STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: Rulemaking to Consider Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard For Baseload Generation of Local Publicly Owned Electric Utilities	Docket 12-OIR-1

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON ORDER INSTITUTING RULEMAKING

The Southern California Public Power Authority[1] recommends that the draft Order Instituting Rulemaking ("OIR") that the staff has prepared for the Commission's consideration on January 12, 2012, be revised to sequence the rulemaking so that the issues in the proceeding can be addressed in an orderly and administratively efficient manner.

As the Commission noted at its December 12, 2012 business meeting, Public Utilities Code ("PUC") section 8341(f) requires that the Commission reevaluate the need for its greenhouse gas ("GHG") Emission Performance Standard ("EPS") regulation when an enforceable GHG emissions limit is established and in operation for local publicly owned utilities ("POUs"). The California Air Resources Board ("CARB") cap-and-trade regulation became effective on January 1, 2012, and will start to be enforced on January 1, 2013. Thus, before the Commission devotes the time and treasure of itself as well as stakeholders to revising the existing EPS regulation, the Commission should reevaluate the need for the regulation.

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and

If the Commission determines that there continues to be a need for the EPS regulation in spite of the establishment and enforcement of emissions limits by the CARB, then the Commission should proceed to examine whether there is any need for a change in the existing regulation. The Southern California Public Power Authority ("SCPPA") believes that an objective assessment of how the existing regulation has been implemented will demonstrate that there is no need for a change and that, even if there were a need, the changes proposed by the Natural Resources Defense Council ("NRDC") and the Sierra Club ("SC") would fail to attain their tacit objective of preventing the installation of federally mandated emission control equipment at non-EPS compliant power plants.

If, after an objective assessment of whether there is any need for a change in the existing regulation, the Commission determines there is a need for a change, the EPS regulation should be revised in such a way as to be administratively workable, to be consistent with the legislative intent underlying SB 1368, and not to impair reliable service to California electricity consumers.

I. THIS RULEMAKING SHOULD BE SEQUENCED SO THAT THE REEVALUATION OF THE NEED TO CONTINUE THE EPS REGULATION IS DONE FIRST.

The OIR should be revised to phase this rulemaking so that the reevaluation of the need to continue the EPS regulation is considered first. The draft OIR properly recognizes that the reevaluation of the need for the EPS regulation should be within the scope of the rulemaking proceeding. The draft OIR says that the rulemaking shall consider: "Whether changes to the regulations are necessary pursuant to Public Utilities Code section 8341(f)...." PUC section 8341(f) mandates that this Commission shall reevaluate the need for its EPS regulation when an enforceable GHG limit is established and in operation:

Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Colton, Glendale, and the Imperial Irrigation District, the SCPPA members which participate in the San Juan Project either directly or through SCPPA.

> (f) The Energy Commission, in a duly noticed public hearing and in consultation with the commission and the State Air Resources Board, shall reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to local publicly owned electric utilities.

The California Air Resources Board ("CARB") GHG cap-and-trade regulation[2] became effective on January 1, 2012.[3] The CARB will start to impose compliance obligations on cap-and-trade covered entities on January 1, 2013.[4] Thus, the Commission is now required by statute to reevaluate the need to continue, modify, or replace the EPS regulation.

Given that the Commission must reevaluate the need for the EPS regulation and has included that reevaluation within the scope of the rulemaking, it would be administratively efficient to conduct the reevaluation before doing anything more in the proceeding. It would not be efficient for the staff, stakeholders, and the Commission to spend time trying to determine whether there is any need for revising the regulation if the regulation is going to be terminated when the cap-and-trade regulation starts to be enforced on January 1, 2013. The Commission should revise the draft OIR as shown in the attached redline to direct the staff and involved stakeholders to conduct the reevaluation of the need of the EPS regulation before doing more in this proceeding.

---

[2] 17 CCR §§ 95800-96023.

[3] Office of Administrative Law ("OAL") File No. 2011-1027-06S (December 13, 2011).

