

Submitted by e-mail to: [docket@energy.ca.gov](mailto:docket@energy.ca.gov)

April 19, 2013

California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 12-OIR-1  
1516 Ninth Street  
Sacramento, CA 95814-5512



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 No. 12-OIR-1  
Rulemaking Workshop

### **Sierra Club and NRDC Comments on Proposed Final Conclusions**

The Sierra Club and Natural Resources Defense Council (NRDC) submit the following comments on the Proposed Final Conclusions. We appreciate the ongoing efforts by the Commission to ensure California's Emissions Performance Standard (EPS) continues to operate as intended to preclude new long term investments in inefficient and polluting power plants. Since this proceeding began over a year ago, California has seen a seismic shift away from coal power. Every Publicly Owned Utility (POU) in the state with a long-term coal contract has announced intentions to terminate these contracts prior to the end of their full term. If these intentions are realized, California will be nearly coal free. California's divestment from coal is a significant achievement. However, the severe climate change impacts the State already faces, coupled with the need to drastically reduce greenhouse gas pollution through 2050, do not afford us the luxury of resting on our laurels. Tightening the EPS is an important step toward decarbonization of California's energy supply. The Commission should show needed leadership and lower the EPS to the maximum extent feasible.

We support most of the proposed conclusions and believe they will carry out the purpose of the EPS with minimal additional burden on the state's POUs. However, we are concerned by the Commission's failure to lower the existing EPS of 1,100 lbs CO<sub>2</sub>/MWh. The Commission's Proposed decision ignores new combined cycle technologies that provide ramping capability to integrate renewables without sacrificing efficiency, permits procurement of needlessly inefficient and polluting facilities, and leaves California in the unusual position of lagging behind proposed federal performance standards of 1,000 lbs CO<sub>2</sub>/MWh. Indeed, as noted in our July 27, 2012 comments, industry groups are using California's EPS to argue for a weaker federal standard.<sup>1</sup> Moreover, Washington State recently adopted an EPS of 970 lbs CO<sub>2</sub>/MWh "for all baseload

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<sup>1</sup> Docket No. 12-OIR-1, Joint Comments on NRDC and the Sierra Club, July 27, 2012 at 7 n.11.

electric generation for which electric utilities enter into long-term financial commitments.”<sup>2</sup> By failing to lower the EPS, the Commission allows California to lag behind other states and be used to bolster arguments for weaker federal greenhouse gas regulations.

The Sierra Club and NRDC’s joint comments submitted on July 27, 2012 and September 28, 2012 provide robust evidentiary support for a Commission decision to lower the EPS to 825-850 lbs CO<sub>2</sub>/MWh. For smaller units, we proposed an EPS of 900-950 lbs CO<sub>2</sub>/MWh. If the Commission adopts a single standard of 950 lbs CO<sub>2</sub>/MWh, new facilities and the few existing baseload facilities not grandfathered under SB 1368 could readily meet this standard. While the record in this proceeding supports an even lower standard, a new standard of at most 950 lbs CO<sub>2</sub>/MWh will return California to its leadership position on climate policy, positively impact proposed federal regulations, and ensure California continues to lower the carbon intensity of its energy supply. Especially in light of action by the federal government and the State of Washington, there is no legitimate basis for leaving California’s EPS at its inflated level.

### **Public Notice of Expenditures at Non-Compliant Facilities**

NRDC and the Sierra Club support the recommended changes in reporting requirements included in the Final Conclusions. We agree that reporting of an annual budget and “real time” reporting improve statewide stakeholder involvement and minimize burden to POU’s. We also support the Commission’s decision to minimize reporting obligations by removing requirements on any utility that has binding agreements in place to exit non-EPS compliant facilities within five years.

### **Proposed Sunset of the EPS**

We fully support the Commission’s conclusion that a sunset of the EPS would be illegal and irresponsible. We expect no party would continue to recommend a sunset at this time.

### **Clarification of “Covered Procurement”**

While we maintain that investments to meet regulatory requirements that extend the legal operating life of non-compliant facilities are covered procurements, in light of the recent developments with the POU owned non-compliant facilities, we see no reason to continue to request clarifications to the existing regulations in this area.

### **The Record Supports Lowering the EPS to No More Than 950 lbs CO<sub>2</sub>/MWh**

The Sierra Club and NRDC provided robust analysis justifying lowering the EPS.<sup>3</sup> Opposition to lowering the EPS is not based on facts and analysis, but an apparent distaste for regulation and a misunderstanding of the reach of SB 1368. Under SB 1368, the EPS does not

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<sup>2</sup> Chapter 194-26 WAC, Greenhouse Gas Emissions Performance Standard (Mar. 6, 2013) (attached to these comments).

<sup>3</sup> See the NRDC/Sierra Club August, 6, 2012 and September 28, 2012 comments.

apply to “combined-cycle natural gas power plants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007.”<sup>4</sup> Yet, when arguing against lowering the EPS, the City of Santa Clara pointed to its Donald Von Raesfeld (DVR) Plant, which came on-line in 2005 and would therefore be exempt from EPS obligations.<sup>5</sup> Even so, DVR operates at 921 lbs CO<sub>2</sub>/MWh, well under a 950 lbs/MWh standard the Commission could readily adopt. Other POUs simply stated that the EPS should not be lowered, did not provide evidence why a lower EPS was infeasible, and did not suggest an alternate EPS that would address their concerns. Regrettably, the Proposed Final Conclusions do not evaluate record evidence or include an independent evaluation. Instead, they merely summarize party position, regardless of whether they are supported by actual facts and analysis. The Commission does not appear to have done its own investigation in this rulemaking and is instead avoiding a data-driven evaluation of lowering the EPS based on complaints and inchoate fears of regulated parties.

