

PRELIMINARY DRAFT

**PROPOSED RULE 1304.2. CALIFORNIA PUBLIC UTILITIES COMMISSION -
REGULATED ELECTRICAL GENERATING
FACILITY FEE FOR USE OF SO_x, PM₁₀ AND NO_x
OFFSETS**

(a) Purpose and Applicability

The purpose of this rule is to establish administrative requirements that allow for the option to pay fees for the use of SO_x, PM₁₀ and NO_x emission offsets from SCAQMD internal accounts by an Electrical Generating Facility (EGF) that has contracted to sell energy to an Investor Owned Utility (IOU) subject to the jurisdiction of the California Public Utilities Commission (CPUC). Offsets in SCAQMD internal accounts are valuable public goods. Fees paid to recoup the fair market value of these offsets will be subsequently invested in air pollution improvement strategies consistent with the needs of the Air Quality Management Plan. This rule applies to CPUC-regulated EGFs sited or proposed to be sited within the jurisdiction of the SCAQMD that are unable to meet the Emission Reduction Credit (ERC) provisions of Rule 1303 – Requirements, specifically with regard to obtaining ERCs in the open market. This rule does not allow for the use of emission offsets from SCAQMD’s internal accounts for use as RECLAIM Trading Credits pursuant to Regulation XX – Regional Clean Air Incentives Market (RECLAIM).

(b) Definitions

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

- (i) the highest 15th percentile of PM_{2.5} concentration measurements interpolated to a two (2) kilometer grid of the most recently published Multiple Air Toxics Emissions Study (MATES) modeling domain; or
 - (ii) the highest 15th percentile of cancer risk as calculated in the most recently published MATES; or
 - (B) For an area located within the Salton Sea Air Basin (SSAB), the highest 15th percentile of PM₁₀ concentration.
 - (5) INCREASED CAPACITY means an increase in fossil-fueled electrical generation capacity, either from the construction of one or more units at an existing site, or an increase in the capacity factor of any existing unit at a site, or any combination thereof.
 - (6) INVESTOR OWNED UTILITY (IOU) is a private business organization, subject to governmental regulation, providing an essential commodity or service, including the sale of electricity to the general public, pursuant to a California Public Utilities Commission (CPUC) Long Term Procurement Plan (LTPP).
 - (7) LONG TERM PROCUREMENT PLAN (LTPP) means a long term strategic plan pursuant to California Public Utility Code Sections 454.5 and 399.13, which demonstrates that the associated IOU will comply with State policies, including the Loading Order and the Renewable Portfolio Standard, and will provide safe, reliable capacity at the least cost to ratepayers.
 - (8) RESPONSIBLE OFFICIAL means:
 - (A) For a corporation: a president or vice-president of the corporation in charge of a principal business function or a duly authorized person who performs similar policy-making functions for the corporation;
 - (B) For a partnership or sole proprietorship: general partner or proprietor, respectively; or
 - (C) For a government agency: a duly authorized person.
- (c) Set Aside Conditions
- Prior to setting aside any offsets, the IOU shall provide the Executive Officer (EO) with a projection of new EGF fossil fuel-generation capacity expected in the Basin, based on a CPUC procurement decision, whereby:

