared to the emission limits in effect at the time existing emergency diesel generators were permitted. As can be seen in Table 4-1, PM10 emissions from existing emergency diesel generators are over three orders of magnitude greater than the PM10 emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to. Similarly, NOx emissions from existing emergency diesel generators are over four orders of magnitude greater than the NOx emission requirements in PAR 1309.1 that EGFs seeking access to the Priority Reserve would be subject to.

Table 4-1

PAR 1309.1 Emission Requirements Per MW-hr		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
Zone 1	NSR BACT	NSR BACT
Zone 2; EJA or Zone 3 <=500 MW	NG Only & < 0.06 lb./MW-hr	0.08 lb./MW-hr
EJA or Zone 3 > 500 MW	NG Only & < 0.03 lb./MW-hr	0.05 lb./MW-hr

Table 4-1 (Concluded)

Emergency Diesel Generators (Tier 1) BACT 1996-2002 (g/hp-hr)		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
<750 hp (1996 - 2002)	1.16 lb./MW-hr	21.0 lb./MW-hr
>=750 hp (1996 - 2006)	1.16 lb./MW-hr	21.0 lb./MW-hr
Emergency Diesel Generators – Pre-1996 (g/hp-hr)		
	PM10 Emission Controls lbs./MW-hr	NOx Emission Controls lbs./MW-hr
>100 hp (AP-42)	3.04 lb./MW-hr	42.48 lb./MW-hr

[a] Lb/MW-Hr (33.5% engine efficiency, 97% generator efficiency)

According to SCAQMD records, there are a total of 9,779 emergency engines. Of these, there are approximately 4,780 were permits were filed between 1996 and 2002 and approximately 2,740 permits were filed before 1996. The remainder, 2059 were filed after 2002. These numbers apply to all emergency diesel generators, including those that are used for purposes other than generating electricity. Emission factors, however, apply to both electricity generating and non-electricity generating engines.

The repeated information in Chapter 4 has been deleted.

Response 4-3

The requested information has been incorporated into the Final PEA on page 5-9.

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

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STEPHEN R. MAGUIN
Chief Engineer and General Manager

June 29, 2007

Barry R. Wallerstein, D.Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Barry:

July 13, 2007 Proposed Amendments to Rules 1309.1 and 1315

As you are very well aware, the Los Angeles County Sanitation Districts have diligently followed any developments concerning Rule 1309.1, the Priority Reserve. Since its inception in 1990, we have lobbied staff very hard (starting in 1998) that the Priority Reserve contain sufficient credits needed for extremely predictable growth of essential public service infrastructure. 5-1

While we understand the urgency of the proposed changes scheduled to be adopted by the Board on July, 13, 2007, we are very concerned that the voluminous program documentation associated with the rulemaking over the past nine months is confusing the scope of what is/is not being adopted for wastewater biosolids management options. We are concerned that we are losing the opportunity to comment on these important provisions. 5-2

The Draft Staff Report (marked "June 2007 Set Hearing") that was distributed at the May 22, 2007 public consultation meeting, contains two disclaimers as to what the attached documentation covered. The first note advises that [some] information contained therein from the September 8, 2006 proposed amendments to Rule 1309.1 includes information supportive of the July 13, 2007 proposed changes. The second note says that only the amendments dealing with electrical generating facilities (EGFs) are currently proposed for adoption. This latter note would seem to exclude any concern about biosolids, except for the fact that the Notice of Completion of the project environmental documentation for the July 13th action includes coverage and discussion of future amendments to Rule 1309.1 dealing with energy projects of regional significance (EPRS) and publicly owned biosolids treatment processing facilities. 5-3

