

**STATE OF CALIFORNIA**  
**ENERGY RESOURCES CONSERVATION**  
**AND DEVELOPMENT COMMISSION**

<b>DOCKET</b> 12-012-1
DATE <b>JAN 12 2012</b>
RECD <b>JAN 26 2012</b>

In the Matter of:	)	Docket.	12-OIR-1
	)	<b>Order:</b>	<b>12-0112-7</b>
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 12, 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 the Energy Commission's Emissions Performance Standard regulations, title 20, California Code of Regulations, section 2900 et seq.

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 POU's 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 POU's 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 POU's 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 modify title 20, California Code of Regulations, section 2900 et seq. as follows:

- 1) 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) By establishing criteria for, or further defining, the term "covered procurement," 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) 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](mailto: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](mailto: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: Weisenmiller, Douglas, Peterman

NAY: None

ABSENT: None

ABSTAIN: None

Dated: January 12, 2012, at Sacramento, California.



Harriet Kallemeyn

Secretariat

California Energy Commission