CALPINE CORPORATION

4160 DUBLIN BOULEVARD
SUITE 100
DUBLIN, CA 94568
925.557.2224 (M)
925.479.9560 (F)

NYSE CPN

June 25, 2012

Via e-mail: clee@baaqmd.gov

Ms. Carol Lee
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

Re: Comments on the Bay Area Air Quality Management District's Proposed Amendments to Regulation 2 (Permits) New Source Review and Title V Permit Programs

Dear Ms. Lee:

Calpine Corporation ("Calpine") welcomes the opportunity to provide these comments on the Bay Area Air Quality Management District's ("BAAQMD" or the "District") proposed amendments to its New Source Review and Title V permit programs, as set forth at BAAQMD Regulation 2 (Permits), Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking) and Rule 6 (Major Facility Review) ("Proposed Amendments").

I. INTRODUCTION AND SUMMARY

Calpine is the state's largest independent power producer, owns the state's largest fleet of combined heat and power ("CHP") or cogeneration facilities and is also the state's largest provider of renewable energy, generating over 725 megawatts ("MW") of renewable geothermal energy. Calpine also owns and operates more facilities subject to the District's Major Facility Review (Title V) permitting program than any other company.

Calpine understands that the District's Proposed Amendments of its new source review ("NSR"), prevention of significant deterioration ("PSD") and Title V permit programs are needed to satisfy the requirements of the U.S. Environmental Protection Agency's ("EPA's") Greenhouse Gas ("GHG") Tailoring Rule, as well as to address the federal requirements for fine particulate matter (less than 2.5 microns in diameter ("$PM_{2.5}$")). Indeed, Calpine obtained the most recent federal PSD permit issued by the District for the ongoing construction of Russell City Energy Center, a highly efficient 620-MW combined cycle natural gas-fired power plant located in Hayward, California. The project's PSD permit, which was issued by the District pursuant to delegation of authority from EPA Region 9, was the first federal PSD permit to include "best available control technology" ("BACT") limits on GHG emissions. Calpine voluntarily agreed to the inclusion of these limits in the permit, even before they became required under EPA's Tailoring Rule. Since then, the District's PSD permit for Russell City has been followed by EPA and state permitting agencies in several permits they have issued pursuant to the Tailoring Rule.

Given Calpine's experience working with the District to obtain and defend the PSD permit for Russell City and, more generally, our experience permitting more major facilities in the Bay Area than any other company, Calpine strongly endorses the District's proposal to move forward with adoption of amendments to Regulation 2 that can ultimately be approved by EPA as part of the California State Implementation Plan ("SIP") pursuant to 40 C.F.R. § 51.166. Implementation of the federal PSD program requirements pursuant to a SIP-approved program, rather than a delegation of authority from EPA Region 9, should avoid unnecessarily duplicative and lengthy processes associated with issuance of separate permits pursuant to both the District's rules and 40 C.F.R. § 52.21.

Although it supports the District's overall goals, Calpine has concerns about the direction of the second draft of Proposed Amendments. Calpine therefore offers the following comments, which are described in more detail below, to assure that the District's rules do not stand as an obstacle to the accomplishment of important upgrades that would achieve real reductions in both GHGs and criteria pollutants and to clarify application of the District's rules:

- The District's proposal that any new or modified source with a significant net increase in emissions of any pollutant for which a National Ambient Air Quality Standard ("NAAQS") has been established must demonstrate that such increase will not cause or contribute to an exceedance of any NAAQS for that pollutant is, to our knowledge, unprecedented. The District has failed to explain how sources can comply with this requirement in nonattainment areas and how the District will model compliance with this requirement, which could be especially difficult, if not impossible, for ozone. Calpine urges the District to reconsider this proposal.
- The District's revision to the "PSD Pollutant" definition is appropriate; but, Calpine would note that the rationale for changing the definition applies more broadly and should spur the District to reconsider its new proposed requirement relating to source impact analyses for nonattainment pollutants.
- Calpine thanks the District for deciding to apply a flexible baseline period for calculating increases in GHG emissions. Calpine reiterates its previous suggestion that the District adopt the federal program's flexible baseline period for all other pollutants and the "actual-to-projected actual" applicability test for all pollutants, including GHGs. Senate Bill ("SB") 288 clearly does not bar the utilization of these federal standards, as evidenced by the fact that other California air districts have adopted these standards in their revisions to their permitting programs and CARB has approved at least four sets of these revisions.
- Calpine is encouraged by the District's response to Calpine's comment regarding the definition of "modify." Calpine looks forward to working with the District to ensure that the definition of "modify" does not stand as an obstacle to equipment upgrades that would result in lower emissions per unit of energy generated, where there will be no increase in emissions above limits applicable to a changed source and a related dependent source.

