

**BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA**

In the matter of:)
)
Rulemaking to Consider Modifications of)
Regulations Establishing a Greenhouse)
Gases Emission Performance Standard)
For Baseload Generation of Local)
Publicly Owned Utilities)

Docket No. 12-OIR-1

COMMENTS FROM
THE LOS ANGELES DEPARTMENT OF WATER AND POWER
TO THE CALIFORNIA ENERGY COMMISSION'S
TENTATIVE CONCLUSIONS AND REQUEST FOR ADDITIONAL INFORMATION

RANDY S. HOWARD
Chief Compliance Officer – Power System
Los Angeles Department of Water and Power
111 N. Hope St., Room 921
Los Angeles, CA, 90012
Telephone: (213) 367 – 0381
Email: Randy.Howard@ladwp.com

VAUGHN MINASSIAN
Deputy City Attorney
Office of the City Attorney
111 N. Hope Street, Room 340
Los Angeles, CA, 90012
Telephone: (213) 367 - 5297
Email: Vaughn.Minassian@ladwp.com

Dated July 27, 2012

**BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA**

In the matter of:)
)
Rulemaking to Consider Modifications of)
Regulations Establishing a Greenhouse) Docket No. 12-OIR-1
Gases Emission Performance Standard)
For Baseload Generation of Local)
Publicly Owned Utilities)

**COMMENTS FROM
THE LOS ANGELES DEPARTMENT OF WATER AND POWER
TO THE CALIFORNIA ENERGY COMMISSION'S
TENTATIVE CONCLUSIONS AND REQUEST FOR ADDITIONAL INFORMATION**

Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC), the Los Angeles Department of Water and Power (LADWP) respectfully submits these Comments on the CEC's Tentative Conclusions and Requests for Additional Information (Docket 12-OIR-1) to consider modifications to the Emission Performance Standard (EPS) regulations, Title 20, California Code of Regulations, Section 2900 et seq.

I. INTRODUCTION

The LADWP remains committed to reducing its greenhouse gas emissions as part of Senate Bill (SB) 1368 and Assembly Bill (AB) 32. LADWP's unprecedented transformation is unlike anything that any other large utility in California is being asked to take on. It has made its intentions clear that a key part of its transformation strategy is the elimination from its reliance on coal-fired electricity imports. Such a transition requires careful planning to ensure that undue harm to the reliability of LADWP's electric grid and customer rates are minimized.

The Energy Commission initiated this rulemaking at the request of the Sierra Club and the Natural Resources Defense Council (collectively, known as the Petitioners) to consider possible modifications to the EPS. It appears from the tentative conclusions that the Energy Commission has considered, evaluated and is now close to concluding that further modifications to the EPS are, at this time, unwarranted. LADWP fully supports the direction that the Energy Commission is heading and respectfully requests that this rulemaking draw to a close without further modifications to the EPS regulation.

II. SPECIFIC COMMENTS

a. Four Areas of Focus for Rulemaking and Tentative Conclusions

i. Whether to establish a filing requirement for all POU investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement

The Energy Commission tentatively concluded:

“[M]ere speculation about POU practices is insufficient to justify requiring the requested disclosures [for past, current and planned expenditures]. Instead, if anyone has supportable reasons to question POU investments, the appropriate manner of raising these concerns is filing a complaint or request for investigation with the Commission under Section 2911.”¹

LADWP strongly supports the Energy Commission’s conclusion on this issue. As previously stated, the Petitioners’ claims regarding possible violations of the EPS are based, in part, on incorrect information and therefore significantly misrepresent the facts and lack merit. LADWP has and will continue to remain compliant with the EPS. Should the Petitioners elect to file a complaint or request for investigation under Section 2911, LADWP is confident the Energy Commission will quickly draw the same conclusion.

¹ California Energy Commission, Tentative Conclusions and Requests for Additional Information, 7/09/2012, page 3, footnote 4.

