

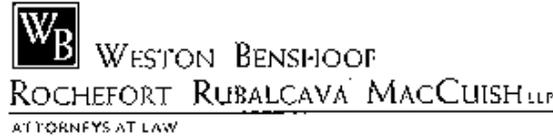
APPENDIX H

RESPONSES TO COMMENTS ON THE DRAFT

ENVIRONMENTAL ASSESSMENT

COMMENT LETTER #1

**WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA, &
MACCUISH**



smc@wbrmcl.com

April 24, 2001

VIA E-MAIL & FIRST CLASS MAIL

Mr. Jonathan D. Nadler
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Re: Comments on Draft Environmental Assessment
Proposed New and Amended Rules
Regulation XX - Regional Clean Air Incentives Market (RECLAIM)

Dear Mr. Nadler:

Our firm represents El Segundo Power, LLC and Long Beach Generation LLC. We are writing to provide our comments on the draft Environmental Assessment (EA) for the new and proposed amended rules to the District's RECLAIM program.

1-1

We believe the draft EA presents an incomplete and potentially misleading analysis of the proposed amendments. By focusing on the issue of RTC demand and a comparison of the emissions reductions associated with the existing RECLAIM program and the proposed changed program, it ignores the goal of the RECLAIM program, which is to achieve progress toward attainment of the state and federal ozone and NO2 air quality standards. The draft EA should include an analysis of the impact on air quality of the exceedances of the power producers' Allocations, and future predicted exceedances, in order to provide an accurate picture of the baseline situation and the future impacts of the proposed project. Specifically, the following areas should have been included:

1-2

1. The draft EA fails to discuss the impact on air quality in 2001 and 2002 from the excess emissions (i.e. emissions over Allocations) from power producing facilities required to run by state order or court decision. Power plants tend to run at full capacity in the summer, but a large percentage of the excess NOx emissions causing the Allocations to be exceeded are occurring during the non-ozone season. The draft EA should discuss whether higher NOx emissions during these periods, when high levels of ozone formation are unlikely due to favorable meteorological conditions, are likely to

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1-2
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increase the number of exceedances of the current ozone standards. (The draft EA admits that exceedances of the NO₂ standard are unlikely. See page 4-18.) Also, the draft EA fails to compare past and projected power plant emissions during the peak ozone seasons of 2000 and 2001. Given the historic operational levels during the summer, and the controls that will be in place at power plants by this summer, emissions from power plants during the 2001 ozone season may be lower than during the 2000 ozone season.

1-3

2. The draft EA also fails to discuss or compare projected actual emissions in 2003 to the levels of 2003 RTCs currently held by power producing facilities. Due to the large number of pollution control projects underway or currently being permitted, power producing facilities may well be able to meet their Allocations for 2003 and beyond after the temporary effects of the energy crisis are over. However, despite the installation of BARCT controls they will not be able to meet their revised Allocations if exceedances from 2001 have been deducted from the 2003 Allocations. The cascading effect of future year deductions is alluded to but never quantitatively analyzed. Thus, the proposed amendments may be setting the RECLAIM program up for a failure “on paper”, even if it is achieving the program’s goals of improving air quality and creating real emission reductions from RECLAIM facilities. The implications of this cascading deduction on power plant operations and air quality need to be fully evaluated in the EA. Included in this evaluation should be a discussion of the potential that the cascading deduction will result in the deferral or cancellation of proposed new generating projects at existing power plant sites, since the cascading deduction will jeopardize the ability of those units to operate in 2003 and later years.

1-4

3. The draft EA fails to discuss the impact on energy supplies in 2003 and later years if local power producers are unable to operate their facilities because of deductions due to exceedances in 2001 and 2002, when they were precluded from purchasing RTCs. The plants in the SCAB will be some of the cleanest power plants in the world but may not be able to operate if they have no Allocations for 2003 and beyond. The EA should address the environmental impacts of relying on older, higher polluting facilities outside of the air basin in the likely event that in-basin generation is curtailed after 2003 as a result of the cascading deduction.

1-5

4. The draft EA states at several locations that emission reductions due to the Mitigation Fee Program are unlikely to fully offset the excess emissions covered by the fees, but does not attempt to quantify the shortfall or discuss the impact on the facilities affected if the shortfall can not be made up. The EA should provide the best

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 ATTORNEYS AT LAW

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1-5 cont. available estimate, or a range of estimates, of the extent of this shortfall, and the air quality implications of that shortfall.

In addition to our general concerns over the areas not discussed in the draft EA, we have the following comments on the document itself:

Introduction:

1-6 The first paragraph states that “the proposed project is intended to lower and stabilize RTC prices by increasing supply, reducing demand, and increasing trading information and accuracy, while protecting public health.” However, there is no discussion in the EA about the effect of the proposed amendments on public health. The draft EA simply assumes that if emissions are not reduced, there will be adverse health impacts, which is not necessarily the case. Adverse health impacts occur from high levels of ozone, which occur under certain meteorological conditions. Higher emissions of NO_x in the winter months may not have an adverse impact on public health. This should be discussed because it goes to the question of whether exceedances under the RECLAIM

1-7 program are truly creating a significant adverse environmental impact. Further, to the extent that the future year deduction is somehow intended to “mitigate” exceedances of the Allocations, it may not be necessary under CEQA. “Mitigation measures are not required for effects which are not found to be significant”. CEQA Guidelines section 15126.4 (a)(3). Also, the draft EA does not adequately explain the conclusion that NO_x emissions will be higher without the proposed program changes. The significant proposals for BARCT retrofits at power plants that the District has already approved or that are pending are part of the existing baseline and will occur regardless of whether the proposed project is approved. Only those BARCT retrofits that go beyond applications already filed with, or approved by, the District can reasonably be credited to the proposed program changes.