II. DISCUSSION

A. The District Should Reconsider Its Proposal To Require An Unprecedented Source Impact Analysis Requirement For Nonattainment Pollutants

In the second draft of the Proposed Amendments, BAAQMD proposes a wholly new requirement for all applicants proposing a net emissions increase to undergo a significant source impact analysis. Proposed Reg. 2-2-308, which the District has entitled the "Non-PSD Significant Source Impact Analysis Requirement", states that, "[t]he APCO shall not issue an authority to construct for a new or modified source that will result in a significant net increase in emissions of any pollutant for which a [NAAQS] has been established unless the APCO determines, based upon a demonstration submitted by the applicant, that such increase will not cause or contribute to an exceedance of any [NAAQS] for that pollutant." *See* Proposed Amendments, Reg. 2-2-308. Reg. 2-2-308 further states that this demonstration must be "made using the procedures for PSD Air Quality Impact Analyses". *Id.* The District states that this "demonstration will be required for all criteria pollutants, both attainment pollutants and non-attainment pollutants." BAAQMD, Background Discussion for Second Draft of Proposed Amendments & Responses to Comments Received on First Draft, Response to Comment I.C.1, at 7 (hereinafter, "Responses to Comments").

Calpine has significant concerns regarding the District's proposed impact analysis requirement vis-à-vis nonattainment pollutants. First, the District has never required an analysis demonstrating that an increase in emissions will not cause or contribute to an exceedance of the NAAQS for a nonattainment pollutant. The Proposed Amendments and the Responses to Comments fail to explain (1) how the APCO will determine that a significant net increase in emissions will not cause or contribute to an exceedance of the NAAQS for a nonattainment pollutant or (2) how the applicant will demonstrate the same in its submission to the APCO. The District's statement that "[t]his demonstration will be made using the same modeling and related procedures as those used for the demonstration made for PSD permitting applicable to sources over the PSD 'major source' threshold"[1] provides no comfort because modeling for an exceedance of the NAAQS in a nonattainment area is a completely different exercise than modeling for an exceedance of the NAAQS in an attainment area.

In particular, the District's Responses to Comments provides no analysis regarding how a source impact analysis can even be conducted in a nonattainment area for a nonattainment pollutant. Calpine is aware that, in certain circumstances and if the representative "background" monitoring concentrations in a particular locale are below the NAAQS, such an analysis can be successfully completed, as it was for Calpine's Russell City Energy Center project for the PM2.5 NAAQS. Calpine is also aware that the District's imposition of such a "Non-PSD Significant Source Impact Analysis Requirement" may be motivated in part by unsuccessful legal arguments challenging Russell City's PSD permit. But both the EPA's Environmental Appeals Board and now the U.S. Court of Appeals for the Ninth Circuit have strongly and clearly affirmed that no

[1] Responses to Comments, Response to Comment I.C.1, at 7.

provision of the Clean Air Act requires demonstration of attainment with the NAAQS for a nonattainment pollutant as a prerequisite of granting a PSD permit (in this case, for 24-hour $PM_{2.5}$).[2]

Calpine is especially concerned about the source impact analysis requirement as it relates to demonstrating compliance with the ozone NAAQS, for which the Bay Area is in nonattainment. Unlike $PM_{2.5}$, which may soon be the subject of a "clean data determination" (meaning that the most recent data demonstrate that air quality throughout the Bay Area is, in fact, attaining the NAAQS), it is extremely difficult to model the complex interactions of pollutants and atmospheric chemistry that result in ozone formation. In this sense, Calpine would note that the commenter which suggested requiring a source impact analysis for both major and minor sources based its recommendation on modeling analyses of hypothetical PM sources that, in some cases, demonstrated the potential for causing a NAAQS exceedance. Responses to Comments, Comment I.C.1, at 6. This commenter made no suggestion that a similar modeling analysis should be required or even *could* be conducted for ozone.

