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

| In the Matter of:<br><br>Rulemaking to Consider Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard For Baseload Generation of Local Publicly Owned Electric Utilities | Docket No. 12-OIR-1 |
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# REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY IN RESPONSE TO AUGUST 31 REQUEST FOR REPLY COMMENTS

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**CONTENTS**


I. INTRODUCTION ..... 1

II. THERE SHOULD BE NO ADDITIONAL REPORTING OR FILING REQUIREMENTS FOR POU INVESTMENTS IN NON-EPS COMPLIANT FACILITIES. ..... 3

- A. There is No Demonstrated Need for Additional Requirements ..... 3
- B. The Proposal Would Impose Vague and Ambiguous Requirements on Public Agencies ..... 5
- C. The Proposal Would Create Conflicting Requirements and is Poor Public Policy ..... 6

III. THE EMISSIONS PERFORMANCE STANDARD SHOULD NOT BE CHANGED. ..... 7

- A. A Lower EPS Would Adversely Impact California's Electricity Markets and Clean Energy Goals ..... 8
- B. Revising the EPS Will Adversely Impact the Cost of Financing Projects and the Cost of Electricity California Ratepayers ..... 11
- C. Changes to the EPS Must be Conducted in Consultation with Other State Agencies ..... 12
- D. The Proposed Federal Emissions Limit is not Comparable to the EPS Adopted Pursuant to SB 1368 ..... 13

IV. CONCLUSION ..... 14

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The Northern California Power Agency[1] (NCPA) offers the following comments to the California Energy Commission (CEC or Commission) on the *Request for Reply Comments* (Request for Replies) issued by Chairman Weisenmiller on August 31, 2012. NCPA appreciates the opportunity to provide the Commission with these comments in the response to the Request for Replies and relevant to the Commission's Emissions Performance Standard (EPS) Regulation. As more fully set forth herein, NCPA urges the Commission to conclude this proceeding with a decision that recommends no additional reporting requirements for POUs and no further review of the EPS at this time.

## I. INTRODUCTION

Since this Rulemaking was originally opened in January, the primary focus has been on matters that more directly impact POUs that have ownership interests in coal-fired electricity generation stations. Accordingly, NCPA's participation in this proceeding has been narrowly tailored. However, with the issuance of the Request for Replies, the potential scope of this entire proceeding is significantly expanded from what was originally contemplated, prompting NCPA to submit these comments.

[1] NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District. NCPA's Associate Members are the Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

In the Request for Replies, the Commission seeks feedback from stakeholders on three issues:

> *(1) Whether to establish a filing requirement for all publicly owned utility (POU) investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement;*
>
> *(2) Whether to make any other changes to the EPS to carry out the requirements of Senate Bill (SB) 1368;* and
>
> *(3) Respond to information docketed by the Natural Resources Defense Council (NRDC) and Sierra Club related to the San Juan Generating Station.*

In response to those inquiries, NCPA urges the Commission to make findings that (1) there should be no expansion of the regulation to include filings requirements for all POU investments in non-EPS compliant facilities, and (2) it is not necessary to make any changes to the EPS to carry out the requirements of SB 1368.

The information already provided to the CEC and to the public through existing California law is adequate and no additional reporting or notification requirements should be imposed. There are already sufficient reporting and notification provisions contained in the regulation, and sufficient public disclosure laws in California. Combined with the fact that no evidence has been provided that would warrant the added administrative burden associated with increased reporting and notification requirements, NCPA believes that the scope and timing of the requested data is vague and ambiguous, and would unduly interfere with governance matters that are already addressed in State law.