1-8 Project Objectives, page 2-6 to 2-7.

1-9 One of the objectives is to respond to the Governor’s Executive Order #D-24-01. The draft EA should discuss how the future year deduction is consistent with the Executive Order, particularly since the future year deduction is likely to restrict generating capabilities in 2003 and subsequent years.



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Chapter 3 - Existing Setting.

- 1-10 Page 3-4, bottom paragraph. The last sentence refers to the predicted RTC shortfall if shortages are deducted from RTC holdings in future compliance years “as opposed to being otherwise reconciled”. The last phrase should be explained.
- 1-11 Page 3-5, Ambient Air Quality Data. The analysis lacks the detail needed to adequately determine the impact of the proposed project. In addition to descriptions of ambient air quality and the number of days a standard is exceeded, the draft EA should discuss the seasonality of ozone and NO₂ standard exceedances and the meteorological factors that must be present for an exceedance to occur.
- 1-12 Page 3-23, Energy Resources. The draft EA states on page 3-23, that peak demand on power plants occurs in August. The draft EA should provide emissions data for power plant emissions during the peak demand period in 2000 to serve as a basis for comparison to projected emissions during peak demand periods in 2001 through 2004, when power plant controls will be in place.

Chapter 4 - Potential Environmental Impacts and Mitigation Measures.

- 1-13 Air Quality. As mentioned above, the draft EA focuses on RTC demand and emission reductions rather than impacts on air quality, except to the extent it analyzes localized effects due to increased use of MSERCs and ASCs. See identification of issues at page 4-2. As a result, the draft EA spends more time discussing peripheral issues such as temporary construction impacts than the impacts on air quality from operational emissions under the proposed project. The impact of increased NO_x emissions in the ozone and the non-ozone seasons should be discussed. Also, Table 4-9 should be stated in tons per day to facilitate comparisons with Tables 4-6 through 4-8.
- 1-14 Energy Resources. The significance criteria (page 4-22) state that a project will be considered significant if it will result in the need for new or substantially altered power or natural gas utility systems. The future year deduction requirement could result in the need for new out-of-basin power plants because existing in-basin plants may have no remaining Allocations by 2003. This should be discussed.



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1-15 Public Services. On page 4-33, the facilities installing SCRs should include Unit 3 at El Segundo Power.

Chapter 5 - Alternatives.

1-16 As a general comment, the selection of alternatives is confusing and contains so many variables that a comparison between the alternatives is difficult. Some of the alternatives seem to have been packaged to lead to the conclusion that the proposed project is the superior alternative.

1-17 The No Project Alternative is described in such a way that it is difficult to determine whether the Governor's Executive Order is part of the alternative or not. Also, it is unclear whether the "freeze" on the use of RTCs purchased after January 11, 2001 is part of the No Project Alternative. There is no discussion under this alternative of how existing enforcement mechanisms would achieve the project objectives. There are two SAOs currently in place that have mandated significant controls and the payment of mitigation fees by facilities that allegedly exceeded their Allocations. The draft EA should discuss how enforcement of the existing program for these and other facilities could achieve the project objectives. This alternative should explicitly address the potential that SAOs would not require that all of the excess emissions are deducted in future years.

1-18 Alternative C, which purports to analyze the concept of deleting the future year deduction, does not include any requirement for compliance plans. This allows the draft EA to conclude, not surprisingly, that the alternative is not superior to the proposed project. Since this is the only alternative that does not include compliance plans, it is not a fair comparison nor does it allow a meaningful discussion of the issue of eliminating the future year deduction. A new alternative should be added that is the proposed project without future year deductions. The analysis should compare this alternative to the other alternatives in terms of the future operational viability of power plants post 2005, and the effects on currently proposed new generation projects at existing power plant sites.

1-19 In the Conclusion section, the statement that "the No Project Alternative does nothing to address the potential emission reduction shortfall (increased NOx emissions) caused primarily by power generating facilities operating at higher than historical levels" is accurate only if one assumes that power producing facilities have absolutely no intention of adding on controls or that the District would take no enforcement action

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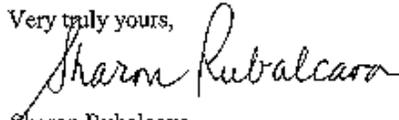
under its existing program. Neither of these assumptions is correct, yet both flow from the superficial analysis given to the No Project Alternative. Enforcement of the existing program has resulted in significant control projects and payment of mitigation fees, no less than the proposed project would require. Application of these principles to other power generating facilities, as an alternative to the proposed project, should be evaluated.

1-20
cont.

