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TABLE OF CONTENTS

INTRODUCTION.....	1
CERTIFICATION OF THE FINAL EA.....	1
SUMMARY OF THE PROPOSED PROJECT.....	1
SIGNIFICANT ADVERSE IMPACTS WHICH CAN BE REDUCED BELOW A SIGNIFICANT LEVEL OR WERE CONCLUDED TO BE INSIGIFICANT	2
POTENTIAL SIGNIFICANT ADVERSE IMPACTS THAT CANNOT BE REDUCED BELOW A SIGNIFICANT LEVEL	3
STATEMENT OF FINDINGS	4
STATEMENT OF OVERRIDING CONSIDERATIONS	5
MITIGATION.....	7
CONCLUSION.....	7

INTRODUCTION

Proposed Rule 1304.1 – Electrical Generating Facility Fee For Use of Offset Exemption, is considered a “project” as defined by the California Environmental Quality Act (CEQA) (California Public Resources Code §§21000 et seq.). The South Coast Air Quality Management District (SCAQMD) as Lead Agency for the proposed project, prepared a Notice of Preparation/Initial Study (NOP/IS) which identified environmental topics to be analyzed in a Draft Environmental Assessment (EA). The NOP/IS provided information about the proposed project to other public agencies and interested parties prior to the release of the Draft EA. The initial evaluation in the NOP/IS identified the topics of air quality and energy as potentially being adversely affected by the proposed project. The NOP/IS was distributed to responsible agencies and interested parties for a 30-day review and comment period from April 9, 2013, to May 8, 2013. During that public comment period, the SCAQMD received two comment letters.

The Draft EA was prepared as a public disclosure document intended to: (a) provide the lead agency, responsible agencies, decision makers and the general public with information on the environmental impacts of the proposed project; and, (b) be used as a tool by decision makers to facilitate decision making on the proposed project. The Draft EA was released for a 45-day public review and comment period from July 9, 2013 to August 22, 2013. The Draft EA, was prepared pursuant to CEQA Guidelines §15161, and evaluated the topics of air quality and GHG emissions as areas that may be adversely affected by the proposed project. The Draft EA concluded that only the topic of operational air quality/GHG emission impacts would have significant adverse impacts.

One comment letter was received during the public comment period on the analysis presented in the Draft EA. No comments in this letter identified other potentially significant adverse impacts from the proposed project. Responses to this comment letter have been prepared. The comment letter and responses to the comments are included in Appendix F of the Final EA.

CERTIFICATION OF THE FINAL EA

The SCAQMD Governing Board certifies that it has been presented with the Final EA for Proposed Rule (PR) 1304.1 and that it has reviewed and considered the information contained in the Final EA prior to making the following certifications and findings. Pursuant to CEQA Guidelines §15090 (Title 14 of the California Code of Regulations, §15090), the SCAQMD Governing Board certifies that the Final EA, including responses to comments, has been completed in compliance with the CEQA statutes and the CEQA Guidelines. The SCAQMD Governing Board certifies the Final EA for the actions described in these findings and in the Final EA, i.e., the proposed project. The SCAQMD Governing Board further certifies that the Final EA reflects its independent judgment and analysis. The Governing Board Resolution includes the certification of the Final EA.

SUMMARY OF THE PROPOSED PROJECT

The SCAQMD is proposing to adopt a new rule, PR 1304.1 – Electrical Generating Facility Fee for Use of Offset Exemption. If adopted, PR 1304.1 would require any electrical generating facility (EGF) that elects to use the specific offset exemption described in SCAQMD Rule 1304 (a)(2) - Electric Utility Steam Boiler Replacement, to pay fees for up to the full amount of offsets provided by the SCAQMD. Offsets in SCAQMD internal accounts are valuable public goods and are a specific benefit conferred to the eligible EGFs. The purpose of this rule is to recoup the fair market value of offsets procured by eligible EGFs electing to use such offsets pursuant to

the requirements in Rule 1304 (a)(2). Because the fee is based on historical values of the emission reduction credits in the market, it is a reasonable cost of conferring the benefit.

Project Objectives

- Recoup the fair market value of offsets provided to eligible EGFs from SCAQMD's internal offset bank pursuant to offset exemption Rule 1304 (a)(2);
- Facilitate the continued development of a reliable electric grid within the SCAQMD's jurisdiction while discouraging electric generation not necessary to serve native load or reliability needs.
- Reduce the depletion rate of offsets from SCAQMD's internal offset bank to ensure the continued availability of offsets for essential public services; and,
- Maximize the availability of funds for investment in air pollution reduction projects that further the goals outlined in the 2012 AQMP.

