

DOCKETED

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July 17, 2014

VIA E-MAIL

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South Coast Air Quality Management District
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Re: Redondo Beach Energy Project, SCAQMD Notice of Intent to Issue Permits

Dear Mr. Lee:

The City of Redondo Beach hereby submits the following comments in response to SCAQMD's Notice of Intent to Issue Permits (Notice) for the Redondo Beach Energy Project (RBEP).

1. **Maximum Emissions Exceed SCAQMD Significance Thresholds – CEQA Review And Mitigation Needed Prior To Issuance of Permit To Construct.** The project maximum daily operational criteria pollutant emissions stated in Table 26 on page 75 of the PDOC greatly exceed the CEQA significance thresholds listed in the SCAQMD CEQA Handbook for VOC, NO_x, PM₁₀, SO_x, and CO.¹ In addition, the Rule 1401 air toxic health risk assessment conclusions in Table 35 on page 100 of the PDOC are on a per unit basis, not cumulative to include all units and the existing background health risk burden.

SCAQMD cannot issue a Permit to Construct without a meaningful review of the Project's significant environmental impacts and consideration of mitigation options. Will the California Energy Commission (CEC) conduct a review of the significant and potentially significant impacts—including those identified above—that have not been addressed by SCAQMD in this proposed decision? If so, what will be the role of the SCAQMD in this review?

In reviewing the impacts, SCAQMD and/or CEC should evaluate the additional contribution of the project to the existing local air quality burden, especially for particulate matter and air toxics. PM₁₀ and PM_{2.5} should be addressed as separate

¹ www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2

pollutants with their own significance thresholds. In addition to the standard approach to conducting air quality modeling, the analysis should account for shoreline fumigation, lower stack heights from the previous facility, and localized terrain influences. Following recently issued EPA guidance, the PM impacts should account for secondary PM_{2.5} formation due to NO_x and SO_x emissions as well as use of ammonia to control NO_x.

2. **Role of SCAQMD With Regard To CEQA.** The CEC is the "lead agency" for compliance with CEQA with regard to approval of the RBEP.² SCAQMD is a "responsible agency."³

In its proposed decision, SCAQMD does not discuss or analyze significant impacts under CEQA, except as they relate to compliance with SCAQMD regulations. Will SCAQMD provide an analysis of significant air quality impacts to assist the CEC with its CEQA analysis?

What is SCAQMD's role as a responsible agency under CEQA?

As the lead agency, must the CEC make its own independent determination of whether there are significant air quality impacts? Can the CEC simply rely on SCAQMD's determination of compliance to find that there are no significant impacts, or must it exercise independent judgment? Can the CEC simply use SCAQMD's standards regarding significance, or must it make an independent determination of whether the standards are appropriate and sufficient?

When answering these questions, please keep in mind the following:

- (a) Public Resources Code Section 21082.1(c)(3) provides:

"As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, [the lead agency shall] find that the report or declaration reflects the independent judgment of the lead agency."

- (b) CEQA Guidelines Section 15020 provides:

"Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from

² Public Resources Code § 25519(c).

³ California Code of Regulations, Title 14, Section 15381.

other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish."⁴

(c) The CEB practice guide to CEQA provides:

"While air quality management district guidance documents are a particularly helpful resource, lead agencies should *not* assume that following the recommendations in any of these documents will provide a complete analysis of air quality impacts for every project. When relying on these guidance documents, the lead agency should consider whether the project might cause significant air quality effects that are not covered by the methods for calculating and evaluating impacts recommended in the document, and augment the analysis as appropriate."⁵

3. **Improper Application Of The Rule 1304(a)(2) Offsets Exemption.** In the PDOC, SCAQMD justifies the use of the Rule 1304(a)(2) exemption from offset requirements based upon a limited review of the previous and future output of three AES-owned facilities. However, Rule 1304(a)(2) requires a basin-wide analysis. It provides:

"The new equipment must have a maximum electrical power rating (in megawatts) that does not allow basin-wide electricity generating capacity on a per utility basis to increase. If there is an increase in basin-wide capacity, only the increased capacity must be offset."

By reviewing only the MW output at the three facilities, SCAQMD has not provided the required analysis of the impact of RBEP and other projects on basin-wide capacity on a per utility basis. The situation at the utility level is much more complicated than addressed in the PDOC. To allow the exemption at certain facilities, the MW loads from multiple older facilities have been "traded" to proposed facilities; for example, between the Huntington Beach Energy Project (HBEP) to the Walnut Creek Energy Facility and from RBEP to HBEP.

It follows logically that if MW load capacity is reduced at individual facilities then the load capacity and emissions must increase at other facilities to meet basin-wide load demands, potentially invalidating use of the Rule 1304(a)(2) exemption. Therefore, it is possible that *either* an increase or a decrease in load capacity at a single facility can result in an increase in basin-wide capacity.

⁴ California Code of Regulations, Title 14, Section 15020.

⁵ Kostka & Zischke, *Practice Under the California Environmental Quality Act*, § 13.60. This is the authoritative treatise on CEQA practice.

The limited analysis provided by SCAQMD does not provide a proper and legal review of the use of the Rule 1304(a)(2) exemption for RBEP. SCAQMD should prepare the basin-wide analysis for each and all power generation facilities that are operating, under construction, and proposed, within the Southern California Edison territory. In addition, the current and planned future approach by SCAQMD of allowing the trading of MW load between facilities should be evaluated for significant impacts under CEQA as well as conformity with EPA nonattainment area New Source Review (NSR) regulations.

SCAQMD should also explain and justify the intake and use of the windfall fees collected under Rule 1304.1 as adequate to mitigate the potentially significant local impacts under CEQA, and in lieu of the use of local procured, market-based emission offsets. Will the fees collected be spent in Redondo Beach and Hermosa Beach to mitigate local impacts?

4. **Lowest Achievable Emission Rate For PM10/PM2.5.** On page 82 of the PDOC, SCAQMD states the Lowest Achievable Emission Rate (LAER) for PM10/PM2.5 is based on pipeline-quality natural gas, and the emission rate provided by AES.

While LAER may be based upon use of pipeline quality gas in turbines, why has SCAQMD simply accepted the emission rate limit provided by AES? Has SCAQMD conducted any research on the PM emissions from gas turbines at operating power plants, to establish what PM emission rate can actually be achieved as LAER? SCAQMD should prepare an analysis of PM10/PM2.5 source test results from similar equipment on a lb/hr and lb/MW basis, and require RBEP to meet the lowest achievable emission rate as shown by this research.

5. **RBEP Is A New Facility.** The RBEP should be considered a new facility and not a replacement or modified facility. SCAQMD cannot establish the existing old unit PTE from the NSR database from which to base the modification. The only similarity between the old power plant and the new plant is the general location. Otherwise, RBEP is a completely new facility based on a new design and new and different technology. RBEP should therefore be considered a new facility. Designation of RBEP as a new facility would make a significant difference in how the air district rules and emissions standards are applied by SCAQMD.

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Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jon Welner', with a long horizontal flourish extending to the right.

JON WELNER of
Jeffer Mangels Butler & Mitchell LLP

cc: Michael Webb, City Attorney, City of Redondo Beach