The discussion of Alternative C is equally flawed. First, the statement that Alternative C is inferior to the proposed project because "Alternative C would not require deducting exceedances of a facility's current annual allocation from future annual allocations, [and] future NOx emission reduction shortfalls would likely be less than they would be compared to the proposed project" is illogical. Page 5-15 and see also page 5-17. The future year deduction does nothing to address air quality in the year in which the exceedance occurs. It is a penalty to discourage future noncompliance and nothing more. In the case of the power producers who were required to run by Cal ISO and later DWR, this type of penalty is not appropriate. In the case of power producers who have proposed new generation at existing sites, the future year deduction requirement will be counter-productive, by discouraging or delaying the startup of newer, cleaner generating units. The penalty will have the effect of prolonging the energy crisis past 2002. This should be discussed in the EA. The RTC market under the existing program would drive facilities to install controls, as would compliance plans. The future year deduction is not the force that will reduce NOx emissions in the future.

Thank you for the opportunity to present these comments.

Very truly yours,



Sharon Rubalcava
WESTON, BENSHOOF,

ROCHEFORT, RUBALCAVA & MacCUISSH LLP

SFR/dte

cc: Tim Hemig
David Lloyd
Gary Rubenstein



COMMENT LETTER 1
Weston, Benshoof, Rochefort, Rubalcava, & MacCuish LLP
April 24, 2001

- 1-1 SCAQMD disagrees with the commentator’s general assertion that the Draft EA presents an incomplete and potentially misleading analysis of the proposed project. The commentator suggests that the Draft EA inappropriately focused on emission reductions rather than on air equality. The comment implies that the Draft EA inaccurately concluded there would be significant air quality impacts associated with emissions from power producing facilities. This view is based on the presumption that excess emissions from power producing facilities would not cause an exceedance of ambient air quality standards. As discussed in responses to specific comments in the remainder of Letter #1, the Draft EA appropriately and comprehensively analyzes the potential adverse air quality impacts from implementation of the proposed project. Regarding excess emissions from power plants, such emissions are due to the energy crisis and the Governor’s Executive Orders and are not a result of the proposed project. Rather, the proposed project provides a set of mechanisms intended to both substantially reduce emissions from power producing facilities and increase supply of emission reduction credits for use by these facilities. Accordingly, the Draft EA analyzes the air quality effects of the proposed project, including the mechanisms intended to provide greater regulatory flexibility to power plants. The Draft EA appropriately concluded that the amendment which allows excess emissions from power plants to be reconciled one year later than would otherwise be required under Rule 2010 (i.e., reconcile up to two years after exceedance rather than one year) is potentially significant. The other potential air quality effect deemed significant in the Draft EA is construction-related emissions. These impacts are deemed “significant” even if they may not actually cause an exceedance of ambient air quality standards.

Responses #1-2 through #1-20 respond to specific assertions that lead to the commentator’s general assertion that the Draft EA presents an incomplete and potentially misleading analysis of the proposed project.

- 1-2 Comment #1-2 states that the Draft EA fails to discuss the potential “impact on air quality in 2001 and 2002 from the excess emissions . . . from power producing facilities required to run by state order or court decision” as a result of the energy crises. This comment misrepresents the requirement of CEQA to analyze the potential adverse environmental impacts of a proposed project. As the commentator recognizes, the high levels of emissions from power plants in 2000 and 2001 are not a result of the proposed project, but rather are a result of other factors including the Governor’s Executive Order, state and court mandates, requirements to operate by Cal-ISO and the State Water Resources Agency to avoid blackouts, and business decisions. The manner in which the SCAQMD proposes to address these emissions and their secondary effects (e.g., high RTC

prices and low availability) is the appropriate subject of the environmental analysis.

The commentator states that the Draft EA should have evaluated whether increased NOx emissions during non-peak ozone periods would contribute to any ozone exceedances. First, the air quality analysis in Chapter 4 included a discussion of whether or not the proposed project would cause or contribute to an exceedance of the ambient air quality standards. For the reasons discussed therein, it was concluded that this would not be the case. Causing or contributing to an exceeding of an ambient air quality standard, however, is not the only criterion of significant impacts. For example, the Draft EA also analyzed the potential for delays in achieving the RECLAIM program endpoint. Because of the provision in the proposed project that allows exceedances of the current annual allocation to be deducted from the subsequent second year's annual allocation instead of the first year's annual allocation, this was deemed a significant adverse air quality impact. See also responses to comment #1-3.

The SCAQMD assumes that the implication of comment #1-2 is that the proposed project, specifically the isolation of power-producing facilities from the RECLAIM market, is not warranted because substantial controls will be in place by the end of this summer. In spite of these additional controls, the analysis of both the existing RECLAIM program and the proposed project (which takes into consideration the current efforts to install control equipment) show potential NOx emission reduction shortfalls through 2005, depending on whether violations of the annual allocations occur (refer to Table 4-8 in Chapter 4). See also response to comment #1-3.