***Lowering the EPS Would Result in Reduced Greenhouse Gas Impact from Renewable Integration.*** Concern that lowering the standard would prevent use of combined cycle plants in supporting the integration of renewables is based on unsupported conjecture, not data. As set forth in our September 2012 comments, new combined cycle technologies, such as F-class systems with triple-stem-pressure heat recovery steam generators (HRSGs) provide fast start flexible capability at much lower emissions rates than simple cycle facilities. Lowering the EPS will not adversely impact California’s ability to integrate increased penetration of renewable resources.

The resources and strategies used for renewable integration will determine the ultimate carbon benefits of the Renewables Portfolio Standard (RPS) and California’s ability to successfully transition to a low carbon future. To the extent fossil fuels are needed for renewable integration, the Commission should work to ensure they are as greenhouse gas efficient as possible. By keeping the existing EPS in place, the Commission loses an important opportunity to continue to move California toward more efficient resources.

***Lowering the EPS is Not an Academic Exercise.*** There appears to be an unsubstantiated perception that lowering the EPS will have little practical impact given California’s increased procurement of renewable energy and shift away from baseload facilities. Calpine, whom “supports a reasonable tightening of the EPS,” notes in its comments that “[n]atural gas-fired combined cycle (“NGCC”) facilities will likely startup, shutdown, and cycle more frequently than they have in the past, but may still remain above the EPS’s 60 percent capacity factor cut-off for the definition of “baseload generation.”<sup>6</sup> Moreover, with LADWP’s withdrawal from the Intermountain Power Plant, additional procurement authorized in the recent Public Utilities

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<sup>4</sup> Pub. Utilities Code § 8341(d)(1).

<sup>5</sup> 12-OIR-1, Reply Comments of the City of Santa Clara, Sept. 28, 2012 at 3.

<sup>6</sup> 12-OIR-1, Comments of Calpine Corporation, Sept. 28, 2012 at 3.

Commission Long-Term Procurement Planning decision, and the potential shutdown of San Onofre Nuclear Generating Station, additional facilities that qualify as baseload will likely be constructed.

Indeed, LADWP argues against lowering the EPS because the proposed Huntington Beach Energy Project (HBEP) by AES Southland would have an energy output of 1,082 lbs CO<sub>2</sub>/MWh.<sup>7</sup> Yet, this is exactly why a lower EPS is needed. HBEP could achieve a much lower energy output with a different, more efficient design. Absent Commission action to lower the EPS, unnecessarily inefficient and greenhouse gas intensive project's like HBEP will be constructed.

Finally, California's influence as a leader on climate policy cannot be overstated. California's existing standard is being used to weaken proposed federal standards. This is unacceptable. By lowering the EPS, California can continue to positively impact and strengthen climate policies both federally and in other states.

***The Commission is Empowered to Lower the EPS.*** The Commission's concern that lowering the EPS would have to be done in cooperation with other agencies does not excuse the Commission's failure to act. The Commission can readily consult and seek input from the CPUC and ARB as it moves forward in lowering the EPS.

#### **Request for Exemption Under Multi-Party Agreements**

We appreciate the discussion and concern for possible gaming associated with these proposed changes. We agree that the proposed change should not affect the requirement of all parties to do everything within their contractual power to avoid life extending investment in non-EPS compliant facilities.

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<sup>7</sup> 12-OIR-1, Reply Comments from LADWP (Sept. 28, 2012) at 29. Contrary to the suggestion in LADWP's comments, SCAQMD has not yet conducted a BACT analysis on HBEP. The 1,082 MWh finding is the BACT analysis proposed by the *project proponent*, not an evaluation by the Air District. SCAQMD has not yet released a draft permit for Huntington Beach.

Thank you for your consideration of these comments.

Respectfully Submitted,



Noah Long  
Staff Attorney  
Natural Resources Defense Council  
111 Sutter St. 20<sup>th</sup> Floor  
San Francisco, CA 94104



Matthew Vespa  
Staff Attorney  
Sierra Club  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

**Chapter 194-26 WAC**  
**GREENHOUSE GAS EMISSIONS PERFORMANCE**  
**STANDARD**

**Last Update:** 3/6/13

**WAC**

194-26-010      Authority.  
194-26-020      Average available greenhouse gas emissions output.

**WAC 194-26-010 Authority.** This chapter is promulgated pursuant to the authority granted in RCW 80.80.040, requiring the department of commerce to adopt the average available greenhouse gases emissions output as determined under RCW 80.80.050 as the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments.

[Statutory Authority: RCW 80.80.050. 13-06-074, § 194-26-010, filed 3/6/13, effective 4/6/13.]

**WAC 194-26-020 Average available greenhouse gas emissions output.** The energy policy division of the department of commerce has surveyed new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States, and finds the average rate of emissions of greenhouse gases for these turbines to be nine hundred and seventy pounds per megawatt-hour.

[Statutory Authority: RCW 80.80.050. 13-06-074, § 194-26-020, filed 3/6/13, effective 4/6/13.]