The Energy Commission tentatively concluded that the “Commission decision-making would benefit from additional information about POU decision-making processes.” The Energy Commission requested: 1) copies of written procedures and policies for approving expenditures, particularly expenditures relating to non-compliant powerplants, and 2) description of the procedure for bringing expenditure or investment requests to the governing body. LADWP provides this additional information under Section b below.

ii. Whether to establish criteria for, or further define, 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”

The Energy Commission has tentatively concluded:

[D]espite the general accessibility of POU annual reports, operating budgets, resource plans, and the like, the Commission has received no complaints or investigation requests. Absent clear recommendations or guidance for further refining or defining “routine maintenance” and “designed and intended to extend the life,” or facts establishing POU misapplication of the EPS compliance requirements, there is no basis for modifying these phases or establishing additional criteria for a covered procurement.²

LADWP fully supports the Energy Commission’s tentative conclusion that changes to the definition “routine maintenance” or referenced phrases are unwarranted. Prior to the petition being filed that initiated this rulemaking, LADWP management had previously held extensive discussions with and provided detailed information to multiple interested parties and ratepayers, including NRDC and Sierra Club, regarding its coal-fired generation, including future plans for coal divestiture. At no time since the EPS regulation was adopted has either LADWP management or the Los Angeles Board of

² Ibid, page 6.

Water and Power Commissioners received a formal complaint from anyone regarding LADWP's compliance with the Emissions Performance Standard.

- iii. **Whether the Commission must or should make changes consistent with the requirements of Public Utilities Code section 8341, subdivision (f) to reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit applicable to POUs is established and in operation.**

The Energy Commission has tentatively concluded:

[T]here is currently no greenhouse gases emissions limit applicable to POUs. Based on this conclusion, the Energy Commission will not "reevaluate and continue, modify, or replace" the Commissions EPS at this time.³

LADWP has been and continues to remain compliant with the EPS, and will continue to pursue its plans for coal resource divestiture. LADWP did not initiate the request for this new rulemaking and did not see any need to request that the Energy Commission re-evaluate and continue, modify or replace the EPS. The Energy Commission initiated this new rulemaking at the request of the Petitioners, and thereafter requested comments on the reevaluation of the EPS per Public Utility Code Section 8341, subdivision (f). Subsequently, LADWP recommended that the Energy Commission first address the statutory requirement of Section 8341. The LADWP recommended that, if after such evaluation the Energy Commission determines that an EPS should remain in place, the EPS not be modified to prevent new uncertainty with regard to long-term investments.

³ Ibid, page 6.

iv. Whether to make any other changes to carry out the requirements of SB 1368.

The Energy Commission has tentatively concluded:

*There was no meaningful discussion of additional recommendations to modify the EPS to carry out the requirements of SB 1368. The Commission is aware that there is an interest in revising the current GHG EPS, which is currently set under commission regulation Section 2902 at 1,100 pounds of carbon dioxide per megawatt hour of electricity. The Commission welcomes comments on this issue.*⁴

LADWP does not support expanding this rulemaking beyond the original scope of the Petition⁵, which focused on the compliance of three coal-fired power plants, specifically Navajo Generating Station, Intermountain Power Project, and the San Juan Generating Station. The Petitioners did not present any request or arguments in the original petition to reset the EPS to some other level different from 1,100 lbs/MWh. LADWP is not aware of any efforts at the California Public Utilities Commission (CPUC) to reset the EPS for load-serving entities it regulates.

SB 1368 does not provide for any periodic change to the level at which the standard⁵ is set (pounds per megawatt hour), which requires new statutory authority. Lastly, to reset or even initiate a rulemaking to reset the EPS standard now would wreak havoc and set in motion further regulatory uncertainty for California utilities that are in the midst of making billions of dollars of investments in new clean generation resources that are expected to remain in place for decades. LADWP is actively working to eliminate its reliance on coal resources and is preparing to close a Request for

⁴ Ibid, page 8.