Recycled Paper

We are also concerned that nowhere, in all the many versions of support documentation accompanying the proposed rules, were revised biosolids management numbers reflected, although the wastewater industry responded to staff's requests for this information in a timely fashion. The biosolids data shown in the June 2007 Set Hearing Draft Staff Report is no different than the data shown in Table 4-2 of the May 2007 Draft Program Environmental Assessment, that in turn is no different from the numbers shown in Table 2-2 of the March 23, 2007 draft PEA, that in turn is no different than the numbers shown in the June 2006 DEA for Rule 1309.1 and Rule 1302. SCAP, the Southern California Alliance of POTWs, transmitted revised biosolids numbers to Mr. Shams Hasan, at his request, on March 29, 2007. We also transmitted this same information to your CEQA consultant, PCR Services Corporation, again on April 25, 2007. The corrected numbers have yet to be reflected in any documents. We are re-attaching the transmittal to Mr. Hasan once again, for your information. 5-4

So that we are absolutely clear, our fundamental issue is the unreasonableness, in our opinion, of staff's insistence that publicly owned but *privately* operated biosolids facilities can not qualify for free Priority Reserve offsets. [We do not have the same concern with *privately owned and operated* biosolids processing facilities not being allowed free access to the Priority Reserve as you clearly stated in your office during our June 2004 meeting.] To make matters worse, we are puzzled by the punitive aspect of earlier proposed rule language that would cause public entities to *return* to the Priority Reserve, *credits originally received for free*, upon contracting with a private operator. Contracting out publicly owned operations to private entities is a cost-saving measure that many local governments, including the SCAQMD, frequently employ. It makes no economic sense, for example, to maintain government-paid employees to operate a cafeteria when privately owned concessions can do the same job at lower costs. There are many reasons why a local government may contract out operations to third parties, including prohibitory labor agreements, safety issues, and insurance concerns, to name a few. It has been our inability to resolve this language satisfactorily that is the origin of this letter. 5-5

Our final point is the conclusion drawn on pages 5-9 &10 of the May 16, 2007 Draft PEA that states "...because of these uncertainties, the SCAQMD qualitatively assumes that GHG emissions from EPRS and biosolids treatment facilities could be substantial, thus, making the significant GHG emission impacts substantially worse." We do not understand the basis for such a statement. In rebuttal, the magnitude of <u>all</u> of the biosolids projects in the basin, per the attachment to Mr. Hasan, are minimal for most pollutants compared to one power plant. Furthermore, it is the intent of the wastewater industry to demonstrate to the regulators that biosolids, as a biogenic source of CO_2, is carbon neutral and possibly carbon negative when combusted in cement kilns, for example. In land application schemes, biosolids may have beneficial effects in sequestering carbon in 5-6

Mr. Barry R. Wallerstein, D.Env. -3- June 29, 2007

soils and agricultural crops and by cutting back on the production of energy-intensive fertilizers. 5-6 cont.

We apologize for this long letter and sincerely hope that *all* of these issues raised are up for discussion at the next appropriate Rule 1309.1 revision. 5-7

Yours very truly,

Stephen R. Maguin

Gregory M. Adams

Gregory M. Adams
Assistant Departmental Engineer
Air Quality Engineering
Technical Services Department

GMA:ch

Attachments

cc: Jane Carney
Elaine Chang
Laki Tisopulos
Mohsen Nazemi
Bob Krause
Jill Whynot
John Pastore
Dan McGivney

SCAP BIOSOLIDS MANAGEMENT OPTIONS
UPDATE DATE: March 29, 2007

TOTAL BIOSOLIDS GENERATED WITHIN THE SCAQMD (DRY TONS PER DAY)

AGENCY	PRESENT	2010	2020
LA CO. SANITATION DISTRICTS	414.00	450.00	500.00
CITY OF LOS ANGELES	264.00	320.00	416.00
ORANGE COUNTY SANITATION DISTRICTS	140.00	182.00	195.00
SOUTH ORANGE CO WASTEWATER AUTHORITY	23.10	27.00	35.00
INLAND EMPIRE UTILITIES AGENCY	34.65	42.27	49.46
CITY OF SAN BERNARDINO	25.00	30.50	35.69
EASTERN MUNICIPAL WATER DISTRICT	28.00	35.50	48.50
MISC. RIVERSIDE COUNTY AGENCIES	81.25	108.06	135.08
SUBTOTAL(DTPD)	1010.00	1195.34	1414.72

