

PROPOSED RULE 1304.2. ~~GREENFIELD—QUALIFIED~~ ELECTRICAL GENERATING FACILITY FEE FOR USE OF SO_x AND PM₁₀ OFFSETS

(a) Purpose and Applicability

This rule applies to ~~Greenfield—Qualified~~ Electrical Generating Facilities (~~GEGFQEGFs~~) sited within the South Coast Air Basin (SOCAB) that ~~(1) have contracted to sell energy to an load-serving entity (LSE) Investor Owned Utility (IOU) subject to the jurisdiction of the California Public Utilities Commission (CPUC), or (2) have an Integrated Resource Plan (IRP) or an equivalent process approved by a public agency or municipality.~~ The purpose of this rule is to allow ~~GEGFQEGFs~~ (excluding SO_x RECLAIM sources) that hold insufficient SO_x and/or PM₁₀ Emission Reduction Credits (ERCs) pursuant to Rule 1303(b)(2)(A) and cannot procure them in the open market despite a ~~diligent documented~~ effort to do so the option to pay fees for ~~up to the full amount of~~ offsets provided by the SCAQMD. Offsets in SCAQMD's internal accounts are valuable public goods and the purpose of this rule is to recoup the fair market value of any such offsets procured by eligible ~~GEGFQEGFs~~ electing to use such offsets. The fees will be invested in air pollution improvement strategies consistent with the needs of the Air Quality Management Plan.

(b) Definitions

- (1) COMMENCEMENT OF OPERATION means to have begun the first fire of the new unit(s), or to generate electricity for sale from the new unit(s), including the sale of 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 in whole.
- (3) ENVIRONMENTAL JUSTICE AREA means an area where:
 - (A) at least 10 percent of the population falls below the Federal poverty level based on the ~~2008-2012 or moremost~~ recently published American Community Survey (ACS) data; and
 - (B) the highest 15 percentile of PM_{2.5} concentration measurements interpolated to a 2 kilometer grid of the most recently published Multiple Air Toxics Emissions Study (MATES) modeling domain; or
 - (C) the highest 15 percentile of cancer risk as calculated in the most recently published MATES.

- (54) INVESTOR OWNED UTILITY (IOU) is a private business organization, subject to governmental regulation, that provides an essential commodity or service, such as electricity to the general public, under a CPUC Long Term Procurement Plan (LTPP).
- (5) LONG TERM PROCUREMENT PLAN (LTPP) means a long term strategic plan pursuant to CPUC Section 454.5 and which demonstrates that the IOU will comply with State policies, including the Renewable Portfolio Standard, and will provide safe, reliable capacity at the least cost to ratepayers.
- ~~(5) LOAD SERVING ENTITY means an electrical corporation, electrical service provider, or community choice aggregator as defined in the CPUC Code Section 380 (j)~~
- ~~(6) NATIVE LOAD means the wholesale and retail customers on whose behalf the Local Publicly Owned Electric Utility (LPOEU), by statute, franchise, regulatory requirements, or contract; which is the subject of an IRP or equivalent process approved by the appropriate oversight body; and that LPOEU has undertaken an obligation to construct and operate the Transmission Provider's/Customer's system to meet the reliable electric needs of such customers.~~
- (6) GREENFIELD QUALIFIED ELECTRICAL GENERATING FACILITY (GEGFQEGF) means a new facility or increased capacity at an existing facility that generates electricity for distribution in the state or local grid system, regardless of whether it also generates electricity for its own use or for use pursuant to a contract.

(c) Process for Projection of MW-Needed and Reservation of Offsets

- (1) The IOU shall provide the Executive Officer (EO) with a projection of fossil fuel-generation capacity expected in the Basin, based on an approved LTPP by the CPUC,
- (A) Based on MW projections, the District shall calculate reasonably anticipated offsets needed; and
- (B) The IOU shall account for potential offsets needed in the 1315(d) Federal New Source Review (NSR) Equivalency Determination Reports.
- (2) Once the contracts between the QEGF and IOU have been executed, the IOU shall provide notice to the EO identifying contracts for new generation in the Basin.