Furthermore, the EPS should not be revised, as there is no need to make changes to the standard to carry out the requirements of SB 1368. The Commission should issue a decision accordingly. NCPA appreciates that the Commission is being responsive to stakeholder requests to address matters regarding the Regulation that were not specifically raised in the Rulemaking Order itself. However, a revision to the Regulations as substantial as altering the existing standard itself is not properly addressed within the context of this proceeding. Stakeholders directly impacted by a revised standard would be unduly prejudiced should the Commission address this matter in the context of the current proceeding, as such a significant revision would impact not only the POUs, but all electric generators, the California Independent System

Operator (Cal ISO) that dispatches power in California, and the other load serving entities that are required by law to have an EPS comparable to that applicable to the POUs.

## II. THERE SHOULD BE NO ADDITIONAL REPORTING OR FILING REQUIREMENTS FOR POU INVESTMENTS IN NON-EPS COMPLIANT FACILITIES.

The proposal to require additional filing and notice requirements should be rejected. It has not been demonstrated that additional requirements are necessary to address an unmet need for information, the proposal would impose vague and ambiguous requirements on public agencies, it would result in additional costs to public agencies and does not represent sound public policy with regard to meeting special interest needs. Furthermore, additional requirements of this nature would unlawfully interfere with established laws governing public disclosure of information and are contrary to the express desire of the Governor and Legislature to streamline and minimize public agency reports.

### A. There is No Demonstrated Need for Additional Requirements

No party, including the NRDC and the Sierra Club, has provided any evidence to indicate that the POUs are currently acting unlawfully, nor that the current filing requirements are inadequate. Indeed, as the Commission pointed out in the July 9, 2012 Tentative Conclusions and Request for Additional Information (Tentative Conclusions), "neither [NRDC/Sierra Club] nor anyone else offer evidence of POU non-compliance. Such evidence is essential to overcome the legal presumption that POU decision-makers regularly perform official duties under the EPS. (See, Evid. Code, § 664 [providing that "[i]t is presumed that official duty has been regularly performed].)"[2] The Tentative Conclusions go on to provide in a footnote that "NRDC and Sierra Club suggest that the Commission might obtain possible evidence or a better understanding of POU practices by requiring POUs to provide data on past, current, and planned investments in non-complaint powerplants. However, mere speculation about POU practices is insufficient to justify requiring the requested disclosures. Instead, if anyone has supportable reasons to question POU investments, the appropriate manner of raising these concerns is filing a complaint

[2] Tentative Conclusions, p. 3.

or request for investigation with the Commission under Section 2911."[3] In the absence of any established need for more information, NCPA believes that there is no reason for the Commission to entertain further deliberations on additional reporting and notice requirements for the POUs.

The demonstrated lack of a need for additional notification requirements is at odds with the Commission's statement that while "POU decision-making processes are consistent with the EPS, they arguably inhibit public scrutiny and review of investment decisions."[4] In fact, the POU processes are not only consistent with the EPS, but with State law, too. California has myriad Government Code provisions that set forth the reporting requirements for POUs; these include strict adherence to such requirements as the Brown Act and the California Public Records Act.[5] These laws provide transparency, and indeed apply to *all POU deliberations* and not just those that pertain to decisions regarding expenditures on non-EPS compliant facilities. NCPA is concerned with the public policy implications of imposing more and greater requirements on public agencies under the guise of transparency, especially in the absence of any showing that such transparency is lacking.

Section 2908 of the Regulation currently requires that a POU, in addition to complying with the notice of public meeting required by Section 54950 of the Brown Act, also provide the Commission with notice of the date, time, and location of the meeting and electronic copies of documents provided to the governing body, so that the Commission can post the information on its web site. This requirement can be met by providing the URL that links to this information. The information required under section 2908 is directly relevant to the Regulation, as it pertains to covered procurements, and clearly articulates the timing and content of the required notices. The NRDC/Sierra Club proposed notification mechanisms and protocols would require the POU to provide a much broader range of information and documentation than currently required, and in some undefined circumstances, sooner than required by law. Further, the information they request is already provided publicly by the POUs to any member of the public that requests it. Clearly, the NRDC/Sierra Club proposal is a solution in search of a problem. There is simply no basis to suggest that to scope of information provided should be expanded, nor that the timely

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[3] Id.