- 1-3 The Draft EA quantitatively estimates emissions (represented as RTC demand) and RTC supply, including current RTC holdings, of all facilities subject to RECLAIM, including power producing facilities. Since power producing facilities would be prohibited from using RTCs purchased after January 11, 2001 to reconcile emissions, the quantitative analysis in the Draft EA includes an estimate of RTC supply and demand solely for power producing facilities in addition to an estimate for the entire universe of RECLAIM facilities. The analysis includes both a quantitative estimate of RTC supply and demand assuming deductions of allocation exceedances in the compliance year two years after the exceedance as well as assuming no deductions are made (Table 4-6.) The "Existing Setting" (Chapter 3) provides a quantitative estimate of RTC supply and demand assuming for RECLAIM facilities assuming the existing Regulation XX provisions apply (Tables 3-1 and 3-2). A comparison of Tables 3-1 (Existing Setting) and 4-6 (Proposed Project) shows that the estimated RTC demand in 2003, assuming deductions are made for 2001 exceedances, is actually less than the RTC demand in 2003, assuming the deductions for previous year exceedances, under the existing RECLAIM program. The proposed amendments thus reduce the "cascading effect" of the deductions as compared to the existing RECLAIM rules.

In addition, as a result of the energy crises, fast-track licensing and construction of power producing facilities has been ordered by the California Governor. Consequently, energy supplies are anticipated to be available to meet demand prior to 2003. As discussed in the Draft EA, there are numerous power generation projects under construction or expected to be on-line prior to 2003. Since April 1999, the CEC has approved nine major power plant projects with a combined generation capacity of 6,278 megawatts. Six power plants, with a generation capacity of 4,308 megawatts are now under construction, with 2,368 megawatts expected to be on-line by the end of the year 2001. In addition, another 14 electricity generating projects, totaling 6,734 megawatts of generation are currently being considered for licensing by the Commission. (Draft EA, page 3-25).

See also response to comment #1-4.

- 1-4 Comment #1-4 states that the Draft EA fails to discuss the impact on energy supplies in 2003 and later years if power producers are unable to operate because of RTC deductions due to exceedances in 2001 and 2002 when they were precluded for purchasing RTCs. This comment assumes that power producing facilities will be out of compliance with the provisions of RECLAIM post-2003.

One of the objectives of the proposed project is to facilitate state and federal efforts to assure a reliable statewide electricity supply by providing greater flexibility to power plants in meeting the requirements of Regulation XX. The proposed project includes a number of components that are expected to both reduce demand and increase supply of emission reduction credits for use by power producing facilities. First, the proposed requirement to install BARCT will substantially reduce emissions (and thus the demand for RTCs) from the facilities. Additionally, the proposed Mitigation Fee Program will provide a mechanism for power producing facilities to operate in excess of their allocations through Compliance Year 2004. The proposed modification of the penalty provision in Rule 2010 would provide power producing facilities up to two years to deduct excess emissions from their RTC holdings instead of the one year requirement currently in the rule (one-quarter of the exceedance may be carried over for an additional year if 75 percent of the exceedance has already been mitigated¹). Finally, the five new credit generating rules (one recently adopted and four proposed) will provide mechanisms to generate emission credits available to power producing facilities. Based on these components of the proposed project, the SCAQMD expects power producing facilities to eventually balance their emissions and RTC holdings. Should RTC demand for power producing facilities continue to exceed supply after the Mitigation Fee Program ends, SCAQMD staff

¹ The proposed project was modified after the release of the Draft EA to allow one-quarter of the exceedance to be carried over for an additional year if 75 percent of the exceedance has already been mitigated (the ability to delay deductions through the Mitigation Fee Program would still sunset after Compliance Year 2003). Staff has reviewed the proposed modification and had determined that it is within the scope of the alternatives analysis and does not result in a significant impact not previously identified nor make a previously identified significant impact substantially worse.

intends to propose that either the Mitigation Fee Program be extended or the power producing facilities be returned to the RECLAIM program. Thus, it is expected that power producing facilities would be able to operate under the requirements of RECLAIM as amended.

As discussed in response to comment #1-3, fast-track licensing and construction of power producing facilities has been ordered by the California Governor as a result of the energy crisis. Consequently, energy supplies are anticipated to be available to meet demand prior to 2003. As discussed in the Draft EA, there are numerous power generation projects under construction or expected to be on-line prior to 2003. Since April 1999, the CEC has approved nine major power plant projects with a combined generation capacity of 6,278 megawatts. Six power plants, with a generation capacity of 4,308 megawatts are now under construction, with 2,368 megawatts expected to be on-line by the end of the year 2001. In addition, another 14 electricity generating projects, totaling 6,734 megawatts of generation are currently being considered for licensing by the Commission. (Draft EA, page 3-25).