Indeed, to the best of our knowledge, *no* other jurisdiction requires a source located in a nonattainment area for ozone to demonstrate that it will not cause or contribute to an exceedance of the ozone NAAQS. For instance, New York has a requirement similar to the District's proposal for sources proposed to be built in areas that are nonattainment for SO_2, PM, NO_x, and CO; however, it specifically excludes ozone from the compliance demonstration because of the difficulty of modeling ozone.[3] BAAQMD's requirement that an applicant demonstrate that it will not cause or contribute to an exceedance of the ozone NAAQS in a nonattainment area for the ozone NAAQS is therefore unprecedented, to our knowledge.[4]

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[2] *In re Russell City Energy Center, LLC*, PSD Appeal Nos. 10-01, 10-02, 10-03, 10-04 & 10-05, 15 Environmental Administrative Decisions ___ (EAB, Nov. 18, 2010), slip op. 122-127, *available at*: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/PSD%20Permit%20Appeals%20(CAA)/6AC7D419AF383FF9852577DF0069A6D1/$File/Denying%20Review....pdf; *Chabot-Las Positas Community College District v. EPA*, 10-13870 (9th Cir., May 4, 2012), memorandum disposition at 5, *available at*: http://www.ca9.uscourts.gov/datastore/memoranda/2012/05/04/10-73870.pdf.

[3] 6 NYCRR § 231-12.2(e). The New York Department of Environmental Conservation confirmed for us in a telephone conference on June 18, 2012 that New York's NAAQS compliance demonstration for nonattainment new source review ("NNSR") applicants does not include a demonstration of compliance with the ozone NAAQS because of the difficulty of modeling ozone.

[4] Calpine is aware of only one other jurisdiction with a nonattainment impact analysis requirement akin to the Air District's proposal, which is Washington State. Washington's NSR rules state that "the permitting authority that is reviewing an application to establish a new source in a nonattainment area shall issue the order of approval if it determines that...[t]he proposed new source will not cause any ambient air quality standard to be exceeded." WAC § 173-400-112(3). While this requirement does not facially exclude ozone from its analysis, no jurisdiction in Washington is nonattainment for ozone. Washington's rule therefore does not

Given the difficulty in modeling compliance with the ozone NAAQS and the relative unlikelihood that the District will be redesignated attainment for the ozone NAAQS any time soon, the District's proposal could have severe negative consequences on construction activity in the Bay Area. Unless the background concentrations are sufficiently below the NAAQS, it may simply be impossible for an existing or new source to ever demonstrate that it would not cause or contribute to a violation of the ozone NAAQS. The District's Response to Comments does not reflect any analysis of what the background concentrations are throughout the Bay Area and whether there are certain locations where the data currently reflect attainment of the NAAQS. If no such locations exist, then the District's proposal could effectively act as a bar to *any* construction of new or existing sources within the Bay Area. Further, if certain locations are currently attaining the NAAQS, but others are not, then the District should fully evaluate the consequences of imposing a rule that would effectively bar any further construction in certain locations of the Bay Area, while allowing construction to continue in those areas that are currently attaining the standard. Moreover, EPA has never adopted a significant impact level ("SIL") for ozone.[5] Without such a tool available, any source projected to contribute at all to ozone formation in an existing nonattainment area could be barred from obtaining a permit by proposed Regulation 2-2-308.