- (1) Based on MW projections, the EO will calculate reasonably anticipated offsets needed; and
 - (2) The EO will account for reasonably anticipated offsets needed in the Federal New Source Review (NSR) Equivalency Determination Reports, pursuant to Rule 1315 – Federal New Source Review Tracking System (Rule 1315).
- (d) Setting Aside Offsets for Use by a CPUC-Regulated EGF
- (1) Following final approval by the CPUC of any executed contract between an EGF and associated IOU, the IOU shall provide notice to the EO identifying such contracts for new generation in the Basin, including a request to the EO for setting aside offsets needed for permitting the approved projects.
 - (2) A request by an IOU for setting aside offsets will be approved by the EO in the form of a letter provided that:
 - (A) All ERCs, offsets, and credits available from all other sources including those already held by the contracted EGF are first exhausted;
 - (B) The requirements of Rule 1315 are met, including that the cumulative set aside offsets requested under all SCAQMD rules will not cause or contribute to the exceedance of the applicable Projections of Cumulative Net Emission Increases pursuant to Rule 1315; and,
 - (C) After accounting for all offsets set aside, including those for Rule 1304.3 – Local Publicly Owned Electrical Generating Facility Fee for Use of SO_x, PM₁₀ and NO_x Offsets, the SCAQMD’s internal offset accounts will have a minimum balance of 50 pound per day (lb/day) of SO_x, 420 lb/day of PM₁₀ and 3,000 lb/day of NO_x offsets for Rule 1309.1 – Priority Reserve and Rule 1304 – Exemptions.
 - (3) In the event that the requested amount of offsets for set aside by an IOU exceed the amount of offsets available, the EO will set aside the maximum amount of offsets that meet the requirements specified in paragraph (d)(2).
 - (4) The EO will post the total amount of offsets set-aside pursuant to paragraph (d)(1) from SCAQMD’s internal offset accounts on a quarterly basis on the SCAQMD website and account for all such offsets set aside in the Preliminary and Final Determinations of Equivalency in accordance with Rule 1315.

- (5) In the event that the CPUC's decision to reject a contract becomes final and non-appealable, the associated IOU shall notify the EO within 30 days of such a decision. The EO will release such offsets set aside for other authorized uses pursuant to Regulation XIII – New Source Review.
- (e) Conditions for the Use of Set Aside Offsets by a CPUC-regulated EGF
- Offsets set aside in accordance with the provisions of this subdivision will be debited from the SCAQMD's internal offset accounts prior to the issuance of the Permit to Construct to the owner or operator of a CPUC-regulated EGF identified in this subdivision subject to the following conditions for use:
- (1) The owner or operator of the CPUC-regulated EGF shall submit a good faith effort letter signed by a Responsible Official certifying that reasonable efforts have been undertaken by the owner or operator to secure, on the open market, the quantity of ERCs required pursuant to the ERC requirements of Rule 1303;
 - (2) The owner or operator of the CPUC-regulated EGF shall demonstrate compliance with the California Environmental Quality Act (CEQA) as follows:
 - (A) For facilities with greater than or equal to 50 MW generation, the necessary licensing shall be completed by the California Energy Commission (CEC), or
 - (B) For facilities with less than 50 MW generation, the applicable lead agency shall prepare the appropriate CEQA document for adoption or certification;
 - (3) The owner or operator of the CPUC-regulated EGF shall remit either the Set-Aside Reservation Deposit or the Single Payment, in accordance with subdivision (g);
 - (4) Any permit application for which the requested set aside offsets are needed is deemed complete, pursuant to Rule 210 – Applications;
 - (5) The CPUC-regulated EGF must be in compliance with all other applicable requirements pursuant to Regulation XIII;
 - (6) Any set side offsets that are not used by the CPUC-regulated EGF will remain in the SCAQMD's internal offset accounts for future use; and,
 - (7) Set aside offsets will be available for the facility or any successors for a period not to exceed 24 months from the confirmation date of the set aside identified pursuant to paragraph (d)(2), after which the set aside will be

cancelled, and any remitted set aside offset fees will be forfeited. Following cancellation, the EO will release any set aside offsets for other authorized uses pursuant to Regulation XIII. The EO may approve a request for an extension of the set aside period by up to an additional 36 months to set aside the requested offsets necessary to permit the contracted project MW, provided a written request is received by the EO prior to the expiration of the initial 24 month period.

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

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

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

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

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

(1) **Offset Fee Determination**

The Offset Fee (F_i), for specific pollutant (i), will be calculated by multiplying the pollutant specific Annual Payment Offset Fee Rate (R_i) or Single Payment Offset Fee Rate (L_i) in Table A, as applicable, by the potential to emit level of any new replacement unit, or by the increase in permitted potential to emit of any Increased Capacity of an existing unit, for

pollutant (i), in pounds per day. The offset fee determination is governed by equations in Table B and subparagraphs (g)(1)(A), (g)(1)(B) and (g)(1)(C).