[4] Tentative Conclusions, p. 3.

[5] California Government Code Section 54950, *et. seq* and §6250, *et.seq.*

notifications now required by the Government Code are in any way insufficient to provide relevant, timely information to interested parties and the general public. NRDC and Sierra Club have not identified any examples, real or feigned, or complaints concerning lack of notice provided in a comprehensive and timely manner and their request for additional requirements should be rejected.

### B. The Proposal Would Impose Vague and Ambiguous Requirements on Public Agencies

Recognizing that there is no justification for imposing additional requirements, these comments also address the specific provisions of the NRDC/Sierra Club proposal, as set forth in their July 27, 2012 Comments. One aspect that NCPA finds particularly troubling is the vague and ambiguous nature of the request for information. NRDC/Sierra Club ask the Commission to require POUs to provide "all documents or information needed to allow for an informed understanding of planned capital and debt expenditures or any contractual amendment or new contract affected a non-compliant facility be made available."[6] Upon whose "informed understanding" is the document request based? Such an arbitrary standard would open the door for disputes and unnecessary deliberations. The additional requirement is not merely a request to have information provided through a link to the CEC's website. In actuality, it is a proposal that would allow the proponents to define the sufficiency of information provided to decision makers regarding expenditures and deliberations associated with its non-EPS compliant facilities. This is simply not an acceptable standard and there is no way to implement the proposal without "imposing onerous financial and administrative burdens on POUs."[7] POU governing boards are charged with making decisions on behalf of their constituents, and are assumed to do so in compliance with the law. Having had their request for additional filing requirements rejected in the past, the current proposal is couched in terms of greater public access; however, the public already has access to the information used by the lawfully elected and appointed decision makers. Until such time as it has been demonstrated that the current decisions making processes and POU deliberations regarding these facilities is NOT sufficient, no changes should be made.

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[6] NRDC/Sierra Club July 27 Comments, p. 3.

[7] See Tentative Conclusions, p. 3.

### C. The Proposal Would Create Conflicting Requirements and is Poor Public Policy

Admittedly NRDC and Sierra Club have a particular interest in matters pertaining to the EPS. However, their desire for more detailed information should be addressed through the existing framework of California law. It is poor public policy to create a patchwork of reporting and notification requirements to address select members of the public with special interest areas. Requiring one notification standard for decision making processes related to possible expenditures on non-EPS compliant facilities, and another standard for other matters that may come before the governing body of a POU would result in inconsistent and/or conflicting requirements. A POU is often one of several divisions of a public agency charged with dealing with a wide variety of issues relating to the administration and governance of a municipality or local district. Even, assuming *arguendo*, that imposition of the proposal would not be administratively burdensome, requiring POUs to comply with different notice and publication requirements for different matters before the public agency *would be* administratively burdensome and result in significant additional costs for the POUs. Again, even if the NRDC/Sierra Club proposal was not vague and ambiguous, it is impossible to implement the proposal without imposing onerous financial and administrative burdens on POUs.

Furthermore, additional reporting – especially without a demonstrated need – is contrary to the State's ongoing efforts to reduce unnecessary reporting. In 2011 Governor Brown issued an Executive Order directing state agencies to review their current reporting requirements and eliminate those that were duplicative or unnecessary.[8] The Legislature took a similar position when it passed Assembly Bill 2227.[9] AB 2227 revises the reporting requirements applicable to POUs by reforming and consolidating various reports submitted to the Commission, and reducing the frequency of report submissions. Recognizing the need for these greater efficiencies, Governor Brown signed AB 2227 into law on September 27, 2012. Both of these instances highlight the importance of ensuring that the imposition of any new reporting requirements is based on a demonstrated need. To do otherwise would not be consistent with the Legislature's and Governor's demonstrated desire for less, rather than more, reporting from

[8] Executive Order B-14-11.