- (A) The EO shall encumber the offsets needed for the contracted MW, provided the requirements of Rule 1315 Federal NSR Equivalency are met, such that after all qualified offset encumbrances including those for Rule 1304.3, the District’s internal offset accounts shall have a minimum balance of 50 lbs/day of SOx and 420 lb/day of PM offsets for Rule 1309 and Rule 1304 emitters;
- (B) The District shall post the total encumbered offsets from the District’s internal offset accounts on a quarterly basis on the District website and account for Rule 1304.2 offset encumbrances in the Preliminary and Final Determinations of Equivalency pursuant to Rule 1315(d);
- (C) In the event that the requested offsets exceed the amount of offsets available, the EO shall encumber the maximum amount of offsets that comply with the requirements specified in subparagraph (c)(2)(A);
- (D) The EO shall notify the IOU of the amount of offsets encumbered and prepare a written report to the Stationary Source Committee on the status of the offset requests; and
- (E) In the event that the CPUC’s decision to not approve a contract becomes final and non-appealable, the IOU shall notify the EO within 30 days of such a decision and the EO shall release the corresponding offsets encumbered, for other authorized uses pursuant to District rules and any refunds shall be pursuant to subdivision (f).

~~(e) Offset Reservation Program Requirements~~

~~— Applicants may participate in the utilization of offsets under the provisions of this rule if they meet all the following applicable eligibility requirements:~~

~~(1) Qualifying Requirements—~~

- ~~(A) Applicants must conduct and document a good faith effort to secure sufficient offsets for PM10 and/or SOx to the satisfaction of the Executive Officer;~~
- ~~(B) All existing sources at the GEGF site must meet BARCT or BACT requirements;~~
- ~~(C) A minimum, non-refundable, reservation fee for at least one year’s worth of offsets requested, as calculated under subparagraph(e)(3)(A), must be paid at the time the reservation is requested;~~
- ~~(D) The permit application(s) for which the requested offsets are needed is/are deemed complete;~~

- ~~(E) After all qualified reservations, the District's internal offset accounts shall have a minimum balance of 50 lbs/day of SOx and 420 lb/day of PM offsets for Rule 1309 and Rule 1304 emitters; and~~
- ~~(F) Cumulative requested offsets shall not cause or contribute to the exceedence of the applicable Rule 1315 Projections of Cumulative Net Emission Increases, the calculation shall consider the lesser of the by the investor owned utility or the requested mega-watts.~~

~~(2) Reserving Offsets~~

~~(A) LSE applicants must generate electricity for distribution in the state or local grid pursuant to a contract to generate electricity under the CPUC LTPP.~~

~~(B) Local Publicly Owned Electric Utility~~

- ~~(i) Has an approved IRP or an equivalent process approved by a public agency or municipality at a publicly noticed meeting;~~
- ~~(ii) The approving body has an adopted energy policy on preferred resources and loading order consistent with CPUC policies; and~~
- ~~(iii) Must provide power for the purpose of supporting its native load only and for grid reliability;~~

~~(3) Transfer of Offsets to GEGFs~~

~~The transfer of necessary offsets, for use pursuant to the provisions of this rule, shall be made only upon satisfaction of all of the following conditions:~~

- ~~(A) For CPUC jurisdictional LSEs, the GEGF contract was approved by the CPUC through its Application or Advice Letter process;~~
- ~~(B) The appropriate CEQA document has been certified;~~
- ~~(C) A reservation has been made pursuant to paragraph (d)(2); and~~
- ~~(D) Pursuant to paragraph (e), if the Single Payment option is chosen, then the balance of the applicable fee less the reservation fee amount is remitted. For the Annual Payment option the reservation fee amount is credited for the first year year.~~

(d) Use of Offsets by QEGFs

Encumbered offsets, in accordance with the provisions of paragraph (c)(2) above, shall be debited from the District's internal offset accounts prior to the issuance of

the Permit to Construct to the owner/operator of a QEGF if the following requirements have been met:

- (1) The owner/operator of the QEGF has a CPUC approved contract with the IOU;
- (2) The owner/operator of the QEGF has paid either the first Annual or the Single (lump sum) payment offset fee;
- (3) The owner/ operator of the QEGF demonstrates that a good faith effort was made to secure ERCs on the open market, by submitting with the reservation request a certified letter signed by a responsible person documenting reasonable efforts undertaken by the applicant to secure the required quantity of ERCs at or below the fee rates in Table A;
- (4) The CEC has adopted the necessary environmental analysis to comply with the California Environmental Quality Act (CEQA); and
- (5) Any offsets that have been encumbered, but are not needed by the QEGF shall remain in the District's internal offset accounts for future use.