⁵ Joint Petition of Natural Resources Defense Council and the Sierra Club for Initiation of a Rulemaking Regarding California's Emissions Performance Standard, November 14, 2011, "Specifically, NRDC and Sierra Club request the following actions: (1) modify Section 2907 to require mandatory reporting requirements when POUs make investments in existing coal plants; and (2) clarify that under current law, POU investments in existing coal plants are subject to the filing requirements of Section 2908 and 2909." Page 1.

Proposals on replacement resources. Any efforts to alter or change the GHG threshold would certainly delay or complicate the early divestiture of Navajo Generating Station (NGS).

b. Topics for Further Input and Evaluation

The Energy Commission requests that the POU's provide the following information to allow for a better understanding of how investment decisions are made:

- Copies of written procedures and policies for approving expenditures, particularly expenditures relating to non-compliant powerplants.
- A description of the procedure for bringing expenditure or investment requests to the governing body. Explain what threshold point or points trigger submitting a particular investment for governing body approval.

LADWP provides the following summary on the procedures and policies for approving expenditures related to the Intermountain Power Project (IPP) and NGS.

i. Intermountain Power Project

As with any electric generation facility, agreements exist which dictate operations at IPP. One of those agreements, called the Power Sales Contract (PSC) is between the Intermountain Power Agency (IPA)⁶, the owner of the IPP, and each individual Power Purchaser. There are a total of 36 power purchasers of which LADWP is one purchaser. Another one of the agreements is the Construction Management and Operating Agreement (CMOA) between IPA and LADWP. LADWP is appointed as the Project Manager and Operating Agent (OA) for the IPP per the CMOA. The CMOA describes the duties and role of LADWP as the Project Manager and Operating Agent.

⁶ The Intermountain Power Agency ("IPA") is a political subdivision of the State of Utah, organized in June, 1977, pursuant to the Utah Interlocal Co-Operation Act. IPA consists of 23 Utah Member Municipalities that own electric utilities, and is governed by a 7-member Board of Directors elected by the Member Municipalities. The purposes of IPA are to finance and operate a facility to generate electricity known as the Intermountain Power Project. LADWP is not a member of the IPA.

LADWP in its capacity as the OA, compiles the budget proposal from the Intermountain Power Service Corporation (IPSC), the operator of IPP, and the budget proposal from IPA to prepare the annual operating budget comprising of the Net Debt Service, Operations and Maintenance, Renewals and Replacements (Capital Jobs), Staffing, Fuel and other Administrative and General Costs. The OA reviews the budget, conducts due diligence, and is responsible for presenting the budget. LADWP must perform in accordance with the CMOA's Prudent Utilities Practice provisions and is prohibited from taking any action which violates the PSCs, the bond resolution or other agreements.

The budget is submitted to the IPP Coordinating Committee (IPPCC) and the IPA Board for review and approval. A preliminary budget is presented to all the purchasers in the month of October for the next fiscal year (i.e. July 1, 2013-June 30, 2014). The final budget is presented to the IPPCC and IPA Board for approval at the May meeting of both the approving bodies. Additionally, all capital jobs are presented to the IPPCC and IPA Board as part of the budget approval process. The Operating Agent has the authority to approve a project up to a maximum limit of \$500,000. Any project above \$500,000 is presented to the IPPCC and IPA Board for their approval. It is important to note that the above-mentioned presentations are to the IPPCC and IPA Board, not the LADWP Board of Water and Power Commissioners or the Los Angeles City Council. LADWP, as well as other California Purchasers are not owners of IPP, and as such, are not representatives on the IPA Board.

Annually before July 1st, the LADWP Board of Water and Power Commissioners and the Los Angeles City Council, in an open and publicly noticed meeting, are responsible for approving each LADWP Annual Budget, which includes the costs for

LADWP's share of IPP as stipulated in the PSC. Each IPP participant, including each California Purchaser⁷, seeks approval of its respective IPP costs through its respective governing body. Neither the Los Angeles Board of Water and Power Commissioners nor the Los Angeles City Council provides a separate approval for the operating and budgeting decisions for the IPP. When rate increases are proposed, LADWP follows a similar approval process as the budget, but the public outreach and involvement are exponentially increased (current rate case has included in excess of 60 public meetings and full presentations and discussions related to coal divestitures and expenditures).