NET INCREASE BIOSOLIDS MANAGEMENT *INSIDE* THE SCAQMD (REQUIRING PRIORITY RESERVE CREDITS)

	PRESENT TO 2010	2010 TO 2020
LA CO. SANITATION DISTRICTS	108.00	55.00
CITY OF LOS ANGELES	192.00	140.80
ORANGE COUNTY SANITATION DISTRICTS	110.00	35.00
SO ORANGE CO WASTEWATER AUTHORITY	16.00	14.00
INLAND EMPIRE UTILITIES AGENCY	42.07	7.15
CITY OF SAN BERNARDINO	0.00	0.00
EASTERN MUNICIPAL WATER DISTRICT	35.00	13.50
MISC. RIVERSIDE COUNTY AGENCIES	22.61	19.89
SUBTOTAL(DTPD)	525.68	285.34
SUBTOTAL WITH 30% SAFETY FACTOR (DTPD)	683.38	370.94

EMISSIONS CALCULATIONS
(Revision 4)
Basis:
a) 50 % of bioslids will be composted and 50% be dried/pelletized.
b) Emissions Factors

For composting process, use SCAQMD baseline 1.78 lbs/ton of throughput; 2 parts throughput/1 part biosolids; 25% soilds at receiving; and 80% control w/biofilters.

VOC = 2.848 lbs/dry ton of biosolids

For drying/pelletizing process, use 8 MM Btu/dry ton of biosolids; 90% efficiency;and BACT for natural gas fired boiler (5 ppm VOC, 12 ppm NOx, 100 ppm CO and 0.01 gr/dscf).

VOC = 0.019 lbs/dry ton of biosolids
NOx = 0.129 lbs/dry ton of biosolids
CO = 0.657 lbs/dry ton of biosolids
PM = 0.127 lbs/dry ton of biosolids

PRIORITY RESERVE NEEDED (LBS/DAY)	PRESENT TO 2010	2010 TO 2020
VOC	979.55	531.70
NOx	44.25	24.02
CO	224.44	121.83
PM	43.46	23.59

COMMENT LETTER NO. 5
COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

Greg Adams
June 29, 2007

Response 5-1

The SCAQMD is aware of the commentator's participation in the rule amendment process for Rule 1309.1 and thanks him for his contributions. Ensuring sufficient credits are available in the Priority Reserve for growth of essential public services is a high priority for the SCAQMD. The commentator should be aware that, as noted in Chapter 4 on page 4-16 of the PEA, historically, the availability of offsets in SCAQMD's offset accounts has always been greater than the demand for those offsets. Consequently, sufficient credits have been available for growth of essential public services. In addition, the adopting resolution for PAR 1309.1, like the adopting resolution for the September 2006 amendments to Rule 1309.1, will direct staff to closely monitor the credit balances in the Priority Reserve account and will recommend transfer of up to 1,500 pounds of emission reductions in the event that any pollutant balances fall below 500 pounds per day.

Response 5-2

The program documentation over the last nine months has been extensive to support the rulemaking activities associated with the proposed project. The SCAQMD has revised the scope of the proposed amendments to 1309.1 to focus on and prioritize the availability of credits so that operators of EGFs can comply with the offset requirements in Rule 1303. The reason for focusing on EGFs, as explained in detail in the PEA, is to avoid the potential for energy demand exceeding the available supply resulting in rolling blackouts and brownouts, similar to what occurred in the years 2000 - 2001. This is considered a priority to avoid the use of more polluting emergency electricity generators and avoid health and safety problems that could occur at hospitals and other emergency providers such as fire and police departments in the event of blackouts. If PAR 1309.1 is adopted by the Governing Board, SCAQMD staff will then consider additional amendments to Rule 1309.1 to allow temporary access to the Priority Reserve for EPRSs and permanent access for publicly-owned biosolids treatment facilities.

