



## ANALYSIS

## CALIFORNIA PUBLIC UTILITIES COMMISSION

### **SB 696 (Wright)** **As Amended June 17, 2009**

#### **SUMMARY**

This bill would provide a limited California Environmental Quality Act (CEQA) exemption for implementation of specific South Coast Air Quality Management District (SCAQMD) rules creating or providing air emission offsets from the SCAQMD's internal air emissions bank within the District's air basin.

#### **CPUC POSITION AND SUPPORTING ARGUMENTS**

**SUPPORT.** As a result of the Los Angeles Superior Court's decision, the SCAQMD is currently prohibited to issue any new air permits and has set aside thousands of air permits already issued, affecting businesses and services such as sewage treatment plants, hospitals, schools, fire and police stations, and landfill gas to energy projects. In addition, the SCAQMD cannot issue any offsets to thermal power plants, making it much more difficult to replace older power plants and permitting newer, cleaner plants to ensure compliance with the state's AB 32 greenhouse gas (GHG) emissions reduction and renewables portfolio standard (RPS) goals. Finally, in the Los Angeles basin, pending litigation concerning SCAQMD's air permits will prevent the construction of new gas-fired generation that would have allowed some of the older power plants using once-through cooling (OTC) to retire.

The bill would address this "permit moratorium" by allowing the issuance of over a thousand pending permits that rely on the SCAQMD's internal air emissions offset bank. Thus, the bill would help facilitate the replacement of older plants and the permitting of new, cleaner plants. In addition, the bill would enhance the Los Angeles basin's grid reliability by allowing SCAQMD to issue priority reserve credits to thermal power plants needed to meet current and future projected load needs during peak demand.

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- This bill would establish an "operating account" which is exempt from CEQA with just enough credits to service existing needs and those of the immediate future. The starting balances of the account would be in the following amounts: 1) Volatile organic compounds: 10.98 tons/day; 2) Nitrogen oxides: 14.27 tons/day; 3) Sulfur oxides: 2.32 tons/day; 4) Carbon monoxide: 12.72 tons/day; and 5) PM10: 10.63 tons/day.

Future rules authorizing the creation of additional offset credits for deposit into the operating account are not exempt from CEQA.

- This bill would establish a “set-aside account” which is not exempt from CEQA and whose credits must be subject to CEQA review before they are transferred to the operating account. The starting balances of the account would be in the following amounts: 1) Volatile organic compounds: 55.56 tons/day; 2) Nitrogen oxides: 11.24 tons/day; 3) Sulfur oxides: 0 tons/day; 4) Carbon monoxide: 0 tons/day; and 5) PM10: 0.55 tons/day.
- CEQA exemptions will not apply to adoption or implementation of rules by SCAQMD unless all of the following are satisfied:
  - Use of best available control technology (BACT)
  - Air modeling to ensure no violation or no significant worsening of an existing violation of air standards
  - Within toxic air limits
  - Account for use of offsets in South Coast Air Quality Management Plan
  - SCAQMD rules must be submitted to EPA and approved by EPA
- For thermal power plants to obtain Priority Reserve offsets under this bill, the following requirements would have to be satisfied:
  - Application has been certified by the California Energy Commission (CEC)
  - Enter into a power-purchase agreement with an investor-owned utility (IOU) regulated by the CPUC, or be a municipal project serving only native load
  - Power plant pays a mitigation fee for credits at a minimum cost of \$92,000 per ton of PM10 (particulate matter less than 10 microns) and fees must be used to reduce pollution in areas impacted by power plant with a minimum 1/3 to be used for installation of renewable or alternative sources of energy
- For thermal power plants to be eligible to receive offset credits from amounts added to the operating account beyond the starting balances, the following requirements would have to be satisfied:
  - Electricity will be provided to Southern California customers, and the capacity addition is authorized by the CPUC’s Long-Term Power Procurement decision, after concluding that all cost-effective and reliable efforts have been exhausted and additional supplies of renewable power were insufficient to meet the region’s current and future projected electricity needs
  - Enter into a power-purchase agreement with an IOU regulated by the CPUC, or be a municipal project serving only native load
- The 2006 Long-Term Power Procurement (LTPP) decision (07-12-052) did not make findings that “all cost-effective, reliable, and feasible demand response and demand reduction resources were exhausted and additional supplies of renewable power were insufficient to meet current and future projected electricity needs of the region.” Since this is required under Section 3 (b)(1) of the bill, the CPUC would need to revise its LTPP process to ensure its decisions can make that finding when additional thermal generation is needed in SCAQMD’s jurisdiction.

