

BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

California Energy Commission

DOCKETED
12-OIR-01

TN # 69271

JAN. 24 2013

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
REQUEST FOR WRITTEN COMMENTS ON FILING/NOTIFICATION OPTIONS AND
ACTIVITIES ASSOCIATED WITH NON-EPS COMPLIANT FACILITIES

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Dated: January 24, 2012

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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 regarding the CEC's request written for comments on four potential options for filing and/or notification related to non-EPS compliant baseload generation facilities in its Notice of Rulemaking Workshop (Notice), dated December 20, 2012, as part of the rulemaking (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 (GHG) emissions as intended by Senate Bill (SB) 1368 and Assembly Bill (AB) 32. All actions and comments by LADWP in this proceeding and other policy discussions related to GHG emissions unequivocally support this position.

II. OPTIONS FOR FILING OR NOTIFICATION REQUIREMENT

Based on the Petitioners' filings in this proceeding to date, LADWP does not believe meaningful evidence of non-compliance by LADWP or any other publicly owned utility has been presented to justify additional filing or notification requirements beyond what is currently required in the EPS regulation¹ for activities associated with certain existing baseload generation facilities, including LADWP's ownership share of the Navajo Generating Station (Navajo) and contractual rights and obligations associated with the Intermountain Power Project (IPP).

To the contrary, LADWP has been openly transparent and public about its plans to divest of its ownership interests in Navajo. More recently, LADWP has made public the on-going efforts by LADWP, 35 other IPP participants, and the Intermountain Power Agency, which owns IPP, to evaluate alternatives to the continued use of coal as a fuel source at IPP.² Such actions by LADWP demonstrate a full understanding of its obligation to not enter into new long-term financial commitments in non-EPS compliant baseload generation, to provide its customers with full transparency about its long-term strategies and costs, and to address its GHG emissions profile in a manner that also maintains reliability and keeps rates competitive.

To that end, LADWP does not support additional reporting requirements as described under Options 1 through 3 of the Notice, particularly if the new term "investment" is added to the regulation beyond the proposal to use that term exclusively as it relates to the case-by-case review for pre-existing multi-party commitments in section 2913. Specifically, the options described in the Notice all use the general term

¹ Greenhouse Gases Emissions Performance Standard (EPS Regulation), Chapter 11, Article 1, section 2908 (Public Notice) and section 2909 (Compliance Filings).

² Los Angeles Department of Water and Power, 2012 Final Power Integrated Resource Plan, December 3, 2012, page 63-64.

“investment” in lieu of the current and more specific definitions of “covered procurement” and “new ownership investment.” The general term “investment” only creates more confusion; it would have overly broad application to a multitude of legitimate expenditures that would not constitute a “covered procurement” as triggered by a life extension of five or more years in a pre-existing non-EPS compliant baseload generation power plant.³

The EPS Regulation makes clear in section 2900 that the applicability of the EPS and related reporting provisions are specific only to covered procurements, and therefore do not apply to other activities or investments that are not also covered procurements.

“This Article applies to covered procurements entered into by local publicly owned electric utilities. The greenhouse gases emissions performance standard established by section 2902(a) applies only to baseload generation, regardless of capacity, supplied under a covered procurement. The provisions requiring local publicly owned electric utilities to report covered procurements, including sections 2908, 2909, and 2910, apply only to covered procurements involving power plants 10 MW or larger.”

In their filing, dated July 27, 2012, the Petitioners suggested that POUs should report any expenditures above \$50,000 associated with a non-EPS compliant facility. Not only does this suggested threshold fail to recognize that the EPS does not apply to expenditures for routine maintenance, but it also illustrates the need to avoid arbitrary definitions, and instead provide an opportunity for case-by-case review when the situation calls for it, as allowed under section 2912 for reliability or financial reasons or section 2913 for pre-existing multi-party commitments.

³ EPS Regulation, Chapter 11, Article 1, section 2901(j)(4)(A), “Any investment in an existing, non-deemed compliant powerplant...that is designed and intended to extend the life of one or more generating units by five or more years, not including routine maintenance.”

