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

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

NORTHERN CALIFORNIA POWER AGENCY RESPONSE TO DECEMBER 20, 2012 WORKSHOP NOTICE

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The Northern California Power Agency[1] (NCPA) offers the following comments to the California Energy Commission (CEC or Commission) in response to the December 20, 2012 *Notice of Rulemaking Workshop* (Workshop Notice) issued by Chairman Weisenmiller, regarding potential revisions to the Emissions Performance Standard (EPS) Regulation.[2]

I. Introduction

In the Workshop Notice, the Commission asks for comments from stakeholders on whether to establish a filing or notification requirement for all publicly owned utility (POU) investments in non-EPS compliant facilities,[3] and if the Commission were to establish a requirement for "major" investments or "investments to meet environmental or other regulatory requirements," whether any further definition of those terms would be necessary.[4] As more fully

[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.

[2] 20 California Code of Regulations ("CCR") §§2900-2913.

[3] Workshop Notice, pp. 3-4.

[4] Workshop Notice, p. 5.

discussed herein, the Commission should not expand the scope of the Regulation, nor adopt notice or filing requirement for all investments in non-EPS compliant facilities, nor should additional terms and definitions be added to the EPS Regulation. As has been repeatedly demonstrated by filings in this proceeding, the information already provided to the CEC and to the public through existing California law is adequate to meet the requirements of the EPS Regulation and objectives of SB 1368. Coupled with the fact that no party has demonstrated a need or use for additional reports, the reporting and notice requirements set forth in the Regulation should remain unchanged. The Commission should refrain from including references to "major" investments or "investments to meet environmental or other regulatory requirements" in the Regulation, as new and additional definitions are not necessary. Furthermore, it is important to note that no party has demonstrated that the current requirements set forth in the EPS Regulation – or the current scope of the Regulation itself – are inadequate to meet the objectives the EPS. Neither has there been a demonstration that any POU has violated the Regulation at any time since it was adopted or how additional POU filings with the Commission will further the intent of the legislation. Absent such a finding, the EPS Regulation should not be amended.[5]

II. THERE SHOULD BE NO FILING OR NOTIFICATION REQUIREMENT FOR ALL POU INVESTMENTS IN NON-EPS COMPLIANT FACILITIES.

In the Workshop Notice, the Commission proposed four possible options for filing and notification requirements for non-EPS compliant facilities.[6] While it is clear that staff has put considerable effort into developing alternatives to the proposal set forth by NRDC and Sierra Club, three of the four alternatives include requirements that are neither warranted, nor

[5] NCPA also supports the M-S-R Public Power Agency Reply To December 20 Workshop Notice, dated January 22, 2013.

[6] Workshop Notice, pp. 3-4.

necessary. NCPA appreciates staff's presentation of options as alternates to the vague and potentially onerous proposals that were included in previous filings. If the Commission makes a finding that it is necessary to go beyond the current scope of the existing regulation and require POUs to report all expenditures – and not just covered procurements –Option 1 would be the least intrusive, with necessary modifications needed to take into account for all aspects of the Ralph M. Brown Act.

A. If the EPS Regulation is Revised to Require Reporting and Notification, Only Option 1 Presents a Framework that Would Not Involve Extensive New Administrative Burdens on Public Agencies.

Option 1 would require the POU to provide a URL linked to the agenda for the public meeting 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. This notification requirement, while imposing additional administrative burdens on the public agencies, minimizes those burdens by requiring only a notification and link to the POU's already existing reports and notices. Only Option 1 avoids the creation of a duplicate reporting structure and avoids putting the CEC in the position of collecting additional reports and filings, without an articulated or demonstrated need for those documents.

That said, Option 1, while apparently designed to limit the administrative burden of these proposals, has significant problems associated with its implementation. Option 1 is not consistent with the provisions of California's public meeting laws, and would expand the current scope of the EPS Regulation. As proposed, Option 1 would require the POU to provide the URL no later than three days prior to the meeting at which the POU would deliberate on any

investment in a non-EPS compliant facility. While consistent with provisions of the Ralph M. Brown Act, which requires public agencies to provide notice of their meetings, the state law also authorizes special meetings to be called with 24-hours notice.[7] Accordingly, Option 1 should be modified to ensure that in instances where meetings are called under these provisions, the notice to the Commission also be subject to the 24-hour requirement.

Option 1 also references notification of a "public meeting of the POU at which *any investment* in a non-EPS compliant plant is being deliberated." The EPS Regulation does not define the term "investment." Indeed, the only reference to investments is to "new ownership investments," which are used to define "covered procurements." Accordingly, the reference to the broader term investments in the context of any provisions of the EPS Regulation is problematic. The Scope of the EPS Regulation is intended to address only covered procurements, and as such, the definitions are centered around defining – to the greatest extent possible – those transactions. Before a notification requirement is imposed, the term investment must be defined in a manner that does not require each and every transaction associated with a non-EPS compliant facility to be included.