SIGNIFICANT ADVERSE IMPACTS WHICH CAN BE REDUCED BELOW A SIGNIFICANT LEVEL OR WERE CONCLUDED TO BE INSIGNIFICANT

The Final EA identified air quality as an area that may be adversely affected by the proposed project. The proposed project was evaluated according to the CEQA environmental checklist of approximately 17 environmental topics for potential adverse impacts from a proposed project. The screening analysis concluded that the following environmental areas would not be significantly adversely affected by the proposed project:

- aesthetics
- agriculture and forestry resources
- biological resources
- cultural resources
- energy
- geology and soils
- hazards and hazardous materials
- hydrology and water quality
- land use and planning
- mineral resources
- noise
- population and housing
- public services
- recreation
- solid/hazardous waste
- transportation/traffic

POTENTIAL SIGNIFICANT ADVERSE IMPACTS THAT CANNOT BE REDUCED BELOW A SIGNIFICANT LEVEL

The Final EA identified the topic of operational air quality/GHG as the only area that may be significantly adversely affected by the proposed project and could not identify and quantify enough feasible mitigation measures to adequately reduce potential impacts to less than significant. It should be noted, however, that since the EA was prepared, the proposed project has been modified such that a lower fee (75 percent fee reduction) is charged for the first 100 MW of generation at a site. This modification is expected to further reduce the likelihood that the proposed project will result in the delay of any repowering activities and hence, the likelihood of a significant adverse air quality impact.

Operational Air Quality/GHG Impacts

The proposed project would require any EGF that uses the specific offset exemption in Rule 1304(a)(2) to pay annual fees or a single, up-front fee for the amount of offsets provided by the SCAQMD. The proposed project is, therefore, consistent with the existing purposes of Regulation XIII to ensure that there are no net increases in emissions from new or modified permitted sources. However, the SCAQMD received comments from stakeholders asserting that implementing fees pursuant to PR 1304.1 may deter investment in replacing 50+ year-old boilers with new more efficient gas turbines. As a result, a repowering project could be delayed, downsized or abandoned. To ensure the analysis examined a “worst cast” scenario, it assumed that an EGF delaying a repowering project would be replacing the steam boiler with either a simple cycle or a combined cycle gas turbine. To respond to the concern that the steam boilers could be operated at an increased load to handle future increased energy need, the boilers were assumed to be operating at 100 percent capacity on a peak daily basis. However, in reality, it is infeasible for boilers to operate at 100% capacity all the time. As shown in Table 4-4 of the Final EA, PM10, VOC and NOx emissions exceed the daily significance threshold as a result of a “worst case” scenario in which municipal utilities delay repowering projects and increase load from the boilers to 100%.

Additionally, as shown in Table 4-10 of the Final EA, the potential delay in GHG emission reductions could also exceed the annual GHG significance threshold. However, it is unlikely that all projects will be delayed at the same time and it is anticipated that the delay will be temporary as there are short-term RA requirements and long-term municipal planning processes in place to ensure that failing older equipment will not lead to electricity shortfalls. Also, fees collected from other EGFs electing to use the 1304(a)(2) exemption will fund air quality improvement projects that will, in turn, create emissions reductions and will have co-benefits in reducing GHG emissions.

Even though the proposed project could result in emission reductions foregone during operation that exceeds the applicable operational air quality/GHG significance thresholds, for the following reasons they are not expected to interfere with the air quality progress and attainment demonstration projected in the AQMP. Based on regional modeling analyses performed for the 2012 AQMP, implementing control measures contained in the 2012 AQMP, in addition to the air quality benefits of the existing rules, is anticipated to bring the SCAQMD into attainment with all national and most state ambient air quality standards by the year 2023. Therefore, when cumulative operational air quality/GHG impacts from the proposed project, previous amendments, and all other AQMP control measures are considered together, cumulative impacts are not expected to be significant because implementation of all AQMP control measures is expected to result in net emission reductions and overall air quality improvement. This

determination is consistent with the conclusion in the 2012 AQMP Final Program EIR that direct cumulative air quality impacts from implementing all AQMP control measures are not expected to be significant (SCAQMD, 2012). For these aforementioned reasons, the proposed project would not result in irreversible environmental changes or an irretrievable commitment of resources.