[9] Assembly Bill (AB) 2227 (Bradford), Stats. 2012.

public agencies. As the NRDC/Sierra Club proposal is not consistent with these objectives, it should not be adopted.

## III. THE EMISSIONS PERFORMANCE STANDARD SHOULD NOT BE CHANGED.

There is no reason for the CEC to review or change the EPS in order to carry out the requirements of SB 1368, and NCPA urges the Commission to issue a decision making such a finding. First, and perhaps foremost, this proceeding – which has been limited in scope since its initiation – is not the proper forum for addressing a revision of such significance that has the potential to impact such a broad range of stakeholders. Furthermore, the CEC adopted EPS may only be modified after consultation with the California Public Utilities Commission (CPUC) and the California Air Resources Board (CARB),[10] and must be consistent with the EPS adopted by the CPUC for other load serving entities.[11] Additionally, the information and data used to support a lowered EPS is based solely on national data primarily compiled to address a non-analogous emissions standard, and does not take into account the specific mandates of SB 1368, nor data directly relevant to California's facilities and energy markets.

In their comments, NRDC and Sierra Club claim that "publicly available design and emission data for existing units demonstrates that commercially available [natural gas combined-cycle] EGUs can and have emitted CO2 less than 825 – 850 lb/MWh on a net emissions basis."[12] However, as none of the data discussed by NRDC and Sierra Club is based on California facilities, the Request for Replies (pp. 4-5) asks for the following:

> a. *"Given that the EPS applies to natural gas plants that are designed and intended to operate as baseload facilities, the Energy Commission seeks input on how many of California's natural gas fired power plants would be affected by a lower EPS, such as in the range NRDC & Sierra Club have suggested."*
>
> b. *"Energy Commission is interested in receiving input on the extent to which a lower EPS may impact the design or ability of natural gas plants to operate more flexibly for integrating renewable resources, since the cycling of these plants entails lower efficiencies and requires fast ramp capabilities, and thereby a potential increase in emissions."*

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[10] Public Utilities Code § 8341(f), see also § 8341(g) which applies to the CPUC adopted EPS.

[11] Public Utilities Code § 8341(e)(1).

[12] NRDC/Sierra Club July 27 Comments, p. 6.

As more fully set forth herein, in the time permitted, NCPA's preliminary review of the potential implications of such a low EPS do not support NRDC and Sierra Club's assertion. To the contrary, NCPA's findings show a significant adverse impact on not only the deliverability of renewable energy to California's utilities, but also the cost-effectiveness of providing energy to Californians, and the certainty of the markets.

### A. A Lower EPS Would Adversely Impact California's Electricity Markets and Clean Energy Goals

SB 1368 was adopted on the Legislature's findings that global warming would have an adverse impact on the State's economy, health, and environment, that greenhouse gas (GHG) emissions should be reduced, and to the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the State has established a policy that will encourage the development of cost-effective, highly-efficient, and environmentally-sound supply resources to provide reliability and consistency with the State's energy priorities.[13] The State's energy priorities include reducing GHG emissions and increasing renewable energy procurement. As but one part of the state's clean energy plan, any revisions to SB 1368 must look to the overall impact the change would have on the provision of cost-effective, safe, reliable, and clean energy to California's residents and business. Reducing the EPS will have a deleterious impact on all of these and imposition of a lower EPS will even adversely impact investments in facilities that have been lauded as "the future" of clean energy in California by members this very Commission.

The Commission has asked for input "*on how many of California's natural gas fired power plants would be affected by a lower EPS, such as in the range NRDC & Sierra Club have suggested.*"[14] Based on the information gathered to date in response to this inquiry, NCPA does not believe that any of the natural gas fired power plants operated by it or its member agencies would meet the lower EPS. Despite the State's desire to increase the amount of electricity that is generated by renewable resources, natural-gas fired generation still plays a key role in California's energy supply portfolio. Indeed, as Chairman Weisenmiller recently noted, "[t]he wind and sun are great resources, but at the same time, you see the power output of those drop

[13] Senate Bill 1368, Section 1.