LADWP is committed to meeting the requirements of SB1368. LADWP is committed to not renewing with coal-sourced generating units the IPP PSC or CMOA when these contracts expire in 2027. LADWP is presently working with IPA on the potential renewal PSC for beyond 2027 that would allow LADWP and other California Purchasers to continue to import EPS-compliant power from the IPP location.

Separately, IPP includes critical interstate transmission lines for electricity imports into California as part of the Project that would be extremely difficult and costly to California ratepayers to replicate today. LADWP and the California Purchasers today import clean renewable energy through the IPP Switchyard and IPP Transmission lines and plan to continue doing so in the future.

ii. Navajo Generating Station

The operation of the NGS is governed by two separate agreements, the Navajo Operating Agreement and the Navajo Project Participation Agreement. The Navajo Operating Agreement describes the process of approving operating budgets including the Capital Improvement projects. The Navajo Project Participation Agreement

⁷ California Purchasers in IPP include Los Angeles Department of Water and Power, City of Anaheim, City of Riverside, City of Pasadena, City of Burbank, and City of Glendale.

describes the functions and responsibilities of the Operating Agent (in this case it is Salt River Project headquartered in Tempe, AZ), the Administrative Committee, the Engineering and Operating (E&O) Committee and the Auditing Committee.

The NGS Operating Agent (OA), Salt River Project, prepares the annual operating budget comprising of categories like Staffing, Operation and Maintenance, Capital Improvements, Property Taxes, Insurance, Administration and Fuel. The annual NGS budget is part of the overall LADWP budget. The budget is submitted to the E&O Committee for review and approval. The E&O Committee is composed of representatives from six NGS owners including: Bureau of Reclamation of the U.S. Department of Interior, Salt River Project (Arizona), Arizona Public Service Company, Tucson Electric Company (Arizona), Nevada Energy Company and LADWP. Any disputes or disagreements at the E&O Committee are normally elevated to the Administrative Committee for resolution. Any disputes at the Administrative Committee are normally referred to the respective CEO of each company for resolution.

All new capital projects are planned, prepared and presented by the Operating Agent to the E&O Committee for approval. Capital projects under \$250,000 are reviewed and approved by the E&O Committee. Projects over \$250,000 require approval from both the E&O and Administrative Committees. LADWP is not required to have approvals of the Board of Water and Power Commissioners or the Los Angeles City Council for operating and budget decisions unless the subject matter is out of the context of the current participation agreements.

Per SB1368, LADWP is committed to eliminate from its resource mix NGS once the land lease of the station and Operating Agreement terminate in December 2019. Beyond the requirements of SB 1368, LADWP has determined through the latest

Integrated Resource Plan (IRP) proceeding, that an earlier divestiture of NGS by 2015 is preferred.

Due to the uncertainty regarding several regulatory rulings on matters such NOx Emissions (BART), Mercury and Hazardous Air Pollutants (MATS), Carbon Tax, Coal Combustion Residue, and the expiration of the Land Lease Agreement of the Plant Site and Coal Supply Agreement by 2019, the NGS owners take a very conservative approach when it comes to major O&M project or capital improvements and are currently uncertain about operating the station beyond 2019. For that matter, all operating and budget decisions are currently based on short term assumptions due to economic reasons. Because of the pending uncertainty, the OA has not sought approval from LADWP for major expenditures that extend the life of NGS by more than 5 years as prohibited under SB1368.

iii. Public Process and Transparency

The Los Angeles Department of Water and Power Board of Commissioners (Board) and the Los Angeles City Council in open and publicly noticed meetings review and approve the LADWP Annual Budget, which includes anticipated yearly costs associated with IPP and NGS. As for Board procedures, Board meetings are open to the public and Board meeting agendas are available to the public at least 72 hours prior to each regular Board Meeting⁸. All members of the public are provided an opportunity to speak on items of interest within the jurisdiction of the Board⁹. For those who cannot physically attend but wish to keep abreast of LADWP's activities and actions, Board

