

INITIAL STATEMENT OF REASONS**Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard for Baseload Generation of Local Publicly Owned Electric Utilities**

California Energy Commission
Docket No. 12-OIR-1
May 2014

I. STATEMENT OF SPECIFIC PURPOSE AND RATIONALE (Government Code §11346.2(b)(1))

The California Energy Commission (“Commission”) proposes to modify existing regulations establishing a greenhouse gases emission performance standard for baseload generation of local publicly owned electric utilities. Senate Bill 1368 (Stats. 2000, ch. 598) established sections 8340 and 8341 of the Public Utilities Code, requiring the California Energy Commission (Commission), in consultation with the California Public Utilities Commission (CPUC) and the California Air Resources Board (CARB), to establish a greenhouse gases emission performance standard (EPS) and implementing regulations for all long-term baseload generation commitments made by local publicly owned electric utilities. The Commission adopted these regulations in 2007. On January 12, 2012, in response to a petition to initiate a rulemaking, the Commission adopted an Order Instituting Rulemaking to initiate a rulemaking proceeding to consider possible modifications to these regulations. After soliciting the input of all stakeholders and conducting several public workshops, the Commission is proposing the following modifications to its regulations. The Administrative Procedures Act requires an agency proposing modifications to its regulations to identify the problem it is attempting to address with the proposed changes. The overall problem the Commission intends to address with these regulations is to ensure better notification of upcoming decisions by POUs to invest in high-GHG emitting power plants to accommodate better public participation in such decisions.

2901(i). Definitions

Amending citation to the definition of local publicly owned electric utility in the Public Utilities Code due to a relocation of that definition within the code.

2908. Public Notice

Adding a requirement that the Commission maintain a publicly available list of persons interested in receiving notice of certain POU investments. Augmenting the noticing requirement by expanding what needs to be noticed to include investments of \$2.5 million or more at a non-EPS compliant facility to meet environmental regulatory requirements. Additionally, adding a requirement that the POUs provide notice directly to those on the list

maintained by the Commission and provide them with an electronic copy of any information related to the subject investment that has been distributed to the POU's governing body, or a URL that links to such information. Adding a requirement that POU's file an annual report detailing certain investments it anticipates making in the coming year, as well as any investments made in the previous year that had not been identified in the previous annual report. This filing is required to be made within 10 days of approval of the annual budget. Adding an exemption to this requirement for POU's that have entered into a binding agreement to divest from a non-EPS compliant facility within the next 5 years. Clarifying that the additional noticing requirement for investments of \$2.5 million or more at a non-EPS compliant facility made to meet environmental regulatory requirements does not imply that these investments are then subject to the compliance filing requirement under section 2909 or compliance review under section 2910.

The Energy Commission determined that \$2.5 million was an appropriate threshold for reporting by publicly owned electric utilities on investments being made in non-EPS compliant facilities. It represents a small proportion of the annual capital expenditures made at these facilities, while at the same time capturing investments large enough to warrant additional public scrutiny, keeping in mind that the purpose SB 1368 was to limit the risk from financial investments in such facilities. The original POU proposal of \$5 million was determined to be so high that it would not capture investments that could genuinely be of concern. The suggestion by environmental groups that it be set at between \$50,000 and \$250,000 was determined to have the opposite effect and capture more investments than necessary, while potentially being overly burdensome.

The Energy Commission determined that least burdensome reporting requirement would be one that was based on the annual capital expenditure plans already developed by POU's for non-EPS compliant facilities. Additionally, the CPUC requires energy service providers under its jurisdiction to file annual reports indicating compliance with SB 1368. Therefore, the Energy Commission believes that an annual reporting requirement for POU's is a proper interval of time to provide interested parties the additional time needed to examine and consider investments in non-EPS compliant facilities, so that when they receive notification that an actual investment decision has been proposed for approval, they are prepared to more meaningfully participate in POU deliberations.

The Energy Commission determined that requiring the filing to occur within 10 days of the POU's budget decision was a reasonable amount of time to allow a POU to put together the filing but also afforded fairly quick notification for those interested in the budget decisions. Additionally, 10 days is consistent with the amount of time the Energy Commission provides itself for noticing public workshops and hearings.