In this respect, we would note that the Clean Air Act and EPA's regulations provide for imposition of a "construction moratorium" for major sources located in nonattainment areas if EPA has found that the state has failed to develop a SIP to achieve the NAAQS or is not implementing its SIP. Once a SIP has been approved by EPA, however, the primary means for demonstrating reasonable further progress towards attainment of the NAAQS is not through modeling demonstrations for individual sources, but through the SIP's "no net increase" and offset requirements. The District's rule, on the other hand, would effectively impose a construction moratorium throughout the Bay Area as part of development of the SIP. In so doing, the District not only puts the cart before the horse; it closes the road to obtaining a permit for any new construction activity throughout what we suspect is a substantial portion of the Bay Area.

The District, in justifying its proposal, states that "[a]ll exceedances of the NAAQS count towards the Bay Area's attainment status, regardless of the size of the facilities that cause them, and their impacts on the public health and welfare are the same. Moreover, requiring such a demonstration will help the District establish for EPA's SIP review that the District's NSR program will ensure that no new or modified source 'will interfere with attainment or

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serve as a model for requiring applicants to demonstrate compliance with the ozone NAAQS in the Bay Area.

[5] *See* letter from Gina McCarthy, EPA Assistant Administrator, to Robert Ukeiley, Jan. 4, 2012, at 3 ("The EPA has not adopted a [SIL] for ozone in its regulations… or identified a specific SIL for ozone in any guidance.") (citations omitted), *available at*: http://www.epa.gov/scram001/10thmodconf/review_material/Sierra_Club_Petition_OAR-11-002-1093.pdf.

maintenance of a [NAAQS],' as is required under 40 C.F.R. Section 51.160(a)(2) and (b)(2)." Responses to Comments, Response to Comment I.C.1, at 7. While the District indicates that EPA Region IX told the District that these requirements "need to be addressed in order for EPA to approve the District's program" (*id.*), the Proposed Amendments reach far beyond the requirements of 40 C.F.R. §§ 51.160(a)(2) and (b)(2).

These sections of the Code of Federal Regulations only pertain to minor NSR review, not to the review of major sources in nonattainment areas. Additionally, 40 C.F.R. §§ 51.160(a)(2) and (b)(2) do not require the sort of source impact analysis that the District is proposing for all sources. Section 51.160(a)(2) and (b)(2) can be satisfied, for instance, by requiring offsets in the minor NSR permit or by requiring such minor sources to achieve the lowest achievable emissions rate (as the District's rule essentially does), to thereby ensure that the new or modified source will not interfere with the attainment or maintenance of any NAAQS. Finally, never before, to our knowledge, has EPA required a jurisdiction to incorporate into its NSR program a source impact analysis which requires an applicant to demonstrate compliance with the NAAQS for a nonattainment pollutant. Therefore, it is highly unlikely that EPA Region IX's indication that the District "need[s]" to address 40 C.F.R. § 51.160 in its Proposed Amendments amounts to a requirement that all applicants demonstrate compliance with the ozone NAAQS.

Calpine requests that the District not adopt draft Reg. 2-2-308 as it relates to nonattainment pollutants. At a minimum, the District should convene all impacted stakeholders to discuss (1) how an applicant or the APCO could, through available dispersion models, demonstrate that a proposed source or modification will not cause or contribute to an exceedance of the NAAQS for any nonattainment pollutant, particularly ozone (in the absence of any established SIL), and (2) how Reg. 2-2-308 might result in an effective construction ban on new or modified sources throughout the entirety of, or certain locations within, the Bay Area. Finally, it is perplexing that draft Reg. 2-2-308 should suggest that applicants can fulfill the required impact analysis demonstration by satisfying the PSD Air Quality Impact Analysis requirements in Reg. 2-2-305; the terms of Reg. 2-2-305 apply only to PSD Pollutants, which are, of necessity, only those pollutants for which the Bay Area has not been designated nonattainment.[6]

B. The District's Proposed Definition Of "PSD Pollutant" Is An Improvement Over The First Draft Definition; However, The Rationale For The District's Change Highlights A Greater Problem With The Proposed Amendments

[6] *See* Proposed Amendments, Reg. 2-2-305. For instance, Reg. 2-2-305.4 states that "[t]he APCO shall determine, based on the applicant's submissions and any other relevant information, whether any net emissions increases of *PSD pollutants* that the authority to construct will authorize in significant amounts would cause or contribute to a violation of...any applicable California or National Ambient Air Quality Standard for such pollutant." (Emphasis added.) In turn, a PSD Pollutant is defined in the Proposed Amendments as "[a]ny Regulated NSR Pollutant...except pollutants for which the San Francisco Bay Area has been designated as non-attainment." *Id.*, Reg. 2-2-223.