LADWP is also concerned that investments being made to existing “non-EPS compliant facilities” might have no relationship to the baseload generation. A recent example is the procurement of the 250 MW K-Road Moapa Solar Project located on the Moapa Tribal properties. This solar project connects to the Navajo Project Transmission System which is a part of the “non-EPS compliant facility”. LADWP plans on making investments to the transmission system that will likely exceed \$50,000 to interconnect this project. Similar types of “investments” have been made at IPP to interconnect the Milford I and Milford II Wind Farms to the IPP Station and the Southern Transmission System which are key assets of the “non-EPS compliant facility.”

As LADWP and other California utilities transition out of coal as a resource, they need the ability to utilize as much of the historical “investments” as possible to maintain the lowest possible financial impact to the ratepayers. These assets have potentially huge value for additional renewable development and EPS compliant natural gas development. Because of the current regulatory requirements, including the RPS Compliance requirements and the Cap-and-Trade Compliance requirements, the utilities have aggressive schedules to implement these mandates. Placing additional reporting burdens and requirements that might delay or detract from these plans is not justifiable.

However, LADWP could support Option 4, if amended, to provide for an annual attestation by a POU consistent with annual reporting by LSEs subject to the CPUC’s EPS. LADWP recommends that the term “investment” not be used in Option 4, and instead, retain the existing regulatory language for “covered procurement” as used in CPUC’s EPS regulation. LADWP also recommends that any such POU reporting to CEC continue to recognize the role of the local POU governing body to approve long-

term procurement plans and long-term financial commitments to power generation, similar to the CPUC authority over LSEs.

a. Option 1 – Notification Associated with Any Investments

Option 1: *This option would entail a POU providing a URL linked to the agenda for the public meeting of the POU at which any investment in a non-EPS compliant plant is being deliberated in advance of each business meeting. The URL would be provided no later than three days prior to the meeting and would be posted on the Energy Commission's website. This option would not require the Energy Commission to post back-up information on its website, nor would it distribute the URL and back-up information to a listserv.*

LADWP Response:

LADWP does not support additional reporting requirements for “any investment in a non-EPS compliant plant” being deliberated in a “public meeting of the POU” as those terms require further clarification. First, the EPS regulation does not include a definition of any “investment” and therefore this terminology is too broad to be considered useful. The term used in the regulation for “covered procurement” is defined in § 2901 Definitions (d) as follows:

- “(d) “Covered procurement” means:*
- (1) A new ownership investment in a baseload generation powerplant, or*
 - (2) A new or renewed contract commitment, including a lease, for the procurement of electricity with a term of five years or greater by a local publicly owned electric utility with:*
 - (A) a baseload generation powerplant, unless the powerplant is deemed compliant, or*
 - (B) any generating units added to a deemed-compliant baseload generation powerplant that combined result in an increase of 50 MW or more to the powerplant’s rated capacity.”*

The term “new ownership investment” as used within the context of a covered procurement is defined in the regulation under § 2901 Definitions (j) as follows:

- “(j) “New ownership investment” means:*
- (1) Any investments in construction of a new powerplant;*

- (2) The acquisition of a new or additional ownership interest in an existing non-deemed compliant powerplant previously owned by others;*
- (3) Any investment in generating units added to a deemed-compliant powerplant, if such generating units result in an increase of 50 MW or more to the powerplant's rated capacity; or*
- (4) Any investment in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility that:
 - (A) is designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance;*
 - (B) results in an increase in the rated capacity of the powerplant, not including routine maintenance; or*
 - (C) is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant."**

A new term "investment" would suggest a broader scope that goes beyond the definition of "new ownership investment." Without a clear understanding of how that term would be defined in the regulation in a manner that is consistent, such reporting could extend to expenditures for routine maintenance in a non-EPS compliant facility that are not the target of the EPS.

Second, the term "public meeting of a POU" is also too broad and extends well beyond a POU governing body's vote related to a specific covered procurement involving a new ownership investment or new or renewed contract commitment. For example, LADWP management and the Board of Water and Power Commissioners have and continue to hold public meetings related to the development and updating of LADWP's Integrated Resource Plan (IRP). These public meetings and workshops cover a variety of topics associated with long-term resource planning, including LADWP's overall coal transition strategy and the various alternatives being evaluated and modeled. While these are "public meetings of a POU" involving actions to divest of non-

EPS compliant resources, they should not result in the unintended consequence of a violation for failure to report such meetings under section 2908 of the regulations.

b. Option 2 – Notification for Major Investments or Investments for Environmental or Other Regulatory Requirements