- 1-5 The Draft EA quantifies: potential NO_x emission reduction shortfalls for both existing RECLAIM program as well as the proposed project (refer to response to comment #1-3); the estimated generation of MSERC and ASC credits that may enter the Mitigation Fee Program (and AQIP); and includes this information in the analysis of potential air quality impacts (see Table 4-6). Appendix E presents the methodology for quantifying the amount of credits estimated to enter the Mitigation Fee Program. The methodology is based on a number of assumptions intended to provide a realistic, yet conservative, estimate of the amount of credits that may be generated. The quantitative analysis concludes that the anticipated shortfall of RTCs for the RECLAIM program, due in part to the unanticipated statewide energy crisis, is diminished under the proposed project relative to the existing RECLAIM program assuming that California Governor's Executive Order D-24-01 is in effect. The conclusion is based on the estimated decrease in demand and the increase in supply for RTCs, including the credits generated by the Mitigation Fee Program. The commentator is referred to the air quality subsection of Chapter 4 and to Appendix E.
- 1-6 Comment #1-6 is predicated on the assertion that if NO_x emissions exceeding facilities allocations do not cause a substantial increase in ozone, the exceedances may not cause adverse health impact and thus may not create a significant adverse environmental impact. The Draft EA did not conclude a significant adverse public health impact per se. Rather, the Draft EA concluded that a potential delay in achieving anticipated emission reductions by allowing power-producing facilities that pay into the Mitigation Fee Program to deduct exceedances up to two years after the exceedance (one-quarter of the exceedance may be carried over for an additional year if 75 percent of the exceedance has already been mitigated) rather than the next compliance year as is currently set forth by the penalty provisions in Rule 2010 is significant.

- The SCAQMD has adopted a set of significance thresholds for air quality, including mass daily emission thresholds for criteria pollutants, including NO_x. A delay in reconciling excess emissions in a quantity greater than the mass daily significance threshold is considered significant. See also response to comment #1-2.
- 1-7 The commentator appears to inaccurately characterize an existing RECLAIM penalty provision as a part of the proposed project. The penalty requirement to deduct allocation exceedances from future year allocations is already set forth in Rule 2010. The proposed project would relax this penalty requirement by extending by one year the time allowed to deduct the exceedance. The penalty provision cited by the commentator is not a CEQA mitigation, but is part of the project design to provide temporary relief from the penalty provision by delaying the time that current exceedances would need to be deducted from future allocations.
- 1-8 The Draft EA quantifies emission reductions (as represented by RTC supply) from current retrofit projects and from the proposed Compliance Plan requirement based upon the best available information. The commentator is referred to Table 4-6. No comments have been received that suggest refinements are required for these estimates.
- 1-9 The propose project contains a number of components; some implement the Governors Executive order, while other provisions attempt to minimize the potential adverse air quality effects of California’s energy crisis in the district. The Mitigation Fee Program provision in the proposed rule responds to the Governor’s Executive Order #D-24-01, which states in part, ...”the districts shall require a mitigation fee for all applicable emissions in excess of the previous limits in the air quality permits...” The Governor’s Executive Order does not preclude the SCAQMD from enforcing the existing penalty provision of RECLAIM regarding allocation exceedances. Also, as discussed in responses to comments #1-3 and #1-4, the proposed project includes a number of components that are expected to both reduce demand and increase supply of emission reduction credits for use by power producing facilities. See also responses to comments #1-4 and #1-14.
- 1-10 The referenced “Existing Setting” discussion (page 3-4, last paragraph) depicts the estimated RTC demand and supply for non-power producing facilities under existing RECLAIM provisions. The sentence in question refers to reconciling emissions and allocations by the means currently provided for in Regulation XX including purchasing credits, installing controls, or curtailing production. If a facility were to exceed its annual allocation, it would be subject to the penalty provisions of Rule 2010, including the deductions from future year RTC holdings.
- 1-11 Comment 1-11 states that the description of existing air quality should include a discussion of “the seasonality of ozone and NO₂ standard exceedances and the meteorological factors that must be present for an exceedance to occur”.

Comment 1-11 is related to comment #1-2 and comment #1-13 in that these comments appear to assume that the only indicator of significance for air quality is whether excess NO_x emissions would cause an exceedance of the ambient air quality standards for ozone or NO₂. The SCAQMD has adopted a comprehensive set of air quality significance thresholds any one of which would indicate significance if exceeded. These thresholds include not only exceedances of an ambient air quality standard, but also mass daily emissions thresholds. Neither the Initial Study nor the Draft EA identified the potential for the proposed project to result in an exceedance of ambient air quality standards.

If an exceedance of the ozone or NO₂ ambient air quality standard were the only indicator of significance, then the additional information requested may be relevant. As presented in the Draft EA, however, the description of air quality conditions in the project area conforms to the “Environmental Setting” requirements of CEQA (CEQA Guidelines §15125).

The Draft EA presents the “Existing Setting” section for air quality in two sections. The first subsection describes the existing setting for the NO_x RECLAIM market. The other subsection discusses the health effects of exposure to criteria air pollutants, describes federal and state ambient air quality standards, and presents monitoring data for all monitoring stations in the district. No additional information is necessary.

- 1-12 Comment 1-12 suggests that the analysis provide “emissions data for power plant emissions during peak demand period in 2000 to serve as a basis for comparison to projected emissions during peak demand periods in 2001 through 2004, when power plant controls will be in place.” However, the comparison for CEQA purposes is not between 2000 and future years, but rather between the project and the existing setting. As with other comments in Letter #1, this comment appears to assume that the air quality analysis in the Draft EA should solely focus on the effect of excess emissions from power plants on ambient air quality.