STATEMENT OF FINDINGS

Public Resources Code §21081 and CEQA Guidelines §15091(a) state that no public agency shall approve or carry out a project for which a CEQA document has been completed which identifies one or more significant adverse environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. Additionally, the findings must be supported by substantial evidence in the record (CEQA Guidelines §15091(b)). As identified in the Final EA and summarized above, the proposed project has the potential to create significant adverse operational air quality/GHG impacts. The SCAQMD Governing Board, therefore, makes the following findings regarding the proposed project. The findings are supported by substantial evidence in the record as explained in each finding. This Statement of Findings will be included in the record of project approval and will also be noted in the Notice of Decision. The Findings made by the SCAQMD Governing Board are based on the following significant adverse impact identified in the Final EA.

PM10, VOC, NO_x and GHG emissions exceed the CEQA significance thresholds as a result of an extreme “worst case” scenario in which municipal utilities delay repowering projects and increase load from the boilers to 100% and cannot be mitigated to insignificance. However, as noted previously, the modification to the proposed project which provides a 75 percent reduction in fees for the first 100 MW makes this scenario more unlikely.

Finding and Explanation:

PR 1304.1 is concluded to result in adverse significant operational PM10, VOC, NO_x and GHG air quality impacts as a result of an extreme “worst case” scenario analysis. If significant adverse environmental impacts are identified in a CEQA document, the CEQA document shall describe feasible measures that could minimize the impacts of the proposed project. PR 1304.1 is a fee rule and alternatives to the project are adjustments to the fee, which are addressed in the alternatives analysis found in Chapter 5 of the Final EA. The potential adverse air quality and GHG emissions impacts from the proposed project will be the result of those EGFs deciding to delay projects that would repower to cleaner, more efficient equipment because of the fee. Aside from the existing regulatory framework, such as deadlines to cease using once-through-cooling, or pre-arranged agreements, there is no requirement regarding the timing of these facilities to repower. In addition, the SCAQMD cannot regulate when and how the projects are built. However, the proposed project charges a fee to those facilities that are conferred the benefit of obtaining offsets from the SCAQMD internal bank pursuant to Rule 1304 (a)(2) offset exemption. This fee will fund air quality improvement projects, such as those found in the 2012 AQMP.

The significance determination is not due to an *increase* in emissions, but rather a potential delay in emission reductions, if and when a utility delays in repowering existing steam boilers with more efficient equipment. If the delay occurs, it is anticipated that the length of the delay to repower old equipment will be temporary because there are short term reliability requirements and long term municipal planning processes to ensure older equipment will not cause an

inadequate supply of electricity. Further, there will be an additional cost of natural gas to operate boilers at 100 percent capacity which could result in higher operating costs if not repowered, further incentivizing municipal utilities to repower. According to Dr. Frank Wolak, an economics professor and Director of the Program on Energy and Sustainable Development at Stanford University, the proposed fee would not change the economics of a utilities' decision to repower an existing steam boiler because EGFs within California are subject to reliability planning requirements. The significance determination in the Draft EA was based on an extreme "worst case" analysis scenario which relies on the following assumptions:

- The analysis assumes the delay in repowering projects occurs at the same time, which is highly unlikely;
- The analysis assumes existing boilers will operate at maximum capacity (100 percent) that is not expected to realistically occur;
- The analysis chooses a steam boiler with the highest emission rate (lbs/day per MW) and compares to a turbine with the lowest emission rate that may not be reflective of all individual repower projects;
- The analysis does not consider substitution of a steam boiler for a renewable cleaner source of energy such as solar, wind, geothermal, etc.;
- The analysis does not take credit for the emission reductions achieved through the air quality improvement project funded by the proposed fee;
- The analysis includes a "real world" scenario that determines significance for one criteria pollutant (NO_x) as opposed to the extreme "worst case" scenario which determines significance for three criteria pollutants (PM₁₀, VOC, NO_x).

The Governing Board finds that no feasible mitigation measures have been identified that would mitigate the potentially significant adverse impacts to operational air quality/GHGs to less than significant levels. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors" (Public Resources Code §21061.1).

The Governing Board finds further that the Final EA considered alternatives, including adjustments lowering the fee, pursuant to CEQA Guidelines §15126.6, and the final rule proposal incorporates a version of the lower fee alternative, but in an abundance of caution, does not find that the proposal would necessarily reduce potential impacts to insignificance. The administrative record for the CEQA document and adoption of the rule amendments is maintained by the SCAQMD Office of Planning, Rule Development and Area Sources.

Conclusion

The Governing Board finds that the findings required by CEQA Guidelines §15091(a) are supported by substantial evidence in the record. The record of approval for this project may be found in the SCAQMD's Clerk of the Board's Office located at SCAQMD headquarters in Diamond Bar, California.