Subsequent to the September 2006 Board adoption, staff conducted several meetings with interested stakeholders, including two public workshops, one public consultation and two public meetings in the affected communities. There have been opportunities to provide oral and written testimony at all of these public forums. This is in addition to the opportunity to provide comments during the 45-day public comment period on the Draft PEA. There will also be an opportunity to provide oral and written testimony at the public hearing scheduled for July 13, 2007. Finally, future amendments to add publicly-owned biosolids treatment facilities to the definition of essential public service will go through a public process, at which time the commentator will be afforded additional opportunities to provide comments. However, it is intended that the current PEA will serve as the primary environmental document for such amendments.

Response 5-3

As noted in response #5-2, the currently proposed amendments to Rule 1309.1 represent prioritizing the adoption of amendments affecting EGFs. This does not mean or imply that there is no concern for publicly-owned biosolids treatment facilities. The PEA analysis specifically includes publicly-owned biosolids treatment facilities in anticipation of future rulemaking to permanently add these types of facilities to the definition of essential public service.

Response 5-4

It is unclear to staff why the revised data were not incorporated into the Draft PEA by the consultant. Staff, however, has incorporated the revised data into Table 4-2 in the Final PEA. These revised data do not create significant new adverse direct or indirect air quality impacts or make substantially worse existing significant direct or indirect adverse air quality impacts. Thus, recirculation pursuant to CEQA Guidelines §15088.5 is not required.

Response 5-5

Although not part of the currently proposed project, an earlier version of PAR 1309.1 considered adding publicly-owned biosolids treatment facilities to the definition of essential public service. The earlier definition required that the publicly-owned biosolids treatment facilities had to be exclusively publicly-owned and operated. This provision provided consistency with the definition for sewage treatment facilities (Rule 1302(m)(1)). The rationale for excluding privately-owned and/or operated facilities is that they are for profit operations and are likely in a better position than publicly-owned and/or operated facilities to be able to afford credits obtained from the open market. However, based on public comments received, staff will consider in future amendments revising the proposal in a manner that would allow publicly-owned, but privately operated biosolids treatment facilities to also access the Priority Reserve. Such a revised proposal will be fully discussed and publicly reviewed during the subsequent rulemaking effort.

Response 5-6

It may be possible, as stated by the commentator, that CO2 emissions from publicly-owned biosolids treatment facilities could be relatively minor compared to a power plant. The statement cited by the commentator, "GHG emissions from **EPRSs** [emphasis added] and biosolids treatment facilities could be substantial," is correct since it includes potentially substantial GHG emissions from the EPRSs in addition to the publicly-owned biosolids treatment facilities. When added to the potentially sizeable emissions from the EGFs, the SCAQMD staff concluded that significant adverse CO2 emissions from EGFs would be made substantially worse when adding total emissions from both EPRSs and publicly-owned biosolids treatment facilities.

Response 5-7

Since copies of the comment letter were sent to Rule 1309.1 staff, it is expected that these issues will be addressed in during the promulgation of future amendments to Rule 1309.1 to add publicly-owned biosolids treatment facilities to the definition of essential public service

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June 29, 2007

VIA E-MAIL

Mr. Michael Krause
South Coast Air Quality Management District
(c/o CEQA)
21865 Copley Drive
Diamond Bar, California 91765

Re: Draft Program Environmental Assessment
Proposed Amendments to Rule 1309.1 – Priority Reserve

Dear Mr. Krause:

On behalf of the City of Vernon, developer of the Vernon Power Plant ("VPP"), we are providing the following comments on the Draft Program Environmental Assessment ("EA) prepared in connection with the proposed amendments to South Coast Air Quality Management District ("SCAQMD") Rule 1309.1 and re-adoption of Rule 1315.

