

A) Compliance with the Federal 1 hour NO₂ Limit

Staff claims that it, “has been able to obtain only limited guidance from the U.S. Environmental Protection Agency (U.S. EPA) or from any other regulatory body regarding how to evaluate a project’s impact relative to the new federal 1-hour NO₂ standard.”¹ On June 29, 2010 EPA issued guidance for modeling for the 1 hour NO₂ standard.² Staff must analyze the applicants modeling for the 1 hour NO₂ standard in accordance with the June 29, 2010 EPA guidance to certify that the project complies with all LORS.

B) BAAQMD Rule 2-2-307

BAAQMD Rule 2-2-307 Denial, Failure of all Facilities to be in Compliance states, “The APCO shall deny an authority to construct for a new major facility or a major modification of an existing major facility unless the applicant provides a list, certified under penalty of perjury, of all major facilities within the state of California owned or operated by the applicant or by any entity controlling, controlled by, or under common control with the applicant and demonstrates by certifying under penalty of perjury that they are either in compliance, or on a schedule of compliance, with all applicable state and federal emission limitations and standards. The APCO may request the applicant to provide any technical information used by the applicant to certify compliance.” The project owner’s facilities are not in compliance or on a schedule for compliance. The EPA ECHO website reports that the Calpine Delta Project has been out of compliance with the clean air act for 12 quarters in a row and is currently not on a schedule of

¹ **Russell City Energy Center (01-AFC-7C)**

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² <http://www.epa.gov/NSR/documents/20100629no2guidance.pdf>

compliance.³ The Los Medanos Project has been in non compliance with the clean air act for 9 of the last 12 quarters.⁴ The Calpine Gilroy Co-Gen is a significant high priority violator and has been out of compliance with the clean air act for 11 of the last 12 quarters. Its violations have not been resolved.⁵ The Metcalf Energy Center is currently a high priority violator and has been out of compliance with the clean air act for 12 quarters in a row.⁶ BAAQMD Rule 2-2-307 requires Compliance at all facilities owned by Calpine.

C) PSD Compliance

Staff concludes that, “The amended project is expected to comply with applicable District rules and regulations, including federal PSD rules and regulations.” It is not possible to determine at this time whether the project complies with federal PSD Regulations as the project's PSD permit is still being adjudicated at the Environmental Appeals Board. Any conclusion that the project is expected to comply with Federal PSD regulation is mere speculation. The CEC cannot approve a license or a license amendment on speculation. To preserve staff's and the parties' time the approval of this amendment is best postponed until the Commission can certify that the project will comply with all LORS. Until the EAB hands down its decision it is premature to reach such conclusion.

³ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B2095>

⁴ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06013B1866>

⁵ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06085B1180>

⁶ <http://www.epa-echo.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=06085B2183>