Option 2: *This option would be an expansion of the existing public notice requirements for covered procurements (in section 2908 of the regulations) to include "major" investments or "investments to meet environmental or other regulatory requirements." This would require a POU to provide a URL that links to the agenda of the public meeting at which investments are being deliberated and the back-up information related to the investments' compliance with EPS. The URL would be provided at least three days prior to the meeting and would require the Energy Commission to post the URL and back-up information on the Energy Commission's website and notify the listserv.*

LADWP Response:

LADWP does not support additional reporting requirements beyond covered procurements for “major investments” or “investments to meet environmental or other regulatory requirements,” as those terms are too broad and efforts to define them will be very difficult, if not impossible.

First, the term “covered procurement” as currently defined in the regulation makes clear (as noted in the previous comment above) that it involves new ownership investments or a new or renewed contract commitment of five or more years in baseload generation. This term clearly delineates activities that are subject to the EPS versus those that are not, and thus applies the public notification and compliance filing requirement only to relevant activities. The approach under Option 2 would expand notification and filing requirements to activities that do not constitute a covered procurement.

Taken a step further, per section 2910 (Compliance Review), CEC would have to review all POU compliance filings for non-EPS compliant facilities and make a determination of whether each major investment or expenditure for regulatory

compliance is in compliance with the EPS, even if it does not meet the definition of a covered procurement, which is the basis for applicability of the EPS regulation per section 2900 (Scope).

If any such type of expenditure necessitated closer review under the current EPS regulation, the CEC would implement such case-by-case review per section 2911 (Compliance Investigation), section 2912 (Case-by-Case Review for Reliability or Financial Exemptions), or section 2913 (Case-by-Case Review for Pre-Existing Multi-Party Commitments).

Second, LADWP is not aware of a definitive power industry standard commonly used to determine when an activity exceeds the threshold for a “minor” investment and becomes a “major” investment. Such delineation is subjective and arbitrary, and thus not reasonable to enforce nor feasible to follow. More importantly, especially for pre-existing long-term financial commitments to non-EPS compliant facilities, the CEC should primarily consider whether an expenditure constitutes a financial obligation required under the terms of a contract or ownership agreement that cannot be avoided. As previously stated, the EPS regulation, section 2913 already allows for CEC to conduct a case-by-case review for pre-existing multi-party commitments. This review process is the more appropriate vehicle to address the specific concerns raised by the Petitioners regarding large expenditures, rather than imposing additional reporting requirements on POU's for all expenditures, whether they are considered a “major” investment or not.

In this rulemaking, the Petitioners have not presented evidence of any inappropriate expenditure associated with Navajo or IPP that would violate the EPS regulation. Using the term “investment” broadly to cover even obligatory expenditures

such as those to cover routine maintenance and daily operations incorrectly suggests that a POU has discretion to not cover its share of such expenditures involving a non-EPS compliant facility. This is not the case during the period in which the long-term financial commitment is in place.⁴

Third, the term “investments to meet environmental or other regulatory requirements” is also too broad. Electric power generation facilities are subject to a multitude of environmental and regulatory requirements involving not just air quality and GHG emissions, but CEQA/NEPA, toxic and hazardous substances, water and wastewater, industrial hygiene and worker safety, not to mention regulatory requirements associated with the continued safe and reliable operation of the facility. Compliance with these requirements are designed and intended to comply with the law, and not for the specific and sole purpose of extending the life of a plant by five or more years. Unless it can be clearly demonstrated that such expenditure is specifically designed and intended to extend the life of the plant or extends a financial commitment to that plant, it should not automatically be considered a covered procurement subject to CEC public notification requirements in section 2908 and compliance filing requirements under section 2909.

c. Option 3 – Annual Filing for Future Major Investments and/or Investments to Comply with Environmental or Other Regulatory Requirements

Option 3: *This option would have a POU provide an annual filing that prospectively identifies "major" investments in non-EPS compliant facilities and/or "investments to meet environmental or other regulatory requirements," for the upcoming year. The filing would contain a description of the investment and what it is intended to do, the costs,*

⁴ LADWP and other California participants are contractually committed to the Intermountain Power Project until June 15, 2027. LADWP is working with the other IPP participants to establish the contractual structure to enable a conversion from coal to an EPS-compliant fuel. LADWP is contractually committed to Navajo until December 31, 2019. Significant progress has been made toward an early exit from that project by 2015.

and an indication of when a decision to move forward is expected. This annual filing would supplement the existing filing requirement under section 2909 of the regulations.