The excess emissions from power plants is due to the energy crisis and is not a result of the proposed project. As discussed in responses to comment #1-1 and comment #1-4, the proposed project provides a set of mechanisms intended to facilitate efforts to assure a reliable statewide electricity supply by providing greater flexibility to power plants in meeting the requirements of Regulation XX. The Draft EA analyzes the air quality effects of the proposed project, including the referenced mechanisms intended to provide greater flexibility to power plants. The Draft EA concluded that, based on projected RTC demand and supply, there could be a significant amount of excess emissions from power plants that may be reconciled two years after the exceedance as opposed to one year as would be required under the current regulation. The Draft EA recognizes that, although the conservative analysis concluded there would be a significant impact from the delay in making up allocation exceedances, that delay may not occur. Emission reductions at power plants from additional controls and additional surplus credits from recently adopted and proposed credit generating rules may allow power

producing facilities to avoid the penalty provision in Rule 2010. As already noted, current projects to install control equipment and installation of control equipment in future years was included part of the analysis of potential adverse air quality impacts for both the existing RECLAIM program and the proposed project.

- 1-13 As required by CEQA, the Draft EA analyzes the potential adverse environmental impacts from implementation of the proposed project. The Initial Study identified three air quality issues relative to the existing setting that are addressed in the Draft EA: 1) the potential delay in achieving anticipated emission reductions; 2) the potential of achieving less emission reductions than anticipated; or 3) the potential for adverse localized effects due to an increased use of MSERCs and ASCs by stationary sources. The Draft EA also evaluates the construction-related emissions associated with the installing additional control equipment, primarily SCR and MSERC projects. The commentator suggests there was insufficient attention given to operational emissions resulting from the proposed project. However, the excess emissions from power producing facilities are not a result of the proposed project, but rather are a result of the energy crisis. The Mitigation Fee Program portion of the proposed project, which facilitates power producing facilities ability operate beyond their allocations, conforms to Governor's Executive Order D-24-01.

See also responses to comments #1-2 and #1-3.

- 1-14 The proposed project is being undertaken in part to provide power generating facilities greater flexibility in complying with existing air quality regulations. The flexibility is intended to allow power-producing facilities to contribute maximum electricity output to the state power grid, thus helping to ease the current shortage of electricity supply. The proposed project would also facilitate, to a certain extent, the construction of power plants in the district², thereby helping to further ease the current energy crisis.

As discussed in the Draft EA, the intent of the compliance plan requirement in proposed amended Rule 2004 is to quickly retrofit existing utility boilers or repower facilities so they will be in a position to operate at maximum capacity to provide reliable energy to the California electricity grid, while still complying with applicable air quality control rules and regulations. Also, there are a number of retrofitting or repowering projects currently in progress, which are expected to be online before the peak power demand period occurs in the summer of 2001. LADWP is currently installing five peaker turbines at its Harbor Generating station and one peaker turbine at its Valley Generating Station. Further, LADWP is in the process of installing SCRs on three existing units at its Scattergood Generating Station. As required by the Order of Abatement between LADWP

² PR 2001 would allow electric generating facilities in any area within the jurisdiction on the SCAQMD that are initially totally permitted on or after January 1, 2001, to opt in to the RECLAIM program. Currently, only facilities within the South Coast Air Basin are eligible for entry into the RECLAIM program. Also, new power plants are given access to the RECLAIM AQIP.

and the SCAQMD, these projects must be online by June 1, 2001. Other power plant SCR retrofit projects currently in progress and expected to be online for the peak power demand season this summer include the following: SCRs on four existing boilers at the AES Alamitos Generating Station; SCRs on two existing boilers at the AES Huntington Beach Generating Station, SCRs on two existing boilers at the AES Redondo Beach Generating Station; two SCRs on Reliant Energy's Etiwanda Generating Station; and SCR on an existing boiler at El Segundo Power.

Consequently, power-producing facilities are not expected to continue to emit at the uncontrolled or minimally controlled levels at which they are currently emitting. Based upon the existing and proposed requirements, power-producing facilities are expected to substantially reduce emissions, which will contribute to complying with future allocations and help minimize future NO_x emission shortfalls.

Further, as discussed in Chapter 3 and elsewhere in the Draft EA, electricity is not expected to be in short supply indefinitely. Currently, there are 10 new power plant projects that have been approved and, in some cases, are already under construction in California. Four of these projects, representing 1,219 MW, are expected to be online before the end of 2001; five of these projects, representing 4,480 MW, are expected to be online before the end of 2002; and one of these projects, representing 750 MW, is expected to be online by June 2003. Further, CEC is currently reviewing an additional 14 new electricity generating projects. In addition to approval and construction of new electricity generating projects, the state of California is aggressively pursuing a number of other options to increase and ensure a reliable supply of electricity. The federal government has recently proposed price mitigation caps for certain electricity purchases that may help reduce the cost of electricity.

It is acknowledged that there is uncertainty with regard to future RECLAIM allocations for power-producing facilities currently supplying electricity to ease the current energy crisis. Because power generating facilities would be limited under the proposed project in their ability to participate in the RECLAIM trading market and there exists uncertainty in whether sufficient emission reductions would be obtained from the Mitigation Fee Program, there is a possibility that future year allocations could be substantially reduced. However, the proposed project is being promulgated to reduce future NO_x emission shortfalls. As shown in Table 3-1 in Chapter 3, under the existing RECLAIM program it is expected that there will be substantial NO_x emission reduction shortfalls through the year 2005 and possibly beyond. However, through the emissions reductions anticipated from the projects funded by the mitigation fees, surplus credits generated from the pilot NO_x credit generating rules, and the installation of additional control equipment, it is anticipated that the proposed project will substantially reduce potential future NO_x emission shortfalls (Table 4-6). To further offset this uncertainty, a power generating facility can participate in the private market to generate MSERCs or ASCs to minimize, if not eliminate, the

impacts of exceeding their allocations. Should additional generation capacity be needed, it is too speculative to determine whether new capacity would come from outside the district or would be made up of new power producing facilities which would operate inside the RECLAIM universe.