B. Option 2 Creates Ambiguous Mandates and Would Require Defining Additional Terms in the Regulation.

Option 2 should not be adopted, as it is ambiguous in its reference to "back-up information related to the investments' compliance with EPS" and additional terms that would need to be defined. It is entirely unclear what is envisioned in the reference to back-up information related to compliance. The Regulation applies to covered procurements, and only procurements that meet the definition set forth in the Regulation would be deemed covered procurements. Absent a finding that something is a covered procurement, there is no further

[7] California Government Code § 54956.

action needed to comply with the EPS. Furthermore, as more fully explained below, Option 2 is problematic in its reference to “major” investments or "investments to meet environmental or other regulatory requirements." While posting a URL and notice the CEC’s listserve may seem like simple enough transactions, the upfront determination of whether “investments” fall into one of these newly introduced terms will create unnecessary challenges and unneeded confusion for facility operations.

C. Options 3 and 4 Would Impose Significant New Filing Requirements in the Absence of a Demonstrated Need for Such Reports.

NCPA is very concerned with the breadth of Options 3 and 4.[8] Both would impose significant filing requirements on POUs. Both would also involve substantial changes to both the definitions and scope of the current EPS Regulation. Options 3 and 4 are also contrary to the current efforts at the Legislature and Governor’s office to reduce the number of unnecessary reports and filings submitted to government agencies. Under both options, the POUs would be required to submit an annual filing to the CEC, yet the record and proposal are devoid of what the CEC would do with the additional report or how it would be addressed by the agency. In the fact of ever growing pressure to reduce administrative costs and unnecessary reports and filings, it should be incumbent upon those that support such a proposal to put forth a finding regarding the need for this additional filing, as well as the intended use for the filing. Furthermore, Option 4’s requirement of an annual filing requirement that is designed to be similar to that which the investor-owned utilities provide the CPUC is not analogous to the POUs under the Regulation. The POUs’ “filings” in this regard are to their local governing bodies. Additional reporting to the CEC, absent an articulated use of the report or demonstrated need, should be avoided.

[8] Workshop Notice, p. 4.

II. THE COMMISSION SHOULD NOT ESTABLISH REQUIREMENTS FOR "MAJOR" INVESTMENTS OR "INVESTMENTS TO MEET ENVIRONMENTAL OR OTHER REGULATORY REQUIREMENTS."

The Regulation should not be revised in a manner that adopts definitions for "major" investments or "investments to meet environmental or other regulatory requirements." Each of these terms would need to be defined in the Regulation in order to avoid ambiguity or confusion, and both terms could be defined in various ways. As parties explained in comments previously filed in this proceeding, additional definitions are neither warranted nor necessary. Electric generation facility operations are not defined by such arbitrary delineations. Indeed, a single transaction (or expenditure) can be conducted for several differing reasons or under various classifications. The categorization of the expenditures should be determined by the facility operations and regular utility practices alone. Furthermore, as a practical matter, all facility operators are bound to operate the plants in compliance with all applicable laws and regulations. Accordingly, the mere inclusion of such a requirement would render all transactions in violation of the EPS. Such an outcome should be avoided.

III. CONCLUSION

There are no sound public policy reasons to expand the scope of the Regulation or the reporting and filings requirements for the EPS. There has been no demonstration that that the well-established laws governing public access to information are inadequate to accommodate the needs of those interested in this particular issue, nor to meet the intent of SB 1368. As parties have noted in previous filings in this proceeding, requiring the submission of additional reports to meet specific interests is not in the best interest of public agencies, and creates a poor precedent. Furthermore, as NCPA and other parties have also noted, an ever expanding "reporting" requirement results in significant practical and financial implications for POUs, as any additional requirements would increase compliance costs for public agencies already sharing

in the State's financial hardships. Furthermore, the submission of extensive reports, such as those contemplated under Options 3 and 4 would create even more administrative requirements on the CEC itself relative to review and analysis of such reports, and all without a demonstrated need. There is no merit in burdening either the POUs or the Commission with additional reporting requirements and duplicating notices regarding the availability of information.

NCPA appreciates the Commission's efforts to provide alternatives that temper the expansive reporting and filing proposals proffered by NRDC and Sierra Club. However, each of the Options set forth in the Workshop Notice would increase the scope of the EPS Regulation, as well as the administrative burdens placed on both the POUs and the CEC, and all without a demonstration of their need or potential uses. Accordingly, NCPA urges the Commission to find that notice and filing requirements for all POU investments in non-EPS compliant facilities are not necessary, and refrain from revising the EPS Regulation to include not only new reporting and filing requirements, but additional definitions, as well.

Dated: January 25, 2013

Respectfully submitted,

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