The Energy Commission chose 5 years as an appropriate threshold for exemption from the annual noticing requirement because it is the same amount of time used to define a long-term financial commitment under SB 1368. Pursuant to statute, any investment of less than 5 years is exempt from the emission performance standard. Therefore, it is appropriate to remove the obligation of filing an annual report for those facilities that are the subject of a firm commitment for divestment within that timeframe.

The specific purpose of these changes is to provide better notice of upcoming decisions by POUs regarding investment in a non-EPS compliant power plant. This change is reasonably necessary to carry out the purpose of SB 1368 because it enables better public participation by interested persons, thus allowing them to track POU compliance with SB 1368. The benefit of these changes is to increase the openness and transparency in government as these decisions are being made and to ensure compliance with SB 1368 and ensure that long-term investments in power plants that do not meet an emission performance standard of 1,100 CO₂ per megawatt hour does not occur unless there is a specific exemption. Restricting these types of investments benefits the environment of California and the public health and welfare of its citizens by ultimately reducing the amount of carbon dioxide and other greenhouse gases that are emitted into the air and contribute to climate change.

2913. Case-by-Case Review for Pre-existing Multi-Party Commitments

Clarifying that POUs can petition for an exemption from application of the emission performance standard from the Commission for any investment required under the terms of a multi-party commitment that was in existence as of January 1, 2007 and is not required to make a determination first that such investment constitutes a covered procurement.

The specific purpose of this change is to enable POUs to ask the Commission for an exemption without having to go through a process of determining whether the investments are indeed covered procurements. Whether or not a POU qualifies for an exemption due to a pre-existing contract is not dependent on whether the contemplated investment is a covered procurement. The key determinant is whether or not the POU is contractually required to make the investment. Therefore, allowing POUs to petition for an exemption without conceding that an investment is a covered procurement would not change the test of whether the POU in fact qualifies for the exemption. POUs have requested this broadening of ability to petition so that they could potentially avoid a long and drawn out process to determine whether an investment meets the definition of covered procurement in those situations where such a determination is mooted by the existence of a contractual obligation. This change is reasonably necessary to carry out the purpose of SB 1368 because it still gives the Commission the ability to carefully scrutinize whether investments are in fact contractually required without unduly burdening POUs in their efforts to obtain such a determination. The benefit of this change is to enable flexibility in reviewing POU compliance with SB 1368 while still ensuring that the overall environmental and public health and safety benefits of the statute are obtained.

II. DOCUMENTS AND REPORTS RELIED UPON (Government Code §11346.2(b)(3))

The Commission has relied upon the following technical, theoretical, or empirical studies, reports, or similar documents in drafting the proposed regulations:

Natural Resources Defense Council and Sierra Club, *Joint Petition of the Natural*

Resources Defense Council and the Sierra Club for Initiation of a Rulemaking Regarding California's Emission Performance Standard, November 14, 2011.

California Energy Commission, *Supporting Material for the Fiscal Impact Statement for Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard for Baseload Generation of Local Publicly Owned Electric Utilities*, April 24, 2014.

California Energy Commission, *Tentative Conclusions and Request for Additional Information*, July 9, 2012.

California Energy Commission, *Final Conclusions*, March 19, 2014.

III. CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS (Government Code §11346.2(b)(4))

Other than minor variations on the proposed changes, the Commission has not identified any reasonable alternatives to the regulatory action proposed, nor have any alternatives been proposed that would be less burdensome and equally effective in achieving the purposes of the regulations in a manner that achieves the purposes of the statute being implemented.

IV. SPECIFIC TECHNOLOGIES OR EQUIPMENT (Government Code §11346.2(b)(1))

The proposed regulations do not mandate the use of specific technologies or equipment or prescribe specific actions or procedures, except for the noticing provisions, therefore, a performance standard was not considered.

V. DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Government Code §11346.2(b)(6))

No federal regulations currently address limiting long-term investments in high-GHG emitting power plants; therefore, the proposed modifications do not unnecessarily duplicate or conflict with federal regulations. The U.S. Environmental Protection Agency (EPA) has initiated a phased process to update and add new rules setting GHG standards for new, modified, and existing power plants under the Clean Air Act. U. S. EPA anticipates the rule for new power plants, issued for comment on January 8, 2014, would go into effect in the summer of 2014. States would then implement this federal rule for new power plants through their new source air permit reviews. Under the second phase, EPA is working with states to develop GHG emission reduction strategies for existing power plants that would be implemented by states, which the EPA plans to release by June 1, 2014. Because the new federal GHG rules are applied to new plants as part of the permitting of facilities, or when existing plants are modified, they do not expressly limit long-term investments by POUs as called for under SB 1368.

Consequently, the EPS does not directly duplicate or conflict with federal regulations.

VI. ECONOMIC IMPACT ASSESSMENT (Government Code §11346.3(b))

Purpose:

The Energy Commission proposes to amend California Code of Regulations sections 2901, 2908, and 2913 to provide minor clarifications, expand the current noticing requirement to include expenditures of \$2.5 million or more made to comply with environmental requirements, and add an additional annual reporting requirement. The purpose of these changes is to provide more transparent and timely notice of upcoming decisions by POUs regarding investment in a non-EPS compliant power plant.

Because the proposed changes are so small and would require only a minimal amount of extra work above what is required by existing jobs, the proposed regulations would not affect the creation or elimination of jobs within California, the creation of new businesses within California, the elimination of existing businesses within California, or the expansion of businesses currently doing business within the state. As discussed above, the proposed regulations provide additional transparency to the implementation of SB 1368 and thus help to protect the health and welfare of California residents and the state's environment by limiting long-term investments in high greenhouse gas-emitting power plants.

Creation or Elimination of Jobs within the State of California

The regulations are designed to provide more notice of certain investment decisions made by POUs. Because the proposed changes to the regulations are so small and would require only a minimal amount of extra work above what is required by existing jobs, the proposed regulations would not affect the creation or elimination of jobs within California.

In aggregate, the changes to the regulations are anticipated to increase the work required from the largest three POUs to no more than 0.20 person-years of non-technical staff. For the Southern California Public Power Authority and the Northern California Power Agency, the Energy Commission estimates that the proposed changes to the EPS regulations are anticipated to increase costs to no more than 0.15 person-years of non-technical staff, resulting in a net increase of only .05 person years per entity.

For the remaining local publicly owned electric utilities, the Energy Commission anticipates the proposed changes to the EPS regulation would result in an increase of 0.35 person years for all remaining POUs combined. The proposed changes to the regulations would result in an additional 0.6 person year, or a maximum anticipated increase of \$75,000 for the proposed changes.

These activities are currently being performed by existing staff and the

regulations only add a minor amount of work. Therefore, the Energy Commission believes that this minor increase can be absorbed by current workers.

Creation of New or Elimination of Existing Businesses within the State of California

The regulations are designed to provide some minor additional notice of certain investment decisions made by POUs. Because the proposed changes to the regulations are so small and would require only a minimal amount of extra work above what is currently being performed, no new businesses in California will be created or existing business eliminated.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

The regulations are designed to provide some minor additional notice of certain investment decisions made by POUs. Because the proposed changes to the regulations are so small and would require only a minimal amount of extra work above what is currently being performed, no existing businesses in California will be expanded or eliminated.

Benefits of the Regulations

The regulations are designed to provide some minor additional notice of certain investment decisions made by POUs. The benefit of these changes is to increase the openness and transparency in government as these decisions are being made and to ensure compliance with SB 1368. They will also ensure that long-term investments in power plants that do not meet an emission performance standard of 1,100 CO₂ per megawatt hour do not occur unless there is a specific exemption. Restricting these types of investments benefits the environment of California and the public health and welfare of its citizens by ultimately reducing the amount of carbon dioxide and other greenhouse gases that are emitted into the air and contribute to climate change. Allowing for greater transparency helps ensure that the requirements of SB 1368 are being met.

VII. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS

The regulations are designed to provide more notice of certain investment decisions made by POUs. Only POUs are affected by, and required to comply with, the proposed changes. POUs are considered public agencies, not businesses. The increased noticing requirements will not have any carryover effect or impact on businesses. Therefore, the proposed regulations will have no significant adverse economic impact affecting business.