[14] Request for Replies, p. 4.

off pretty substantially as the wind falls off or as the sun sets, so we need the gas plants to complement the renewables and fill in behind them."[15] An EPS in the range suggested by NRDC and Sierra Club would adversely impact a significant portion of the state's electricity supply.

NCPA's own Lodi Energy Center (LEC) would also be impacted by a changed EPS. LEC is a brand new facility, dedicated on August 10, 2012, and not without some fanfare due to the cutting-edge technologies employed at the facility.[16] LEC is a combined-cycle, nominal 296 Megawatt (MW) Siemens "Flex Plant 30″ power generation facility consisting of a natural gas-fired turbine-generator and a single condensing steam turbine. The facility employs the latest state of the art emission reduction and efficiencies operations, and is designed to operate at 800 pounds carbon dioxide per megawatt hour (lbs $CO_2$/MWh) – to NCPA's knowledge, this may be the lowest in Northern California for a natural gas power plant. LEC is anticipated to operate at a slightly lower efficiency, resulting in about 825 lbs $CO_2$/MWh, barely meeting the minimum thresholds proposed by NRDC and Sierra Club. LEC is expected to assist the State in adjusting the generation output of the plant to follow electric load of California and operate at less than design efficiencies. However, any changes in operations to accommodate firming and shaping of renewable resources would necessarily increase the facility's emissions and likely cause it to exceed the proposed EPS. This is particularly important since LEC was designed and built with this capability in mind, and a reduced EPS could eliminate development of these types of plants. Yet without this new generation of power plants, California will not be able to integrate the

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[15] Oral comments of Chairman Weisenmiller made during the dedication of the Lodi Energy Center on August 10, 2012.

[16] The following comments were made with regard to the Lodi Energy Center regarding its recent dedication on August 10, 2012:

> " We know that climate change is real; the data keeps coming in and laying out a very tough scenario, so the people who put this energy center together ought to be commended. Replacing coal, bringing in a modern gas fired plant that will be able to supply energy needs quickly, particularly when renewables may be down, because of the wind or clouds. So it's a big winner. It's new, it's jobs, it's reliability." Gov. Jerry Brown in a video message.
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> "At a time of increasing concern over the dangers of global warming, I'm very pleased that this center is taken advantage of clean technology to reduce fossil fuel emissions." Sen. Dianne Feinstein, D-Calif., in a video message.

expected intermittent renewable resources needed to achieve the 33% renewable portfolio (RPS) mandate.[17]

The fact that a facility as efficient and clean as LEC could bump up against, let alone exceed, the proposed EPS indicates how adversely such a change would impact California. The proposal to reduce the EPS does not take into account the extent to which these natural gas facilities are needed to meet California's clean energy goals and associated mandates. This includes the use of these facilities for firming and shaping purposes, or to otherwise accommodate flexible delivery of electricity.

Additionally, the proposed EPS would have a negative impact on utility resource planning and the State's resource adequacy objectives. Natural gas fired facilities simply cannot achieve 825-850 lbs $CO_2$/MWh unless they are large frame unit facilities operated at the most efficient design points. The reduced EPS would only allow the development of these large facilities. This is problematic in several respects. As a practical matter, most of the POUs in Northern California cannot build the large frame combined cycle facilities that would meet the proposed EPS. These plants are too big for their needs, as 300 MW facilities exceed their total load. Even LEC is considered on the "lower end" of large-power plants and it will be supplying electricity for customers as far away as Southern California. However, a lack of sufficient electricity located on-site or near the load results in increased transmission costs, transmission losses, decreased reliability, and the lack of back-up resources in the event of grid disruptions or unplanned outages. Coupled with the need to use these resources in myriad different capacities, it is not sound public policy to adopt an EPS that would force the development on only large-scale facilities, and the State's utilities must retain the flexibility to develop smaller generation facilities. This very issue was deliberated as part of 06-OIR-01, and the need to accommodate the potential for varying facility sizes was reflected in the EPS adopted by both the CPUC and this Commission and underscores the importance of using California-specific data in any analysis of the EPS.