LADWP Response:

LADWP does not support a prospective filing requirement identifying “major” investments or “investments to meet environmental or other regulatory requirements” as this is very broad and exceeds the CEC’s statutory authority under SB 1368. Nowhere in the statute does the Legislature give the CEC the authority to require such extensive prospective reporting that, if broadly interpreted, could conceivably cover any proposed expenditure, not just covered procurements.

Additionally, LADWP would refer CEC to its Annual Budget and IRP as the official documents that encompass LADWP’s prospective expenditures and strategic resource plans associated with its generation resources, including those that are considered non-EPS compliant. LADWP’s long-term resource planning activities make specific assumptions about rate setting to support planned resource procurement. The ability of LADWP to implement its IRP requires that its rate structure is able to support it.

Requiring a separate annual filing is not just administratively burdensome for utility and CEC staff, but it inadvertently suggests that any operational expenditures associated with a utility’s pre-existing long-term financial commitments to non-EPS compliant facilities are subject to CEC scrutiny and potential enforcement, even if those financial commitments do not legally expire for several more years, or are related to non-baseload generation facilities. Prospective reporting to CEC on planned activities is not an accurate means to determine if LADWP enters into a covered procurement subject to the EPS regulation. At such time that LADWP enters into a covered procurement, notification and compliance filing requirements will be triggered under the existing regulation.

d. Option 4 – Annual Filing for Investments From the Previous Year

Option 4: *This option would entail a POU providing an annual filing (similar to what the CPUC requires of LSEs) that contains a description of the investment, what it was intended to do and the costs, along with an attestation that the financial commitments entered into during the prior calendar year are in compliance with the EPS. The investments reported to the Energy Commission could be defined as a "covered procurement" or could also include "major" investments or "investments to meet environmental or other regulatory requirements." This annual filing would replace the existing filing requirement.*

LADWP Response:

Although LADWP does not see the need for additional compliance filings, it would not oppose an annual retrospective attestation filing comparable to what is filed by LSEs under the CPUC EPS regulation for “covered procurements,” as currently defined in regulation. LADWP does not support the use of the term “investment” in lieu of “covered procurement” for a compliance filing, as this would not be consistent with the CPUC EPS regulation. Additionally, since the CEC is not the governing body over POU long-term procurement plans in the same manner that the CPUC has authority over LSE long-term procurement plans, such attestation should continue to recognize the role of the local POU governing body in approving such plans and power purchase agreements.

III. QUESTIONS FOR RESPONSE

- 1) *If the Energy Commission were to establish a requirement for "major" investments, how should the term be defined? By a dollar amount? By some other criteria?*

LADWP Response:

As indicated in LADWP’s response to Option 2 and Option 3 above, it does not support the use of the term “investments.” Defining “major” investments is problematic as there is no definitive industry standard or threshold that is widely accepted. LADWP opposes the monetary threshold of \$50,000, as recommended by the Petitioners, as

this is arbitrary, unworkable, and would capture expenditures that are not covered procurements.

2) *If the Energy Commission were to establish a requirement for "investments to meet environmental or other regulatory requirements," is there any further definition of this term necessary?*

LADWP Response:

As indicated in LADWP's response to Option 2 and Option 3 above, it does not support an additional requirement for reporting investments to meet environmental or other regulatory requirements. POUs should only be reporting covered procurements, not just any expenditure. At existing non-EPS compliant baseload generation plants, this is further restricted to a "new ownership investment" as used in the definition of a covered procurement, and as currently defined in the EPS regulation in section 2901(j). As such, investments related to "environmental or other regulatory requirements" should be subject to the EPS reporting requirements only if those new ownership investments can be demonstrated to meet section 2901(j)(4) as follows:

- A) is designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance;*
- B) results in an increase in the rated capacity of the powerplant, not including routine maintenance; or*
- C) is designed and intended to convert a non-baseload generation power plant to a baseload generation power plant.*

If an investment fails to meet the definition of a covered procurement, it should not be subject to EPS notification or compliance filing requirements.