At page 5-15, the EA concludes that emissions of PM2.5 from the VPP will result in a significant impact on public health. We strongly disagree with this conclusion. Setting aside the fact that there is neither an established methodology or threshold of significance for evaluating this type of impact, the analysis in the EA is very conservative and overestimates emissions from the VPP. While the emission rate used in the analysis is not specified in the EA, it is presumably based on the conservative data presented in the application for the VPP submitted to the SCAQMD. Actual emissions from the VPP are expected to be considerably lower than the worst-case scenarios presented in the application. In analysis conducted subsequent to release of the EA, even the SCAQMD staff indicated that the highest value for PM emissions from the VPP will be lower than what is presented in the EA. Analysis presented by the staff at the Stationary Source Committee meeting on May 25, 2007 indicates that the highest value PM concentration associated with the VPP is 0.44288, as opposed to .55 as reported in the EA. Furthermore, the staff analysis indicates that the location where the highest value occurs is in an industrial area. We believe the actual value is even lower than that reported at the Stationary Source Committee. 6-1

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LATHAM & WATKINS LLP

Please confirm that the analysis presented in the EA is based on conservative assumptions and methodologies, and might over-predict the actual impacts associated with the VPP. Thank you for your attention to this matter. 6-2

Best regards,

Mike Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP

Cc: Jeff Harrison
Donal O'Callaghan

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COMMENT LETTER NO. 6
LATHAM & WATKINS LLP on behalf of CITY OF VERNON

Michael J. Carroll
June 29, 2007

Response 6-1

The comment is correct that the revised air quality modeling analysis staff conducted indicated that the maximum annual average PM2.5 concentration impact from the three proposed gas-fired EGFs was 0.44288 ug/m3. This analysis is conservatively based on emission rate estimates provided by the applicant early in the permit application process and, as such, these rates may be substantially higher than the actual emission rates from the project. Furthermore, it assumes that the project would be constructed at the size originally proposed by the applicant (943 MW). It is unclear whether or not the proposed project will be able to meet the additional emission limitations proposed in PAR 1309.1 for projects greater than 500 MW locating in Zone 3 and environmental justice areas. In the event the proposed project needs to be scaled down, the resulting emission impacts will be less than those estimated in staff's modeling analysis.

Relative to calculating the potential for health impacts, a calculation was performed on the modeled air quality impacts and changes in mortality. For this calculation, it was assumed that all the PM10 is all PM2.5, and the study by Pope (Pope at al., 2002) was used to estimate the change in mortality rate associated with a change in PM2.5. This methodology is the same methodology used in the 2007 AQMP Socioeconomic Report to evaluate the number of avoided premature deaths from exposure to PM2.5. From the Pope study, a 10 ug/m3 change in PM2.5 is associated with a six percent change in mortality. This was applied in a concentration-response equation to determine the relative change in mortality associated with the estimated changes in annual PM levels. The Pope study, was one of three studies used to evaluate the number of avoided premature deaths from exposure to PM2.5 in the 2007 AQMP Socioeconomic Report. The study by Jerrett (Jerrett et al., 2005), the second of the three studies in the 2007 AQMP Socioeconomic Report, found a 17 percent change in mortality rate for a 10 ug/m3 change in PM2.5. The study by Laden (Laden et al., 2006), the third of three studies in the 2007 AQMP Socioeconomic Report found changes in mortality from a 10 ug/m3 increase in PM2.5 falling in between the values for the Pope and Jerrett studies which would result in an intermediate value for mortality. Regardless of which study is relied on, the health effects of this project were deemed significant.

Response 6-2

The analysis of potential adverse health impacts from exposure to PM2.5, like the analyses for other types of environmental impacts, typically incorporates a conservative or reasonable "worst case" approach. This entails the premise that whenever the analysis requires that assumptions be made, those assumptions that result in the greatest adverse impacts are typically chosen. This method likely overestimates the actual direct and indirect impacts from the proposed project.