Consequently, with the current projects to retrofit or repower existing electricity generating facilities in the district, the anticipated increase in electricity generators and other proposals to secure reliable long-term energy supplies from the power generators, it is not expected that the proposed amendments to the RECLAIM program will exacerbate the current energy crisis.

1-15 Comment noted. The suggested clarification has been made to the Final EA.

1-16 As indicated in the Draft EA, project alternatives to the proposed project were developed by modifying major components of the proposed rules or proposed amendments currently under consideration. Modifying various components of the proposed project is the standard approach the SCAQMD takes when developing alternatives for all SCAQMD projects that require an alternatives analysis and provides a consistent method of identifying a range of reasonable alternatives as required pursuant to CEQA Guidelines §15126.6(a). Based upon this approach, it was necessary to identify a number of variables to provide a reasonable range of alternatives.

It should not be surprising that the proposed project was the environmentally superior alternative because it was crafted based on considerable evaluation, meetings with stakeholders, evaluation of SCAQMD databases, etc. The point of the proposed project was to address the RTC high price and low availability issues to minimize potential impacts to the environment, especially air quality. The results in Table 5-2 indicate that, with the exception of the No Project, the conclusions regarding whether or not the project alternatives generate significant or insignificant adverse environmental impacts are the same as the conclusions for the proposed project. They do, however, have incrementally lower or higher impacts than the proposed project, but overall the proposed project appeared to be the environmentally superior project.

1-17 The Governor's Executive Order is included as part of the No Project Alternative as explained on page 5-3. This issue is complicated by the fact the Executive Order was not in effect at the time the notice of preparation for the proposed project was circulated. This means that the Governor's Executive Order is not part of the baseline, but is part of the No Project Alternative. This approach is consistent with CEQA Guidelines §15126.6(e)(1).

Since the limitation on the use of RTCs purchased after January 11, 2001, to reconcile emissions is part of the proposed amendments to Rule 2004, this component is not part of the No Project Alternative.

Although Rule 2015(c)(b) specifically refers to an evaluation and review of compliance and enforcement aspects of the RECLAIM program, this provision did not trigger the proposed project. In addition to responding to the energy crisis in California, the proposed project implements Rule 2015(d)(1), which requires the Executive Officer to propose to the Governing Board to amend the RECLAIM program to address any specific program problems. As indicated in Chapter 2, the primary program problems being addressed by the proposed project are the recent high prices and low availability of RTCs. Existing enforcement mechanisms in the RECLAIM program, including the two existing settlement agreements, do not address these problems and, therefore, were not evaluated as part of the No Project Alternative.

Finally, the commentator recommends that the No Project Alternative address potential settlement agreements that would not require all excess emissions (emissions exceeding a facility's annual allocation), to be deducted in future years. As the commentator is aware, the No Project Alternative means taking no action to modify the RECLAIM program. Under this scenario, any facility exceeding its annual allocation would be subject to the existing penalty provisions in Rule 2010(b)(1)(A), which states that in the event of a violation of Rule 2004(d), the Executive Officer will reduce the facility's annual emissions allocation for the subsequent compliance year by the total amount the allocation was exceeded. See also response to comment #1-18.

- 1-18 Alternative C includes a provision that would not require a facility to deduct exceedances of its annual allocation from future years. Although Alternative C is anticipated to generate similar impacts compared to the proposed project, this alternative does not reduce future year NO_x emission reduction shortfalls to the extent of any of the other alternatives. Alternative C also results in a greater delay in reaching the RECLAIM program endpoint.

Even if the SCAQMD added a new project alternative such as the one suggested by the commentator, i.e., the proposed project (including compliance plans) with no deduction in future years of exceedances of current annual allocations, it would not be superior to the proposed project for the following reasons.

- a. It would not reduce future year NO_x emission reduction shortfalls to the extent of any of the other alternatives except Alternative C precisely for the reason that current annual allocation exceedances would not be deducted from future year allocations.
- b. Similarly, it would also result in a greater delay in reaching the RECLAIM program endpoint compared to the alternatives except for possibly of Alternative C. The compliance plan requirement would likely mean reaching the RECLAIM program endpoint sooner than would occur under Alternative C, but later than all other alternatives for the same reason – current annual allocation exceedances would not be deducted from future year allocations.

- c. All other impact areas, including localized operational air quality impacts, energy impacts, hazard impacts, and public service impacts would, however be equivalent to the proposed project.
- 1-19 The commentator asserts that the No Project Alternative analysis is superficial and relies on the following incorrect assumptions: that power generating facilities have no intention of installing air pollution control equipment and the SCAQMD would take no enforcement action. First, the SCAQMD respectfully disagrees with the commentator's opinion that the No Project analysis is superficial with regard to addressing potential emission reduction shortfalls, as explained in the following paragraphs. Second, the commentator's assertion that the analysis relies on flawed assumptions is incorrect.