As Calpine argued in its previous comments, the definition of "PSD Pollutant" confusingly suggested that, where there is a "split designation" (i.e., multiple federal NAAQS for a pollutant and the Bay Area is in attainment of one and nonattainment of another), PSD requirements would still apply for that pollutant for some purposes because of the attainment-part of the "split designation."[7] The District appropriately revised the definition of "PSD Pollutant" in the second draft. Proposed Amendments, Reg. 2-2-223. In making this revision, the District stated that "[i]f there are multiple federal NAAQS applicable to a pollutant, and the Bay Area is designated as non-attainment for one of the standards, then the substantive requirements of the PSD program are inapplicable for that pollutant under 40 C.F.R. section 52.21(i)(2)." Responses to Comments, Response to Comment IV.E.5.d, at 74.

The District correctly identifies 40 C.F.R. section 52.21(i)(2) as the reason why PSD substantive requirements do not apply to non-attainment pollutants. Indeed, 40 C.F.R. section 52.21(i)(2) clearly states that all of the substantive requirements for PSD "shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment under section 107 of the Act." 40 C.F.R. § 52.21(i)(2). However, the Proposed Amendments now contemplate requiring applicants to demonstrate that any significant net increase in emissions of a nonattainment pollutant will not cause or contribute to an exceedance of any NAAQS for that pollutant. As discussed above, this latter requirement is plainly inconsistent with the federal regime and, specifically, the PSD exemption in section 52.21(i)(2). For the reasons described above, including the difficulty of modeling ozone, the absence of any developed SIL for ozone, and the fact that air quality throughout portions of the Bay Area continues to violate the ozone NAAQS, Calpine would urge the District not to adopt proposed Regulation 2-2-308.

C. The District Should Consider Adopting The Flexible Baseline Period For All Pollutants, As It Has Done For GHGs, And The "Actual-to-Projected Actual" Applicability Test For All Pollutants

In determining the appropriate baseline period for purposes of calculating a GHG emissions increase or decrease from a source, the Proposed Amendments now permit the applicant to select any period of 24 consecutive months within the 10-year period immediately preceding the completion of the application for authority to construct or permit to operate. Proposed Amendments, Reg. 2.2.3. Calpine thanks the District for making this proposal. Calpine believes this is a sensible revision to calculating the GHG emissions baseline period.

As BAAQMD recognized in proposing the flexible baseline period for GHGs, "[i]t is clear that with [the three-year] baseline period there is a very real potential to end up with baseline emissions that are not actually representative of normal operations." Responses to Comments, Response to Comment III.2, at 26. The District continued, "[i]f the most recent three years reflect recession conditions when demand is depressed – as is the case currently – then the

[7] March 2012 Comments at 8.

baseline emissions against which an emissions increase is measured will not actually be representative of normal source operations." *Id.* It is precisely for this reason that the District should take the extra step and apply a flexible baseline period for purposes of calculating emissions increases of other pollutants as well, particularly $PM_{2.5}$.

The District, in rejecting a flexible baseline period for $PM_{2.5}$, argues that doing so would violate SB 288 (Cal. Health and Safety Code §§ 42500 *et seq.*), which was adopted to prevent California air districts from relaxing their pre-existing rules in response to EPA's promulgation of NSR reform in 2002. BAAQMD states that "[u]nlike GHGs…$PM_{2.5}$ is not a completely new pollutant compared to what was regulated in 2002 because $PM_{2.5}$ is a subset of PM_{10}, which was a regulated pollutant in 2002." Responses to Comments, Response to Comment III.2, at 25, n. 16. However, the District has never regulated $PM_{2.5}$ as a separate pollutant under its NSR rules. SB 288 plainly therefore does not bar the District from applying a flexible baseline period for $PM_{2.5}$. Given that the District is not so restricted by SB 288, the better policy choice is to apply a flexible baseline period for $PM_{2.5}$ for the reason that the District has itself recognized: applying the three-year baseline to pollutants whose emissions are quantified based almost entirety on fuel consumption would reflect recession conditions when demand was depressed, rather than normal source operations.