⁸ LADWP Board of Water and Power Commissioners website. Available at: https://www.ladwp.com/ladwp/faces/ladwp/aboutus/a-whoweare/a-wwa-boardofcommissioners?_adf.ctrl-state=owb58c1d9_33&_afLoop=147809744938861

⁹ Department of Water and Power of the City of Los Angeles, Rules of the Board of Water and Power Commissioners. Available at: https://www.ladwp.com/cs/idcplg?IdcService=GET_FILE&dDocName=AD17DWPWEB9173008000&RevisionSelectionMethod=LatestReleased

meetings are accessible by telephone as well and are locally televised. Furthermore, video archives of past meetings are also available on the Board's website and Board actions are archived on the website as well.

In the 2012-13 Annual Budget presentation, a description of SB 1368 and Navajo divestiture/replacement under the scenario of Navajo divestiture by 2016 stated:

“Navajo Generating Station (Coal) Exit Program -State Senate Bill 1368 (SB 1368) requires LADWP to cease taking any energy from the Navajo Generating Station (NGS) upon expiration of its operating agreement for LADWP's 21% share of ownership of the 3-unit 2250 MW plant by 2019. To replace this 477 MW share of this baseload generating plant, LADWP will use a portion of the energy efficiency program energy savings of its energy efficiency program, a portion of the State mandated 33% renewable energy resources required by 2020, and the purchase of natural gas fired generating capacity that uses existing LADWP transmission rights to deliver net required energy to Los Angeles. LADWP presently anticipates replacing the NGS by the end of calendar year 2015 as part of a least-cost plan to make this transition. Costs in FY 2012-2013 will be limited to efforts associated with planning for replacement power supplies and solicitation of offers for the sale of the LADWP ownership share of the NGS.”¹⁰

In addition to the approval of the Annual Budget, the Board and City Council also govern the policy direction the Department takes on its coal exit strategy as reflected in the Integrated Resource Plan and Rate Case. In February 2012, the Los Angeles City Council appointed an independent representative¹¹ to scrutinize proposed hikes in water and electricity bills.

¹⁰ Los Angeles Department of Water and Power transmittal to City Controller Wendy Gruel dated May 24, 2012 regarding the Proposed Fiscal Year 2012-13 Los Angeles Department of Water and Power Budget, page 269. Additionally, a table of Navajo O&M and capital expenditures under a 2016 divestiture scenario is found on page 296.

¹¹ On March 8, 2011, City of Los Angeles voters approved a City Charter amendment to create an independent LADWP watchdog office known as the Office of Public Accountability. Commonly known as the “Ratepayer Advocate”, this independent representative is tasked with reviewing all of LADWP's

In developing the 2011 LADWP Integrated Resource Plan, the LADWP held numerous community and neighborhood meetings to gather input on the timing and integration of all of LADWP's major initiatives, including coal divestiture. LADWP has clearly communicated its policy-level decision to resolve and outline a clear path in its IRP to transition out of coal-fired power plants. The Strategic Case¹² on coal divestiture strategies recommends early divestiture of NGS by 2015 due to the environmental benefit of reducing Carbon Dioxide emissions by 7.6 Million-Metric Tons and better ability to find and integrate replacement EPS Compliant resources. The divestiture plans for NGS by no later than December 2015 are in the implementation phase. The transition plans for IPP are in the early phases with the active participation of the owners and California Purchasers.

Furthermore, LADWP has notified co-owners in NGS of its intent to sell or to divest and has hired the services of the investment banking firm Goldman, Sachs & Co. to assist in the divestiture. LADWP also communicated the use of Goldman Sachs & Co.'s services though both the LADWP Board of Water and Power Commissioner's Board Meeting¹³ and the Los Angeles City Council¹⁴. As mentioned above, all members of the public are provided an opportunity to speak on any items of interest within the

requests for rate increases which must be approved by both the LADWP Board as well as the Los Angeles City Council. See Los Angeles City Charter Section 683.