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June 29, 2007

VIA E-MAIL

Mr. Michael Krause
South Coast Air Quality Management District
(c/o CEQA)
21865 Copley Drive
Diamond Bar, California 91765

Re: Draft Program Environmental Assessment
Proposed Amendments to Rule 1309.1 – Priority Reserve

Dear Mr. Krause:

On behalf of San Gabriel Power Generation, LLC, developer of the San Gabriel Generating Station, we submit the attached information for incorporation into the record of the California Environmental Quality Act review undertaken in connection with the proposed amendments to South Coast Air Quality Management District ("SCAQMD") Rule 1309.1 and re-adoption of Rule 1315.

Appendix D of the Draft Program Environmental Assessment ("EA") includes information regarding possible indirect environmental impacts associated with some of the projects that may obtain emission offsets from the Priority Reserve pursuant to the proposed amendments. This information is summarized in Chapter 5 of the EA. At page 4-2, the EA points out that not all of the projects that might obtain emission offsets from the Priority Reserve are currently known or under review. The EA takes into consideration the possible indirect impacts associated with these projects, but because the impacts are speculative at this time, the EA does not provide detailed information regarding such impacts. The absence of such speculative information in the EA would not affect the ability of such projects to obtain offsets from the Priority Reserve provided the project otherwise satisfied applicable conditions and requirements. 7-1

The San Gabriel Generating Station is identified in Table 2-3, and elsewhere in the EA, as one of the projects potentially eligible to obtain offsets from the Priority Reserve (identified as "Reliant Energy LLC"). The EA identifies possible impacts associated with the San Gabriel Generating Station as possible indirect impacts associated with the rulemaking. However, because applications for the San Gabriel Generating Station were filed with the California Energy Commission and the SCAQMD just prior to release of the EA, detailed information regarding the identified impacts was not available. To supplement the analysis in the EA, we are submitting more detailed descriptions of the possible indirect impacts associated with the San 7-2

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LATHAM&WATKINS LLP

Gabriel Generating Station in essentially the same format used for Appendix D. As indicated in the attachment to this letter, no new significant indirect environmental impacts are anticipated to occur as a result of development of the San Gabriel Generating Station, and no increases in the severity of any previously identified indirect environmental impacts are anticipated. 7-2 cont.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Best regards,

Michael J. Carroll
of LATHAM & WATKINS LLP

Attachment

Cc: Mike Alvarado
Joe Araiza
Bob Lawhn
Brian McQuown

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COMMENT LETTER NO. 7
LATHAM & WATKINS LLP on behalf of SAN GABRIEL POWER GENERATION LLC

Michael J. Carroll
June 29, 2007

Response 7-1

This comment summarizes information from page 4-2 of the Draft EA regarding the speculative nature of potential indirect impacts from unknown future projects affected by PAR 1309.1 that may seek access to the Priority Reserve. As noted by the commentator, the absence of such speculative information does not affect the ability of such projects from accessing the Priority Reserve because these projects will undergo an appropriate CEQA analysis by the lead agency prior to accessing the Priority Reserve, as long as applications are submitted from the beginning of the year 2005 through the end of the year 2008.

Response 7-2

As indicated in this comment, specific information regarding potential indirect impacts from the San Gabriel Power Generating Station (formerly Reliant Energy LLC) were unavailable at the time the time the Draft PEA was released for public review. Immediately prior to the release of the Draft PEA, information on potential indirect impacts from this project was submitted to the lead agency, CEC, but only became publicly available after release of the Draft PEA. The commentator has compiled the information in essentially the same format as for other projects identified in Appendix D and requested that it be incorporated into the document to supplement the existing information on indirect impacts. The information provided by the commentator on this project indicates that for all environmental topic areas impacts are not significant or can be mitigated to less than significant. Incorporating the information provided in this comment does not constitute significant new information because it does not create any new significant adverse impacts or make substantially worse existing significant adverse impacts. Therefore, recirculation pursuant to CEQA Guidelines §15088.5 is not required.