Furthermore, SB 288 does not appear to bar the application of flexible baselines for calculating the emissions increases of *any* other pollutants either. The District contends that it is "restricted by SB 288 from adopting NSR Reform" for criteria pollutants and CARB (which approves air district rules as consistent with SB 288) "has taken the same position." Responses to Comments, Response to Comment III.2, at 25. However, as Calpine discussed in its previous comments on the Proposed Amendments,[8] the San Joaquin Valley Air Pollution Control District ("APCD"), Santa Barbara County APCD, Ventura County APCD, Imperial County APCD, Placer County APCD, San Luis Obispo County APCD, Feather River Air Quality Management District, and San Diego County APCD[9] have all adopted flexible baselines, thereby determining that doing so would not amount to a relaxation of existing requirements prohibited by SB 288. Additionally, the San Joaquin Valley APCD, Santa Barbara County APCD, Ventura County APCD, and Imperial County APCD rules have all been submitted to EPA by CARB. The District should explain how SB 288 restricts the District's discretion in adopting flexible baselines for non-GHG

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[8] *See* Letter to Ms. Carol Lee, from Barbara McBride, re: Comments on the Bay Area Air Quality Management District's Proposed Amendments to Regulation 2 (Permits) New Source Review and Title V Permit Programs, March 27, 2012 ("March 2012 Comments"), at 5, *available at*:
http://www.baaqmd.gov/~/media/Files/Engineering/Proposed%20Reg%202%20Changes/Public%20Comments/3-27-2012%20CPN%20Comments%20Proposed%20Amendments%20to%20Reg%202%20NSR.ashx?la=en.

[9] The San Diego County APCD unanimously adopted its revision (Rule 20.3.1) on April 4, 2012, but has not yet submitted the rule to CARB.

pollutants when these other air districts have promulgated rules broadly permitting flexible baselines and CARB has approved these rules.

Similarly, SB 288 does not bar the utilization of the actual-to-projected actual calculation methodology to determine whether a change results in a significant emissions increase triggering PSD. The District proposes an actual-to-potential test for *all* pollutants, including GHGs. Proposed Amendments, Reg. 2-2-604.2. However, as is the case for the application of flexible baselines, the San Joaquin Valley APCD, Santa Barbara County APCD, Ventura County APCD, Imperial County APCD, Placer County APCD, San Luis Obispo County APCD, Feather River Air Quality Management District, and San Diego County APCD all allow the actual-to-projected actual calculation methodology; and, CARB has submitted the San Joaquin Valley APCD, Santa Barbara County APCD, Ventura County APCD, and Imperial County APCD rules for EPA approval. Finally, EPA proposed approving the San Joaquin Valley APCD rule as a revision to the SIP on June 1, 2012.[10] While the mere fact that these other California air districts have chosen a certain policy course does not dictate that the District adopt the same approach, the District cannot hide behind the uncritical assertion that such an approach would violate SB 288, without additional support for that legal conclusion. This is particularly true in the face of the evidence reflected by these other districts' successful adoption of such an approach as part of the California SIP.

Calpine reiterates its previous comment that BAAQMD should adopt the approach of these other air districts. At a minimum, the District should consider adopting (1) a flexible baseline for purposes of calculating emissions increases of $PM_{2.5}$ (in addition to GHGs) and (2) the federal actual-to-projected actual calculation methodology with respect to both GHGs and $PM_{2.5}$. Because both GHGs and PM2.5 emissions are driven largely by fuel consumption, which experienced a significant decline for many sources during the recession, failure to adopt such an approach could impose additional burdens on sources making changes that would result in an overall reduction in both GHGs and criteria pollutants.