~~(d) Offset Reservation Program Operation~~

~~Qualifying applicants may request the type and amount of offsets as part of a submitted permit application subject to the following conditions:~~

- ~~(1) Reservation of offsets shall be on a first-come, first-served basis;~~
- ~~(2) Requested offsets approved by the Executive Officer in the form of a letter shall be available for the facility or its successor(s) for a period not to exceed 24 months from the date of the issuance of the permit to construct, after which the reservation shall be cancelled and the reservation fee shall be forfeit. The reservation may be extended by an additional 36 months by the Executive Officer.~~
- ~~(3) The District shall post the total reserved offsets from the District's internal offset account on a quarterly basis on the District website and as part of its annual Final Determination of Equivalence Rule 1315 report.~~

(e) Offset Fees

- (1) A qualified applicant electing to use the offset provisions in this rule shall pay a fee, ~~the Greenfield Offset Fee~~ QEGF Offset Fee, calculated pursuant to paragraph(e)(3), for each pound per day of each pollutant (i), for which the SCAQMD provides offsets. This fee may be paid on an annual basis ($GF_{Ai}QF_{Ai}$), as a single payment ($GF_{Si}QF_{Si}$), or a combination of both at the election of the applicant.

- (2) The ~~Greenfield-Offset Fee~~QEGF Offset Fee, for a specific pollutant (i), where (i) is either SOx or PM10, shall be calculated by multiplying the pollutant specific Annual Offset Fee Rate (A_i) or Single Payment Offset Fee Rate (S_i) respectively in Table A, by the SOx or PM10 permitted potential to emit level(s) of the new ~~facility replacement~~-unit(s) calculated pursuant to the equations in paragraph (e)(3).

Table A: Pollutant Specific Offset Fee Rates

Pollutant (i)	Annual Offset Fee Rate (A _i) (\$ per lb/day)*	Single Payment Offset Fee Rate (S _i) (\$ per lb/day)*
SOx**	3,170 <u>3,266</u>	80,530 <u>81,657</u>
PM10	4,050 <u>4,107</u>	101,237 <u>102,654</u>

* ~~Offset Fee rates R_{Ai} and L_{Si}~~ are adjusted annually by the Regulation III CPI. The rates published in Table A above are for FY 2015-2016 and are valid through 6/30/16. Furthermore, the rate in effect at the time of either the issuance of the Permit to Construct or the debit of offsets from the District accounts shall be used, as applicable.

**SOx fees for non-RECLAIM sources only;

- (3) The offset fee ~~calculation~~ shall be calculated pursuant to the equations in subparagraphs (A) and (B):

(A) Annual Payment Option

~~Greenfield-QEGF~~ construction on or after [Date of Adoption] with SOx and/or PM10 offsets debited from the SCAQMD internal offset accounts:

$$\del{Greenfield} \del{QEGF} \text{ Annual Payment Offset Fee } (\del{G}QF_{Ai}) = A_i \times PTE_{new_i}$$

(B) Single Payment Option

~~Greenfield-QEGF~~ construction on or after [Date of Adoption] with offsets debited from the SCAQMD internal offset accounts:

$$\del{Greenfield} \del{QEGF} \text{ Single Payment Offset Fee } (\del{G}QF_{Si}) = S_i \times PTE_{new_i}$$

Where;

~~GF_{Ai}~~QF_{Ai} = ~~Greenfield-QEGF~~ Annual Offset Fee Payment (GF_A) for pollutant (i).