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June 29, 2007

VIA E-MAIL

Mr. Michael Krause
South Coast Air Quality Management District
(c/o CEQA)
21865 Copley Drive
Diamond Bar, California 91765

Re: Draft Program Environmental Assessment
Proposed Amendments to Rule 1309.1 – Priority Reserve

Dear Mr. Krause:

On behalf of CPV Sentinel, LLC, developer of the CPV Sentinel Energy Project (previously known as "CPV Ocotillo"), we submit the attached information for incorporation into the record of the California Environmental Quality Act review undertaken in connection with the proposed amendments to South Coast Air Quality Management District ("SCAQMD") Rule 1309.1 and re-adoption of Rule 1315.

Appendix D of the Draft Program Environmental Assessment ("EA") includes information regarding possible indirect environmental impacts associated with some of the projects that may obtain emission offsets from the Priority Reserve pursuant to the proposed amendments. This information is summarized in Chapter 5 of the EA. At page 4-2, the EA points out that not all of the projects that might obtain emission offsets from the Priority Reserve are currently known or under review. The EA takes into consideration the possible indirect impacts associated with these projects, but because the impacts are speculative at this time, the EA does not provide detailed information regarding such impacts. The absence of such speculative information in the EA would not affect the ability of such projects to obtain offsets from the Priority Reserve provided the project otherwise satisfied applicable conditions and requirements. 8-1

The CPV Sentinel Energy Project is identified in Table 2-3, and elsewhere in the EA, as one of the projects potentially eligible to obtain offsets from the Priority Reserve (identified as "Competitive Power Ventures, LLC, Ocotillo"). The EA identifies possible impacts associated with the CPV Sentinel Energy Project as possible indirect impacts associated with the rulemaking. However, because applications for the CPV Sentinel Energy Project had not been filed with the California Energy Commission and the SCAQMD prior to release of the EA, detailed information regarding the identified impacts was not available. To supplement the analysis in the EA, we are submitting more detailed descriptions of the possible indirect impacts 8-2

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LATHAM & WATKINS LLP

associated with the CPV Sentinel Energy Project in essentially the same format used for Appendix D. As indicated in the attachment to this letter, no new significant indirect environmental impacts are anticipated to occur as a result of development of the CPV Sentinel Energy Project, and no increases in the severity of any previously identified indirect environmental impacts are anticipated. 8-2 cont.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Best regards,

Mike Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP

Attachment

Cc: Mark Turner

OC\898077.1

COMMENT LETTER NO. 8
LATHAM & WATKINS LLP on behalf of CPV SENTINEL LLC

Michael J. Carroll
June 29, 2007

Response 8-1

This comment summarizes information from page 4-2 of the Draft EA regarding the speculative nature of potential indirect impacts from unknown future projects affected by PAR 1309.1 that may seek access to the Priority Reserve. As noted by the commentator, the absence of such speculative information does not affect the ability of such projects from accessing the Priority Reserve because these projects will undergo an appropriate CEQA analysis by the lead agency prior to accessing the Priority Reserve, as long as applications are submitted from the beginning of the year 2005 through the end of the year 2008.

Response 8-2

As indicated in this comment, specific information regarding potential indirect impacts from the CPV Sentinel Energy Project (formerly CPV Ocotillo) were unavailable at the time the time the Draft PEA was released for public review. Subsequently to the release of the Draft PEA, information on potential indirect impacts from this project was submitted to the lead agency, CEC, and, therefore became publicly available. The commentator has compiled the information in essentially the same format as for other projects identified in Appendix D and requested that it be incorporated into the document to supplement the existing information on indirect impacts. The information provided by the commentator on this project indicates that for all environmental topic areas impacts are not significant or can be mitigated to less than significant. Incorporating the information provided in this comment does not constitute significant new information because it does not create any new significant adverse impacts or make substantially worse existing significant adverse impacts. Therefore, recirculation pursuant to CEQA Guidelines §15088.5 is not required.