TABLE A
Pollutant Specific CPUC-Regulated EGF Offset Fee Rates

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

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

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

TABLE B
Pollutant Specific CPUC-Regulated EGF Offset Fee Determination

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

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

^[2] Payment of the First Year of Commenced Operations Offset Fee is due following Commencement of Operation, either on or before the anniversary of

the issuance of the Permit to Construct or on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(ii).

¹³¹ Payment of the Continuing Operation Offset Fee is due subsequent to the First Year of Commenced Operations Offset Fee payment, either annually on or before the anniversary of the issuance of the Permit to Construct or annually on or before the anniversary of the issuance of the Permit to Operate for an Increased Capacity of an existing unit, for the portion of the of the total permitted MW capacity that commenced operation, pursuant to clause (g)(2)(A)(iii).

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

(A) Annual Fee Determination

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

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

Where:

Fi = Offset Fee for pollutant (i)

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

PTE_{NEWi} = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

(B) Single Payment Fee Determination

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

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

Where:

Fi = Offset Fee for pollutant (i)

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

PTE_{NEWi} = Permitted potential to emit for pollutant (i), in pounds per day, pursuant to subparagraph (g)(1)(C)

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

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

(2) Offset Fee Payment Schedule

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

(A) Annual Fee Payment Schedule

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

(i) Set Aside Offset Reservation Deposit Fee

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

(ii) First Year of Commenced Operations Offset Fee

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

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

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

(iii) Continuing Operation Offset Fee

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

(B) Single Payment Fee Payment Schedule

A CPUC-regulated EGF owner or operator choosing the single payment option shall pay a one-time Offset Fee, determined in

accordance with subparagraph (g)(1)(B), due prior to the issuance of the Permit to Construct, or prior to the issuance of the Permit to Operate for an Increased Capacity of an existing unit.

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

(h) **Application Cancellation and Refund**

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

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

(i) **Permit Cancellation or Modification and Refund**

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

- (1) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and no future payments due; or
 - (2) if the constructed MW capacity for which the Permit to Construct was issued is built out in multi-year phases, prior to commencing construction of any phase, an owner or operator of a CPUC-regulated EGF can request that the EO modify the associated permit to limit the maximum monthly or annual generation capacity, and:
 - (A) if the annual payment option was chosen pursuant to subparagraph (g)(2)(A), then there will be no refund and any subsequent offset fee payment subject to this rule will be based on the resultant approved Potential to Emit (PTE), pursuant to subparagraph (g)(1)(A) and clauses (g)(2)(A)(ii) and (g)(2)(A)(iii); or,
 - (B) if the single payment option was chosen pursuant to subparagraph (g)(2)(B) then, for the corresponding reduction in offsets, the amount paid, less the amount equal to the Set Aside Reservation Deposit determined in accordance with subdivision (g), will be refunded.
- (j) **Failure to Pay Fees**
If the owner or operator of a CPUC-regulated EGF fails to pay any offset fee required pursuant to this rule within thirty (30) days after the due date, any associated permit will expire and no longer be valid, unless such offsets are replaced by an equivalent amount of ERCs by the owner or operator. Any such permit may be reinstated within sixty (60) days following expiration by making full payment of the applicable fees owed plus an additional 50% of the applicable fees owed.
- (k) **Use of Offset Fee Proceeds**
 - (1) Except as provided in paragraph (k)(2), offset fee proceeds paid pursuant to this rule will be deposited in an SCAQMD special fund account and will be used to obtain emission reductions consistent with the needs of the Air Quality Management Plan. Priority will be given to funding air quality improvement projects in impacted surrounding communities where the CPUC-regulated EGF project is located and in Environmental Justice Areas.

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

(1) Severability

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

FOR DISCUSSION PURPOSES ONLY