The SCAQMD performed a comprehensive analysis of the effects of the No Project Alternative on the projected emission reduction shortfall for both power generating facilities (refer to Table 3-1) and non-power generating facilities (refer to Table 3-2). This analysis was described on pages 3-1 through 3-4 in Chapter 3 of the Draft EIR and the methodologies and assumptions for this analysis were included in Appendix E of the Draft EIR. Briefly, this analysis projected NOx emission reduction shortfalls for the existing RECLAIM program (No Project Alternative) for the years 2001 through 2005. This analysis took into consideration the anticipated demand for RTCs as well as the available supply of RTCs from a number of sources to estimate the projected surplus or shortfall of RTCs for each year analyzed.

Using the same methodology and similar assumptions, the effect of the proposed project on the NOx emission shortfall was calculated for power generating facilities (refer to Table 4-6) and for non-power generating facilities (refer to Table 4-7). The total NOx emission reduction shortfalls or surpluses from the proposed project were then compared to the total NOx emission reduction surpluses or shortfalls from the existing RECLAIM program (Table 4-8). As can be seen in Table 4-8, the proposed project substantially reduces the projected NOx emissions reduction shortfalls over the years analyzed compared to the existing RECLAIM program.

The commentator's assertion that the No Project Alternative analysis did not assume that control equipment would be installed is incorrect for the following reasons. As indicated in Chapter 3, the analysis of the existing RECLAIM program's effects on emission reduction shortfalls took into consideration emissions from retrofit projects for all years analyzed. For the analysis, the SCAQMD identified all current retrofit projects under consideration and calculated the emission reduction potential of these NOx retrofit projects. The NOx emission reduction potential of these projects were then projected to occur for each of the years analyzed. This means that the analysis did assume that power generating facilities and non-power generating facilities would install air pollution control equipment and took this assumption into consideration when

analyzing the NOx emission reduction shortfalls for both the proposed project and for the No Project Alternative.

The commentator's assertion that the No Project Alternative analysis did not take into consideration SCAQMD enforcement of annual allocations is also incorrect for the following reasons. The analysis of the NOx emission reduction shortfalls for both the No Project Alternative and the proposed project included results under two scenarios. The first scenario assumed violations of the annual allocations would not occur; the second scenario assumed that violations would occur (see the last line of Tables 3-1 and 3-2 entitled "Estimate RTC Demand should Violations Occur"). The analysis of the existing RECLAIM program did not include the effects of the Governor's Executive Order, which essentially allows power-generating facilities to exceed their emission limitations for the year 2001 without penalty as long as they pay a mitigation fee.

- 1-20 Deductions of exceedances in the next compliance year are required by the current RECLAIM rules. The proposed rules give power producers an additional year for emission deductions and provide a mechanism for the deductions to be restored when SCAQMD is able to generate emission reductions through the proposed credit generation rules. The deduction helps ensure that the environment is made whole and is an important element of the changes being proposed. A rule without any deduction for exceedances would likely not be approved by U.S. EPA since it would be a relaxation of a current rule requirement that is in place for environmental protection. The assertion that deductions will discourage new, cleaner generation appears unfounded. In fact, power producers are worried that they may not be able to meet future allocations because of the deductions for exceedances, their best option is to immediately invest in new cleaner generation to replace existing generation. This would reduce their demand for RTCs and make it more likely that they will be able to comply. Furthermore, power producing facilities that will exceed their allocation can pay into the Mitigation Fee Program and/or independently purchase mobile or area source credits generated through the proposed credit generating rules.

Governor Davis' Executive Order D-24-01 established a statewide emission bank funded by projects already completed. New or existing power producers are allowed to lease the available credits from 2001 through 2003 to provide emissions offsets for projects to add new or expanded peaking capacity for the summer peak season in 2001.

The Governor's order also requires that power producers be allowed to pay into a mitigation fee for emission exceedances. Proposed Rule 2020 establishes the criteria for the Mitigation Fee program. The proposed RECLAIM rules allow the SCAQMD two (and possibly three) years to refund the emission reductions used under the Mitigation Fee Program. The SCAQMD has been working with industry, environmental groups, CARB and EPA to develop several pilot credit generation rules. Rule 1612.1 - Mobile Source Credit Generation Pilot Program, which includes Class 7 and 8 vehicles and yard hostlers, was adopted by the

SCAQMD Governing Board in March 2001. Four additional rules are being proposed: PR 1631 - Pilot Credit Generation Program for Marine Vessels; PR 1632 - Pilot Credit Generation Program for Hotelling Operations; PR 1633 - Pilot Credit Generation Program for Truck/Trailer Refrigeration Units; and PR 2507 - Pilot Credit Generation Program for Agricultural Pumps. Several projects have been recently identified by SCAQMD staff which are expected to substantially refund power producers for emission exceedances through the Mitigation Fee Program. Power producers also have the option of funding projects under the credit generating rules independently and using RTCs generated to offset their previous years' exceedances.