~~GF_{Si}~~QF_{Si} = ~~Greenfield-QEGF~~ Single Offset Fee Payment (GF_S) for pollutant (i).

i = SOx, ~~and/or~~ PM10

- A_i = Table A, Annual Offset Fee Rate for pollutant (i), in terms of dollars per pound per day, annually.
- S_i = Table A, Single Payment Offset Fee Rate for pollutant (i), in terms of dollars per pound per day.
- PT_{New_i} = Permitted potential to emit of new unit(s) for pollutant i, in pounds per day. (Maximum permitted monthly emissions \div 30).

(f) Offset Fee Payment Schedule and Refunds

The applicant or owner/operator of a ~~GEGF~~~~QEGF~~ electing to use the offset provisions in this rule shall remit the offset fees as follows:

(1) For the annual payment option:

- (A) The applicant must remit the first year annual offset fee payment, which is non-refundable, prior to the issuance of the ~~p~~Permit to ~~e~~Construct and such fees shall be based on the total amount of the permitted potential to emit corresponding to the constructed MW capacity for which a permit to construct is being issued by SCAQMD for the facility. Subsequent payments shall be remitted annually based on the cumulative total of MW capacity that commenced operation (multi-year projects), on or before the anniversary date of the original commencement of operation of such MW capacity at the fee rates in effect at the time the fee is due.
- (B) Prior to the commencement of construction of each new electrical generating permit unit, an applicant can request the Executive Officer to have their permit amended to limit the permitted maximum monthly and/or annual generation capacity and can seek a refund for the fee adjustment corresponding to the requested reduction in permitted potential to emit.
- (C) If the applicant or owner/operator of a ~~GEGF~~~~QEGF~~ fails to pay the QEGF Offset Fee, either the QF_{A_i} or the QF_{S_i} as applicable ~~GEGF Offset Fee (GF_i) amount~~, for each applicable pollutant (i), within thirty (30) days after the due date, the associated permit(s) will expire and no longer be valid. Such permit(s) may be reinstated within sixty (60) days by full payment of the fees owed plus 50%.
- (D) The applicant or owner/operator of a ~~GEGF~~~~QEGF~~ that has elected the annual fee payment option may switch to the single payment option upon submittal of a written request to the ~~Executive Officer~~ for such a change in payment method. The amount of the single payment offset fee due shall be based on offset fee rates applicable at the time the

written request for the change in payment method is submitted to the ~~Executive Officer~~. The sum of the annual offset fees remitted prior to the submittal of a request for change to a single payment option shall be credited towards the single payment offset fee due.

- (2) For the single payment option, the applicant must remit the entire fee prior to issuance of the ~~permit~~ Permit to ~~construct~~ Construct.
 - (3) The amount of any payments made in satisfaction of the requirements of the rule, less an amount equal to the first year of offsets initially remitted as a reservation fee, as required in subparagraph (c)(2), shall be refunded, less an administrative processing fee as specified in paragraph (g)(2), for both the single and multi-year annual payments, if a written request by the facility applicant is received prior to the ~~commencement~~ Commencement of ~~operation~~ Operation. Such a request for refund shall automatically trigger cancellation of the Permit to Construct and/or Operate, unless such offsets are replaced by an equivalent amount of Emission Reduction Credits.
 - (4) ~~Notwithstanding a valid Change of Operator, o~~ffsets provided pursuant to this rule to a ~~facility~~ QEGF may be utilized only by the QEGF to which they are provided and only for the life of the QEGF from commencement of operation through cessation of operation. Such 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, QEGF's reservation and use of offsets pursuant to this rule shall not be affected by a valid Change of Owner/Operator.
- (g) Use of Offset Fee Proceeds
- (1) Offset Fee proceeds paid pursuant to this rule shall be deposited in an SCAQMD restricted fund account and shall be used to obtain emission reductions consistent with the needs of the Air Quality Management Plan. Priority shall be given to funding air quality improvement projects in communities where the ~~repowering~~ QEGF projects are located and Environmental Justice Areas.
 - (2) Up to 8% of the Offset Fee proceeds, deposited in a restricted fund account, may be used by the Executive Officer to cover administrative costs related to implementation of this rule.
- (h) 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. In the event any of the exceptions to this rule is held by judicial order to be invalid, the persons or circumstances covered by the exception shall instead be required to comply with the remainder of this rule.

DRAFT - FOR DISCUSSION PURPOSES ONLY