STATEMENT OF OVERRIDING CONSIDERATIONS

If significant adverse impacts of a proposed project remain after incorporating mitigation measures, or no measures or alternatives to mitigate the adverse impacts are identified, the lead

agency must make a determination that the benefits of the project outweigh the unavoidable adverse environmental effects if it is to approve the project. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project [CEQA Guidelines §15093(a)]. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable” [CEQA Guidelines §15093 (a)]. Accordingly, a Statement of Overriding Considerations regarding potentially significant adverse operational PM10, VOC, NOx and GHG air quality impacts resulting from the extreme “worst case” analysis of the proposed project has been prepared. This Statement of Overriding Considerations is included as part of the record of the project approval for the proposed project. Pursuant to CEQA Guidelines §15093(c), the Statement of Overriding Considerations will also be noted in the Notice of Decision for the proposed project.

Despite the inability to incorporate changes into the proposed project that will mitigate potentially significant adverse operational air quality/GHG impacts to a level of insignificance, the SCAQMD's Governing Board finds that the following benefits and considerations outweigh the potentially significant unavoidable adverse environmental impacts:

1. The analysis of potential adverse environmental impacts incorporates an extreme “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 emission reductions delayed from the proposed project.
2. SCAQMD staff's analysis indicates that Proposed Rule 1304.1 does not present a significant obstacle to the permitting of new replacement generation at the cities, and therefore, does not create an electricity system reliability concern.
3. Funds generated from the payment of the proposed fees will be used to maximize investment in air quality improvement projects consistent with the 2012 AQMP and in the areas impacted by the repowering projects, but the analysis did not take credit for these emission reductions.
4. Supplemental projects funded by the proposed fee that the SCAQMD will undertake will reduce emissions from the proposed project and will aid the advancement of technology, which will facilitate compliance with the 8-hour ozone standard and the new PM2.5 standard.
5. By maximizing funding for air quality improvement programs with the fee from the proposed project, emission reductions will be generated that provide local and regional air quality benefits to reduce the impact of the potential delay in emission reductions from those limited facilities choosing to delay their repower projects because of the fee.
6. The proposed project would allow the SCAQMD to recoup the fair market value of offsets.
7. The proposed project would reduce the depletion rate of offsets from SCAQMD's internal offset bank.

The SCAQMD's Governing Board finds that the aforementioned considerations outweigh the unavoidable significant effects to the environment as a result of the proposed project.

MITIGATION

CEQA requires an agency to prepare a plan for reporting and monitoring compliance with the implementation of measures to mitigate significant adverse environmental impacts. Mitigation monitoring requirements are included in CEQA Guidelines §15097 and Public Resources Code §21081.6, which specifically state:

When making findings as required by subdivision (a) of Public Resources Code §21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Public Resources Code §21080, the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment (Public Resources Code §21081.6). The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

The provisions of CEQA Guidelines §15097 and Public Resources Code §21081.6 are triggered when the lead agency certifies a CEQA document in which mitigation measures, changes, or alterations have been required or incorporated into the project to avoid or lessen the significance of adverse impacts identified in the CEQA document. However, since no mitigation measures to reduce significant adverse operational PM10, VOC, NOx and GHG air quality impacts were identified, a mitigation monitoring and reporting plan for operations is not required.

CONCLUSION

Based on a “worst-case” analysis, the potential adverse operational air quality/GHG impacts from the adoption and implementation of the proposed project are considered significant and unavoidable.

The proposed fee would make potential boiler replacement projects more expensive and thus could potentially lead to the delay, downsizing, or abandonment of these types of projects, at least for municipalities. If boiler projects are delayed, downsized, or abandoned, EGFs may have to continue operating their aging, less efficient boilers for some additional amount of time which could result in forgoing a reduction in emissions from not repowering at an earlier date. By comparing the emissions from the replacement equipment with boilers operating at maximum capacity on a daily basis, the analysis includes impacts from boilers increasing their load in a “worst case” daily scenario. Under this scenario, PM10, VOC, NOx and GHG emissions would exceed the daily CEQA significance threshold because it is assumed that municipal utilities would delay repowering projects and increase loads from the existing boilers. However, it is unlikely that all projects will be delayed at the same time and that loads will increase to 100 percent capacity. Additionally, the funding from other repowering projects will have co-benefits in reducing GHG emissions. Also, the anticipated delay will be temporary as backstop measures and the existing regulatory and planning framework will ensure that older equipment will be replaced so as not to cause an inadequate supply of electricity.

By funding air quality improvement programs with the fee from the proposed project, emission reductions will be generated that provide local and regional air quality benefits to reduce the impact of the potential delay in emission reductions from those limited facilities choosing to delay their repower projects because of the fee. Further, no additional feasible mitigation measures or project alternatives have been identified that would reduce these impacts to insignificance.