- This bill would prohibit any credits used to be transferable, except to a new owner of the same source, and will revert back to the SCAQMD's internal accounts upon the source, or portion of a source, ceasing operation.
- This bill would require the SCAQMD to establish a fee paid by the power plant for the use of offset credits from the Priority Reserve.
- CEQA Section 15260 does allow for statutory exemptions that are granted by the Legislature. This bill would incorporate all the environmental protective provisions of the SCAQMD rules. This bill is intended to support the continuance of the SCAQMD banking system.
- About half of the power plants in SCAQMD area are over 40 years old. With the proposed exemptions, this bill would facilitate the replacement of older plants and permitting of new, cleaner plants. One of the state's goals is to support renewables coming online and help achieve AB 32 compliance. The replacement plants can provide firming resources needed to support increased reliance on intermittent renewable energy. In addition, grid stability requires that a portion of the generation be located close to the load center, or that new transmission projects include sufficient capacitors close-to-load to preserve grid stability (the latter solution will be more costly, but would reduce in-basin emissions).
- This bill is in response to the Los Superior Court decision in Natural Resources Defense Council vs. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792) holding that the SCAQMD violated the requirements of CEQA in the promulgation of certain district rules which affects the CEC's ability to site power plants in the area. According to SCAQMD, both the CEC and CAISO attempted to file briefs supporting SCAQMD's process, but the court declined to receive them. The court ruled that the SCAQMD's CEQA document for their air emissions offset program was inadequate. The court ruled that the SCAQMD must assume that all offsets in the SCAQMD internal bank were actually in the air, which results in pollution.
- Due to the court decision, the SCAQMD was forced to stop issuing any permits which relied on using the District's internal offsets bank to offset air emissions. Currently, the SCAQMD is unable to issue over a thousand pending permits unless either SCAQMD can use their internal offset bank or CEQA analysis is performed on these projects. In addition, thousands of permits that were previously issued are now subject to CEQA analysis. This action will cause further delays and increase costs for already approved projects.
- Under the Federal Clean Air Act, the air districts must adopt programs to require that major, new or modified sources of contaminants which are released in an air basin that do not meet the federal standards (non attainment air basin or area), must provide emissions offsets for their emissions increases as well as best available technology. If the source fails to apply for the credit, the SCAQMD claims the offsets as "orphan shutdowns" and deposits them in its internal air emissions bank. The SCAQMD uses these offsets to supply needed offsets for essential public services and for projects exempt from offsets under the District rules.

- In 2006, the SCAQMD amended its rules to allow power plants meeting specified requirements, and paying significant mitigation fees, to access the SCAQMD bank. This was deemed necessary because all the privately-owned PM10 credits in existence would supply less than half the needs of the three proposed power plants that have contracts with Southern California Edison. Developers of at least seven power plants totaling approximately 4,100 MW were intending to use these rule revisions to permit their plants. (see table below)

Project Name	MW	PPA or Muni	LCR Area	COD
Canyon PP	200	Muni	LA Basin	Unknown
CPV Sentinel	850	PPA w/SCE	LA Basin/Imperial Valley	2010 / 2012
EME Walnut Creek	500	PPA w/SCE	LA Basin – Western/Barre	2013
NRG El Segundo	560	PPA w/SCE	LA Basin – Western/Barre	2012
Palmdale HPP*	570	Muni	None	2013
Vernon (SREC)**	943	Muni	LA Basin – Western/Barre	Unknown
Victorville 2 HPP*	563	Muni	None	2010

Notes/definitions:

1. \*Project not located in SCAQMD, but licensing application proposed the use of PRCs.
2. \*\*Project denotes that the SCAQMD has rejected the project for PRC consideration.
3. PPA is power purchase agreement between the generator and the IOU.
4. LCR is local capacity region.
5. COD is construction on-line date.

#### **PROGRAM BACKGROUND:**

- The CPUC performs thermal power plant needs assessments for the IOUs. The IOUs resumed procurement of electricity under the authority of AB 57 (Wright, Chapter 835, Statutes of 2002), which was enacted after the state's energy crisis. AB 57 directs the CPUC to review and adopt LTPP for the IOUs, and currently the CPUC reviews and adopts IOU procurement plans with a rolling ten-year timeframe every two years. The LTPP proceeding evaluates the utilities' need for new resources and establishes rules for rate recovery of procurement transactions. Further, the CPUC adopted a Resource Adequacy (RA) framework (Public Utilities Code Section 380) in 2004 in order to ensure the reliability of electric service in California. All Load Serving Entities (LSEs) are required to file with the CPUC demonstrating that they have procured sufficient capacity resources including reserves needed to serve its aggregate system load on a monthly basis.

#### **LEGISLATIVE STAFF CONTACT**

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