[4] 17 CCR §§ 95840(a), 95851(a).

II. IF THE COMMISSION DETERMINES THAT THERE WILL CONTINUE TO BE A NEED FOR THE EPS REGULATION AFTER THE CAP-AND-TRADE LIMIT ON GHG EMISSIONS IS ENFORCED, THE COMMISSION SHOULD DETERMINE WHETHER THERE IS ANY NEED FOR CHANGE IN THE EXISTING REGULATION.

If, after conducting its reevaluation of the EPS regulation pursuant to PUC section 8341(f), the Commission determines that there will continue to be a need for the EPS regulation after the cap-and-trade regulation starts to be enforced on January 1, 2013, the Commission should determine whether there is any need for a change in the existing rules before attempting to rewrite the rules. SCPPA strongly believes that an objective analysis will reveal there is no need for change.

NRDC/ SC insinuate that POUs have failed to comply with the EPS and have misinterpreted the EPS regulation. NRDC/ SC are incorrect.[5] NRDC/SC point to two examples of investments in the San Juan Generating Station that NRDC/SC claim did not meet the standards set forth in the EPS regulation. One is an investment in a pollution upgrade project in response to a 2005 consent decree that was completed by 2008. This investment was undertaken *before* the EPS regulation took effect. The second example is the replacement of the turbine rotor at San Juan which SCPPA specifically found through a public process to be routine maintenance in SCPPA Resolution No. 2009-23 on February 19, 2009.[6] Replacement of the San Juan turbine rotor is a paradigm of routine maintenance that is not proscribed by SB 1368 or the EPS regulation.

The apparent agenda of the NRDC/SC is to prevent California participants in the San Juan Project from funding the installation of federally mandated Best Available Retrofit

[5] NRDC/SC Petition at 3.

[6] The SCPPA members which were involved in the turbine replacement decision were Azusa, Banning, Colton, Glendale, and the Imperial Irrigation District.

Technology ("BART") pollution controls, specifically the insulation of selective catalytic reduction ("SCR") equipment at San Juan in response to the August 4, 2011 EPA Federal Implementation Plan ("FIP") for San Juan.[7] NRDC/SC contend that under the San Juan Participation Agreement the California public entities that have ownership interests in the San Juan Project could block compliance with the EPA's August 4, 2011 FIP: "If the California owners do not vote to approve the capital investments in SCR, which is prohibited under California law, then the improvements should not go forward and California owners should not have to pay the costs of those improvements."[8]

NRDC/SC are misinformed. Under section 28.3.8 of the San Juan Participation Agreement, the Operating Agent for San Juan, the Public Service Company of New Mexico, must: "Comply with any and all laws and regulations applicable to the performance of Operating Work."[9] "Operating Work" includes "environmental compliance activities."[10] If the San Juan Coordination Project Committee fails to reach agreement on any matter, including Operating Work, the Operating Agent is "authorized and obligated to take such reasonable and prudent action, consistent with Prudent Utility Practice, as is necessary to the successful and proper operation and maintenance of the San Juan Project, pending the resolution, by arbitration or otherwise, of any such inability or failure to agree."[11] Thus, the California San Juan participants cannot block compliance with the federal FIP.

---

[7] *Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination.* EPA-R06-OAR-2010-0846 (August 4, 2011).

[8] NRDC/SC Petition at 9.

[9] San Juan Participation Agreement, section 28.3.8 (March 23, 2006).

[10] *Ibid*, section 5.35.

[11] *Ibid*, section 18.6.

III. IF, AFTER AN OBJECTIVE EVALUATION OF POU DETERMINATIONS ABOUT INVESTMENTS IN NON-EPS COMPLIANT POWER PLANTS, THE COMMISSION BELIEVES THERE IS A NEED TO REVISE THE EPS REGULATION, THE REVISIONS SHOULD BE TAILORED RESPONSIBLY.