3) *Would the two terms above capture the kinds of investments that are of most concern to parties? If not, is there some other category, short of "all" investments, that would be needed to cover such investments?*

LADWP Response:

Neither “major” investments nor “investments to meet environmental or other regulatory requirements” should be of concern to parties, at least in connection with the EPS Regulation or SB 1368. The only type of investments that should be of concern to parties in connection with the EPS Regulation and SB 1368 are covered procurements as defined in the EPS Regulation. The Commission should not attempt to identify categories of investments beyond covered procurements.

- 4) *Is an attestation that POU investments in non-EPS compliant plants made during the prior year comply with the EPS sufficient to ensure that these investments are consistent with SB 1368?*

LADWP Response:

As noted in LADWP’s response to Option 4 above, it does not oppose an annual attestation requirement for covered procurements as currently defined in the regulation. Such attestation is more than sufficient to ensure that POU covered procurements are consistent with SB 1368.

IV. OTHER ISSUES FOR COMMENT

- 1) *Participating POUs should provide a brief status update on their activities related to investments to meet environmental and regulatory requirements for the non-compliant facilities they have an ownership interest in. This status update should be submitted in writing in advance of the workshop and parties should be prepared to discuss this issue at the workshop.*

LADWP Response:

Processes to replace coal generation from the IPP and Navajo stations have been initiated and are in progress. At Navajo, LADWP is implementing plans to divest from the project by the end of 2015, which is four years ahead of the date required by SB 1368. LADWP has entered into exclusive negotiations on a divestiture of the asset to be completed in 2013 with commitments to continue taking its share through the end

of 2015. To replace the resource, LADWP has already entered into two significant long-term solar energy agreements (providing approximately 450 megawatts (MW) of renewable generation). LADWP has also issued an RFP for natural gas combined-cycle generation to similarly provide for replacement energy for that divestment. Seventeen proposals were received and LADWP has shortlisted four proposals for further due diligence.

At IPP, LADWP is working with the other participants to establish the contractual structure to enable a conversion from coal to an EPS-compliant fuel. For additional information, please see LADWP's 2012 Final Power IRP, December 3, 2012, available at: www.ladwp.com/irpdocs. Because there are many participants in this project that are not subject to SB 1368 and LADWP does not have an ownership right, just contractual rights, the process for transition is more complex. The utilities have spent billions of dollars at IPP and transitioning the assets to help meet the RPS obligations and provide compliant power is a good solution for the 23 Utah municipal owners, the six Utah cooperatives and one Utah investor-owned utility as well as the ratepayers of the six California POU participants. LADWP, as Operating Agent responsible for facilitating this complex process, has identified eight steps in the transition of IPP. The first was to amend the Utah State Law to allow non-coal power production at IPP. This step is now completed. The second step is to amend the Intermountain Power Agency (IPA) Organization Agreement. This step has been completed and ratified by the IPA Board and is currently being ratified by the Utah Municipal Owners. The next step will be to amend the existing Power Sales Contracts. This step will be the first step for the California POU participants.

2) *Comments made earlier in the proceeding suggest that the Energy Commission should make a change to section 2913 of the regulations regarding the case-by-case review of pre-existing multi-party commitments. Specifically, comments propose that the term "investment" replace the term "covered procurement." The Energy Commission welcomes written and oral comments on this proposal.*

LADWP Response:

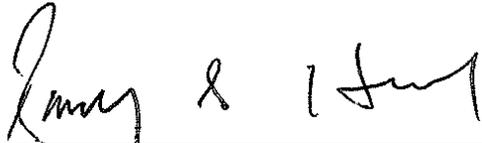
LADWP does not oppose the use of the term “investment” in section 2913 of the regulations in lieu of the term “covered procurement,” so long as the term “investment” is not broadly applied across the entire regulation, but rather narrowly construed as pertaining only to section 2913.

V. CONCLUSION

The LADWP appreciates the opportunity to submit this latest round of comments on a rulemaking that has spanned over a year in duration and has required extensive discussion and sharing of information. Through that process, LADWP and the other POU's have clearly demonstrated that the EPS regulations have been followed and therefore have worked as originally intended by the California Legislature. As such, LADWP strongly encourages the Energy Commission to not modify the EPS as requested by the Petitioners. LADWP has been transparent and forward 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 GHG emissions. LADWP 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 LADWP has embarked upon without further delay.

Dated: January 24, 2012

Respectfully submitted,

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