This information is based on projected operations of the facility. As the Request for Replies notes, the use of natural gas fired electric generation facilities to facilitate the delivery of renewable energy into California lowers efficiencies and creates the potential to increase

[17] Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1.

emissions,[18] so that even facilities that could theoretically meet the lower standard would likely be unable to do so when used in this capacity. Since the EPS is but one aspect of California's important environmental agenda, it is imperative that any changes to the rule be reviewed and analyzed in light of the State's overall electricity objectives, based on data specific to California – including the location of existing facilities, the way in which those facilities are operated during normal conditions, the manner in which those facilities may be called upon to facilitate an ever increasing RPS, the impacts that geography and altitude have on the facility's emissions, and the location of the facility relevant to the load it will be serving.

Clearly, any change to the EPS should not be considered without a careful analysis of the technical feasibility, as well as including a review of potential unintended consequences of such an action. For example, what will happen when flexible operations are needed to support intermittency of renewable resources? How will entities – both public and private – be able to finance long term investments in costly new, clean fossil fuel fired generation when an ever changing EPS could render those investments uneconomical at any time? What costs will California electricity ratepayers have to bear to shutter existing facilities that are unable to meet the lower EPS, notwithstanding the fact that they are well under the current EPS? These questions, as well as a technical analysis of how the reduced figures will impact overall grid reliability in California and throughout the western electricity grid should be thoroughly analyzed prior to any changes being entertained. Such an analysis – which should be conducted by an independent consulting firm – should be financed by proponents of the change.

### B. Revising the EPS Will Adversely Impact the Cost of Financing Projects and the Cost of Electricity California Ratepayers

Revising the EPS must take into account the important operational considerations addressed above. However, in addition to the operational considerations, any changes must also be reviewed in light of the impact that a lower EPS would have on project financing and ratepayer electricity costs. Subjecting project developers and owners to a varying EPS reduced regulatory certainty and investors' confidence in California projects. NCPA, who recently financed the Lodi Energy Center project, is concerned that obtaining project financing in the future will be adversely impacted by fears that the financed facility would be deemed obsolete

[18] Request for Replies, p. 5.

soon after its operational date. Development of electricity generation facilities includes a long lead time, and the facilities themselves are built to last 30 years. Changing the EPS would adversely impact all new investments in electricity generation, whether the facility is financed by a POU or private entity that seeks to sell the power to the POU.

It will also result in increased costs for electricity, all at the detriment of California's residents and businesses. In their comments, NRDC/Sierra Club state that "the added capital cost of more efficient designs is more than offset by the reduction in fuel costs, especially in base load applications" and allege that "California can reduce $CO_2$ emissions from affected electricity generation by approximately 25 percent - - without added costs to customers."[19] Despite this bold assertion, the proponents fail to provide California specific data to support the statement. A review of the informal data NCPA was able to compile regarding its facilities and those of its member utilities simply does not support this assertion. Any action by this Commission that would render clean-fossil fueled facilities uneconomical should be avoided.

### C. Changes to the EPS Must be Conducted in Consultation with Other State Agencies

In separate but coordinated proceedings, both the CPUC and CEC determined that the EPS should be 1,100 lbs $CO_2$/MWh. Any change to the EPS should also be part of a separate but coordinated effort. Not only because this is required by the provisions of Public Utilities Code sections 8341(f) and (g),[20] but because the Legislation also requires the EPS applicable to POUs to be comparable to the EPS applicable to other load serving entities under section 8341(e)(1).[21] A POU EPS of 825-850 lbs $CO_2$/MWh standard is not comparable to the current 1,100 pound

[19] NRDC/Sierra Club July 27 Comments, p. 6.