D. The District Rightly Notes The Potential Dilemma Created By The "Modify" Definition And Calpine Will Work With The District To Ensure That The "Modify" Definition Is Appropriately Applied

Calpine noted in its previous comments to the District that, based on the definition of "modify" in the Proposed Amendments (Reg. 2-1-234), certain combined cycle gas turbine ("CCGT")/ heat recovery steam generator ("HRSG") upgrade projects would be deemed a "modification," even though there would be no increase in emissions above permitted levels.[11] Calpine explained that an upgrade project could increase the CCGT's gas firing ability, which could be mistaken to result in an increase in emissions of precursor organic compounds ("POC"), particulate matter ("PM"), and GHGs because emissions of these pollutants are calculated based upon source test results, the amount of fuel combusted, and, in the case of GHGs, standard

[10] *See* 77 Fed. Reg. 32493 (June 1, 2012) (Docket ID No. EPA-R09-OAR-2012-0408-0001).

[11] March 2012 Comments at 6.

emissions factors. However, emissions would not actually increase. The possibility that such upgrade projects could trigger BACT would act as a serious impediment to the scheduling and completion of such beneficial projects within the Bay Area. This is particularly true for GHGs, which are (with the exception of Russell City) not currently subject to legally enforceable permit limitations, which might be relied upon to avoid triggering NSR in the first place (through the definition of "modify").

BAAQMD responded to Calpine's comment by stating that "[i]f the turbine/HRSG combination really should be treated as a single unit for purposes of determining whether emissions are increasing and should be subject to NSR review as a 'modification', then the District can regulate them as a single 'source' and apply the definition of 'modified source' to the combined equipment as a single unit." Responses to Comments, Response to Comment IV.E.2.a.8, at 58-59. The District stated that, rather than amending the "modify" definition, it would make such modification determinations "on a case-by-case basis for each facility." *Id.*

Calpine proffered an amendment to the definition of "modify" to merely clarify how the District's proposed definition would apply to the circumstance where a CCGT and HRSG are subject to combined limitations on emissions and/or heat input. Accordingly, Calpine is encouraged by the District's statement.[12] Calpine believes the District accurately assesses the dilemma posed by the "modify" definition where an upgrade is planned on a CCGT and the emissions limitation is placed on the CCGT/ HRSG train.

Calpine also acknowledges and appreciates the District's proposal to adopt a definition of "related source",[13] which would effectively capture the situation of a CCGT/ HRSG train; although application of this time in Reg. 2, Rule 2 would only alleviate an offsets obligation, something which would not apply in the first instance to Calpine's contemplated CCGT upgrade projects. Accordingly, we would encourage the District to apply this newly defined term more broadly to consideration of whether a particular change results in a modification, consistent with our earlier comments on this subject. We look forward to working with the District in cases

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[12] However, while the second draft of the Proposed Amendments changes the definition of "modify," the same central flaw in the regulatory text remains. The first draft of the Proposed Amendments would preclude source owners from relying on "any permit limit that applies to combined emissions from multiple sources, unless it imposes an effective limit specifically on the emissions from the individual source at which the change will occur," for the purpose of avoiding a "modification" by keeping emissions below such permitted limits. First Draft Proposed Amendments, Reg. 2-1-234.1. The current draft similarly states that, "[a] permit limit that applies to combined emissions from multiple sources does not establish an individual source's potential to emit, unless the limit imposes an effective, legally enforceable limitation specifically on the emissions from the individual source." Second Draft Proposed Amendments, Reg. 2-1-234.1.1. Therefore, while the Air District's statements regarding the "modify" definition are encouraging, we would support a further refinement of the regulatory definition of "modify."

[13] Reg. 2-2-226.

where a CCGT/ HRSG train should be treated as a single unit for purposes of determining whether the source should be required to undergo NSR.

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Thank you for the opportunity to submit these comments. Please feel free to contact me at 925.557.2238 or barbara.mcbride@calpine.com with any questions.

Sincerely,

Barbara McBride
Director, Environmental, Health and Safety,
Western Region

cc: Alexander Crockett, Esq., Assistant Counsel
Jim Karas, Director of Engineering
Gregory Stone, Manager – Air Quality Engineer