If the Commission determines, after an objective evaluation of POU performance under the existing EPS regulation, that some revisions to the regulation are necessary, those revisions should be tailored responsibly and specifically. NRDC/SC propose that each and every POU investment in non-EPS compliant facilities, both past and future, be investigated by the Commission after submission of "complete documentation by POUs."[12] "Complete documentation" is ambiguous, overbroad, and not reasonably calculated to achieve the goals of SB 1368 or the EPS regulation. Requiring the submission of "complete documentation" for each and every investment, no matter how small and no matter how obvious it is that the investment constitutes routine maintenance, would create an administrative quagmire for both the Commission and filing POUs.

The consequences of a regulation that is overly broad would go beyond imposing an undue administrative burden on both the Commission and stakeholders. The reliability of service to California electricity consumers could be jeopardized. Although SCPPA members including the San Juan participants are making substantial strides in incorporating new renewable resources to meet the demands of their consumers, non-EPS compliant power plants are going to be required to meet consumer demand reliably until reliance upon the plants is phased out in an orderly and responsible fashion. Power plants, like any machinery, require maintenance in order to be operated prudently and responsibly. Requiring POUs to submit "complete documentation" for each and every investment in routine maintenance at non-EPS

[12] NRDC/SC Petition, Attachment 1.

compliant power plants could prevent timely maintenance at the power plants, jeopardizing the operation of the power plants and potentially jeopardizing the reliability of service to consumers.

IV. CONCLUSION.

In order to move forward in an administratively efficient and responsible manner in this rulemaking, the Commission should phase the proceeding. The Commission should conduct the reevaluation mandated by PUC section 8341(f) first before doing anything more in the proceeding. The Commission should move to next steps only after completing the reevaluation and determining that continuation of the EPS regulation is necessary in spite of the imposition of cap-and-trade GHG emissions limits. If the Commission determines that continuation of the regulation is necessary, the Commission should then determine whether any revisions are necessary and, if so, what the revisions should be. A redline of the draft OIR is attached as Attachment 1.

Respectfully submitted,

/s/ Norman A. Pedersen

Norman A. Pedersen, Esq.
HANNA AND MORTON LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071-2916
Telephone: (213) 430-2510
Facsimile: (213) 623-3379
Email: *npedersen@hanmor.com*
Attorney for the **SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

Dated: January 11, 2012

Attachment 1

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket. 12-OIR-1
	)	**Order: 12-XXXX-XX**
Rulemaking to Consider Modification of	)	
Regulations Establishing a Greenhouse	)	ORDER INSTITUTING
Gases Emission Performance Standard	)	RULEMAKING
For Baseload Generation of Local	)	
Publicly Owned Electric Utilities	)	
	)	January 11, 2012

I. PURPOSE AND SCOPE OF THE PROCEEDING

Pursuant to Public Resources Code sections 25210, 25213, and 25218(e), and Title 20, California Code of Regulations, section 1222(a), the California Energy Commission (Commission) hereby institutes a proceeding to ~~discuss and, if warranted, implement possible changes to~~ reevaluate the need for the Energy Commission's Emissions Performance Standard ("EPS") regulations, title 20, California Code of Regulations, section 2900 et seq., and if warranted, to implement possible changes to the regulations.

Senate Bill No. 1368 (Stats. 2006, ch. 598) directed the Commission, in consultation with the California Public Utilities Commission and the California Air Resources Board, to "establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation." (Stats. 2006, ch. 598, §2.) The Commission was also directed to adopt regulations for the enforcement of the greenhouse gases emission performance standard with respect to local publicly owned electric utilities (POUs). (Stats. 2006, ch. 598, §2.) On August 29, 2007 the Energy Commission adopted regulations implementing SB 1368, which the Office of Administrative Law

approved on October 16, 2007.