[20] Public Utilities Code section 8341: "(f) The Energy commission, in a duly noticed public hearing and in consultation with the [CPUC] and [CARB], shall reevaluate and continue, modify, or replace the greenhouse gases emissions performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to local publicly owned electric utilities." Public Utilities Code section 8341 "(g) The [CPUC], through a rulemaking proceeding and in consultation with the [CEC] and [CARB], 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 load serving entities."

[21] Public Utilities Code section 8341(e)(1) provides, in part, that "On or before June 30, 2007, the Energy Commission, at a duly noticed public hearing and in consultation with the [CPUC] and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electricity utilities . . . The greenhouse gas emissions performance standard established by the Energy Commission for local publicly owned electric utilities shall be consistent with the standard adopted by the [CPUC] for load-serving entities."

standard adopted by the CPUC for other load serving entities. POUs and their ratepayers would be disproportionately impacted by such a change, and the Commission should avoid creating such a disparity. Furthermore, as discussed above, any change to the EPS should include not only the three state agencies specifically referenced in sections 8341(f) and (g), but the Cal ISO as well.

As the FSOR states, "in October 2006, the Energy Commission embarked on a *thorough rulemaking process* that included dozens of informal meetings with many stakeholders, three lengthy workshops, and two hearings along with almost daily communication with interested parties."[22] Any revisions to the EPS should include a similar process, and should only be undertaken upon a finding that a change would not have an adverse impact on the overall clean-energy plan that involves implementation of GHG reduction measures pursuant to the AB 32 Scoping Plan,[23] as well as implementation of the 33% renewable portfolio standard mandated by SBX1-2.

### D. The Proposed Federal Emissions Limit is not Comparable to the EPS Adopted Pursuant to SB 1368

NRDC and Sierra Club also support revising the current EPS as part of California's leadership role in moving national climate change policy. To this end, they reference the United States Environmental Protection Agency (US EPA) proposed $CO_2$ emission limit of 1,000 lbs $CO_2$/MWh.[24] NRDC and Sierra Club also note that much of the data that they proffer to support a revised EPS for under SB 1368 is taken from comments that they have submitted in that proceeding.[25] However, the proposed US EPA standard is not analogous to the EPS adopted by this Commission pursuant to the provisions of SB 1368. For one thing, the proposed Federal standard would apply to new units that generate electricity for sale and are larger than 25 MW. Furthermore, the proposed Federal EPS would not apply to any existing units, *including modifications such as changes needed to meet other air pollution standards*, nor certain units that have permits and would begin construction within twelve months. The proposal also

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[22] 06-OIR-01 Final Statement of Reasons (FSOR), p. 1, emphasis added.

[23] Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32), Statutes of 2006, Chapter 488.

[24] NRDC/Sierra Club July 27 Comments, p. 7.

[25] Docket EPA-HQ-OAR-2011-0660.

includes an option for averaging emissions for certain projects that phase in carbon reduction technologies.[26] The differences between the proposed Federal standard and the requirements of the SB 1368 mandate are significant enough to render a standard-to-standard comparison irrelevant.

## IV. CONCLUSION

NCPA urges the Commission to issue a final decision concluding that the current reporting and notification requirements to which POUs are subject provide sufficient and adequate access to the public and no revisions to the Regulation are necessary to expand upon the requirements already in place.

Furthermore, NCPA urges the Commission to reject any calls to alter the EPS, as changes to the standard are not necessary to effect the objectives of SB 1368 or to meet the State's broader green agency goals. The CEC "adopted an EPS of 1,100 lbs/MWh, which is consistent with the CPUC standard, and reflects cost and reliability considerations evaluated by the CPUC and CEC."[27] There is no reason to change that thoughtfully and thoroughly determined standard at this time.

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[26] *See* EPA FACT SHEET: Proposed Carbon Pollution Standard for New Power Plants, document 77 FR 26476, available at www.regulations.gov.

[27] FSOR, p. 73.