¹² Los Angeles Department of Water and Power 2011 Power Integrated Resource Plan, Pg. ES-16, Recommended Strategic Case. Available at: https://www.ladwp.com/cs/idcplg?IdcService=GET_FILE&dDocName=QOELLADWP006035&RevisionSelectionMethod=LatestReleased

¹³ Board of Water and Power Commissioners, Department of Water and Power of the City of Los Angeles, Tuesday, June 21, 2011 Agenda item No. 8. Available at: http://ladwp.granicus.com/DocumentViewer.php?file=ladwp_b9b6c1b37c2c760f5116f1ca411fd10f.pdf&view=1. Video of this Board Meeting is available at: http://ladwp.granicus.com/MediaPlayer.php?view_id=2&clip_id=124

¹⁴ Amendment No. 1 to Agreement No. 47790 Between the LADWP and Goldman Sachs & Co. for Merger & Acquisition Advisory Services, dated June 1, 2011. Available at: http://clkrep.lacity.org/online/docs/2011/11-1091_rpt_bwp_6-22-11.pdf

jurisdiction of the Board. LADWP issued a Request for Proposal for replacement resources on June 29, 2012 and the announcement is included below:

**REQUEST FOR PROPOSAL (RFP)
FOR
Replacement Combined Cycle
Letter of Announcement**

The City of Los Angeles Department of Water and Power (LADWP) is issuing this Replacement Combined Cycle RFP with the intent of securing an existing combined cycle power plant under terms and conditions favorable to LADWP customers.

To help meet the regulatory requirements requiring LADWP to divest of its coal generation facilities, LADWP is seeking proposals to acquire an existing combined cycle facility with a capacity between 300 MegaWatt (MW) and 575 MW. The output from the combined cycle facility is needed beginning as early as 2013, and must be on-line no later than 2019. Ideally, energy should be delivered to LADWP beginning January 1, 2016.

A Proposal Conference is scheduled for 1:00 p.m. PST, Monday, July 16, 2012 at the John Ferraro Office Building, 111 N. Hope Street, Los Angeles, CA 90012 in the Portland/ San Francisco Room located on A-level. See Section 1.8 of this RFP for instructions regarding the proposal conference.

All submitted materials will become property of LADWP and may be incorporated into a contract between LADWP and the selected Seller(s).

Please submit your written proposal as one original with three (3) hard copies, and two (2) complete electronic copies on CD-ROM, or flash drive. In the event that a discrepancy exists between the hard copy and the electronic copy, information on the hard copy version will prevail.

Proposals will be accepted by LADWP at any time after 2:00 p.m. (PDT) beginning July 30, 2012, through 2:00 p.m. (PDT) on August 30, 2012. Proposals shall be submitted in a sealed package, clearly marked as follows:

**Los Angeles Department of Water and Power
Robert Castro, Project Administrator
John Ferraro Building, Room 968
111 North Hope Street
Los Angeles, CA 90012**

III. CONCLUSION

The LADWP appreciates the opportunity to submit these comments and strongly supports the Energy Commission's tentative conclusions to not modify the EPS as requested by the Petitioners. LADWP has been candid with its customers regarding the costs and necessity to transition away from coal-fired generation as a result of SB 1368 and AB 32. LADWP remains committed to reducing its greenhouse gas emissions and urges the Energy Commission to swiftly bring closure to this rulemaking in order to return attention to the actions that will help bring about the transition that it has embarked upon without further delay.

Dated July 27, 2012

Respectfully submitted,

By: 

RANDY S. HOWARD
Chief Compliance Officer – Power System
Los Angeles Department of Water and Power
111 N. Hope St., Room 921
Los Angeles, CA, 90012
Telephone: (213) 367 – 0381
Email: Randy.Howard@ladwp.com

By: 

VAUGHN MINASSIAN
Deputy City Attorney
Office of the City Attorney
111 N. Hope Street, Room 340
Los Angeles, CA, 90012
Telephone: (213) 367 - 5297
Email: Vaughn.Minassian@ladwp.com