On November 14, 2011, Sierra Club and NRDC submitted a joint petition requesting the Energy Commission to revisit the regulations, citing several recent investments made by POUs in non-EPS compliant facilities and raising concern that these investments had not undergone any review by the Energy Commission. Specifically, the petition recommended the Energy Commission open a rulemaking proceeding to modify the regulations to require POUs to submit compliance filings for all non-EPS compliant investments and to further define what constitutes a covered procurement as used in the regulations. On December 14, 2011 the Energy Commission granted the petition and directed staff to draft this Order Instituting Rulemaking to consider the issues raised in the petition as well as concerns raised by representatives of the POUs that the Energy Commission is required to reevaluate the regulations in their entirety now that an enforceable cap on greenhouse gas emissions has been established and is arguably in operation. (Public Utilities Code §8341(f).)

Therefore, the Commission orders that a rulemaking proceeding be opened to consider whether to continue and, if continued, whether to modify title 20, California Code of Regulations, section 2900 et seq. ~~as follows~~ with issues being addressed in the following sequence:

1) Whether, upon reevaluation pursuant to Public Utilities Code section 8341(f), there will continue to be a need for the EPS regulation after the cap on greenhouse gas emissions is enforced pursuant to 17 CCR §§ 95240 and 95851(a).

2) If there will continue to be a need for the EPS regulation after the cap on greenhouse gas emissions is enforced pursuant to 17 CCR §§ 95240 and 95851(a), whether there is any need to change the EPS regulation.

~~1~~3) If there is any need to change the EPS regulation, whether the regulation should be changed by establishing a filing requirement for all POU investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement;

~~2~~4) If there is any need to change the EPS regulation, whether the regulation should be changed ~~B~~by establishing criteria for, or further defining, the term "~~covered procurement~~ new ownership investment," including specifying what is meant by "designed and intended to extend the life of one or more generating units by five years or more," and "routine maintenance;"

~~3) Whether changes to the regulations are necessary pursuant to Public Utilities Code section 8341(f);~~

~~4~~5) Any other changes to the regulations considered necessary to carry out the requirements of SB 1368.

II. DELEGATION OF AUTHORITY TO COMMITTEE

A committee consisting of Commissioner Peterman as presiding member and Commissioner Douglas as associate member, or a successor committee appointed by the Commission with comparable powers and duties pursuant to Public Resources Code section 25211, shall preside over this rulemaking proceeding. The Committee may hold workshops and hearings as it deems appropriate and has the authority to take, and shall take on behalf of the Commission, all actions necessary and appropriate to comply with all applicable legal requirements of the Public Resources Code, the Administrative Procedure Act (Govt. Code §11340 et seq.), and implementing regulations, including submission, after a Commission hearing, of all necessary documents to the Office of Administrative Law, and issuance of notices for all hearings and workshops.

III. PUBLIC PARTICIPATION

The Commission encourages full and free public participation in this proceeding. Any person present at any hearing or workshop shall be afforded a reasonable opportunity to make oral comments on the subject matter of the proceeding. Petitions to intervene are not necessary. Any person may file written comments addressed to:

Docket No. 12-OIR-1
Docket Unit, MS-4
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Alternatively, a person may provide one electronic copy under 5 megabytes to docket@energy.state.ca.us. The Docket Unit will accept Word documents, but please send PDF if possible. Identify all comments with "Docket Number: 12-OIR-1". The Commission will set forth a deadline for the receipt of written comments in a Notice of Proposed Action, which will be published later in the proceeding if it is determined that changes to the regulations are necessary.

The Executive Director, in conjunction with the Public Adviser, shall ensure that this order and notices of hearings and workshops are distributed to all interested persons and that drafts of the regulations are made available sufficiently in advance of workshops, interim hearings, and final adoption by the Commission to allow timely participation.

The Commission's Public Adviser is available to help any person who wants to participate in this proceeding. Please call (916) 654-4489 or toll-free in California at (800) 822-6288, or contact pao@energy.state.ca.us.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on November 30, 2011.

AYE:
NAY:
ABSENT:
ABSTAIN:

Dated: January 11, 2012, at Sacramento, California.

Harriet Kallemeyn
Secretariat
California Energy Commission