

Department of Water and Power

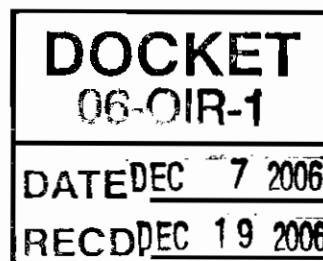


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December 7, 2006

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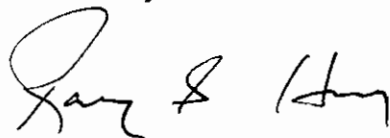
To Whom It May Concern:

Subject: Docket No. 06-OIR-1

Enclosed herewith are preliminary comments submitted in response to Proposed Adoption of Regulations Establishing a Greenhouse Gases Emission Performance Standard for Baseload Generation of Local Publicly Owned Electric Utilities (dated October 30, 2006). These comments were also submitted electronically at docket@energy.state.ca.us on December 7, 2006.

If any additional attention is required concerning this matter, please contact Oscar Alvarez at (213) 367-0677 or John Kerrigan at (213) 367-1286 of my staff.

Sincerely,



Randy S. Howard
Executive Assistant to the Chief Operating Officer – Power System

RS:vmd

c/enc: John Kerrigan
Oscar Alvarez

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In the Matter of:)
)
Proposed Adoption of Regulations)
Establishing a Greenhouse Gases)
Emissions Performance Standard)
For Baseload Generation of Local)
Publicly Owned Electric Utilities)
)

Preliminary Comments of the
Los Angeles Department of Water and Power
on the Implementation of SB 1368 Emission Performance Standard

1. The Emissions Performance Standard Should Be Adopted In a Manner that Complements and Does Not Conflict with Efforts to Increase Renewable Resources Under a Renewable Portfolio Standard Program

- 1 -

Adopting an EPS that is in harmony with efforts to increase renewable resources should be of utmost priority for the State. Like other electric utilities, the LADWP is aggressively pursuing renewable resources either in the form of power purchase agreements (PPA) or direct ownership in renewable energy projects. LADWP recommends that such new financial commitments involving associated eligible renewables under an adopted RPS program be deemed in compliance with the emissions performance standard (EPS).

Applying a standard that does not allow this may hamper efforts to increase renewables if intermittent renewables (including solar and wind) are deemed non-compliant when firmed for system reliability or to meet mandatory reliability standards with other baseload resources that may not meet the 1,100 lbs/MWh threshold.

2. The Emissions Performance Standard Should Apply to New Ownership Investment and Not Existing Ownership Investments

SB 1368 prohibits load-serving entities, as defined in the statute, and local-publicly owned electric utilities from entering into a long-term financial commitment unless baseload generation complies with a greenhouse gases EPS. LADWP is aware that the CPUC, the lead agency responsible for implementing SB 1368 for Investor-Owned Utilities and other Load Serving Entities, is proposing an 1,100 lbs/MWh EPS for any long-term financial commitments in baseload generation. LADWP is currently reviewing the merits of the CPUC's proposed EPS threshold and will provide comments in a subsequent letter.

Section 2 of SB 1368 defines long-term financial commitment as “either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation.” Baseload generation is then defined as “electricity generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.”

As specifically stated in the statute, “long-term financial commitment” applies to new ownership investment and thus, LADWP believes such commitment does not apply to

existing ownership investment in baseload generation. On-going financial commitments are necessary throughout the life of the plant to maintain it in reliable, safe, and efficient operating condition.

If an EPS of 1,100 lbs/MWh is applied to existing ownership investments, approximately 1,847 MW of LADWP's existing in-basin natural gas capacity (Net Maximum Unit Capability) (see table below), could be in jeopardy. Presently, these units comprise twenty-five percent (25%) of the system 7,257 MW Net Maximum Unit Capability.

Generating Station	Unit(s)	Net Maximum Unit Capability
Scattergood	1, 2, 3	803MW
Haynes	1, 2	444MW
	5, 6	600MW
Total		1847MW

3. Baseload Generation Should be Defined Based on Actual or Projected Future Operating Capacity Factor of 60 percent and Not On Name Plate or Equivalent Permitted Capacity Factor

SB 1368 defines baseload generation as electricity generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. The LADWP recommends that this definition be further clarified in the EPS to take into consideration the actual and projected future operating profile of a generating unit, which may be significantly lower than the equivalent capacity factor identified on the permit to operate (maximum emissions limit) or name plate capacity factor (unit design). LADWP's intermediate and peaking capacity is provided by in-basin natural gas units that never reach 60 percent capacity factor under normal business operating conditions, and may only reach such levels in the future under extreme emergencies.

Steam Boilers - Scattergood Units 1, 2, and 3 and Haynes Units 1, 2, 5, and 6 are boilers with CO₂ emissions that would exceed the proposed EPS. Technically, they are permitted as baseload and therefore would be captured under the EPS. However,

Scattergood operated in 2005 at 15 percent CF and Haynes 1, 2, 5, and 6 operated between 4 and 22 percent, well below a 60 percent CF of baseload generation.

LADWP recognizes that SB 1368 defines a power plant as "a facility for the generation of electricity, and includes one or more generating units at the same location." This definition does not take into account power plants that have baseload units and intermediate and peaking units at the same site and, therefore, could result in capturing non-baseload units under the EPS. LADWP recommends that this definition be further clarified in the regulations to account for such arrangements by specifically applying the EPS to only baseload units at a power plant.

Combustion Turbines - Harbor Units 10, 11, 12, 13, 14 and Valley Unit 5 are combustion turbines that have CO₂ emissions that would exceed the proposed EPS. These units, which are dispatched as peakers, were permitted at an equivalent of 60 percent monthly CF by the South Coast Air Quality Management District. However, if the standard is set at 1,100 lbs/MWh at the *facility* level, the units mentioned above could be captured under the EPS even though they are operated at a CF of less than 2 percent. Valley Unit 5 operated at less than 1 percent in 2005.

4. The EPS Should Apply to Contracts for Procurement of Electricity Only and Should Not Be Applied to Other Types of Contracts Related to Baseload Generation

SB 1368 specifically includes in the definition of long-term financial commitment "a new or renewed contract with a term of five or more years, which includes procurement of baseload generation." LADWP recommends that this definition be further clarified in the regulations to apply only to contracts for procurement of electricity. There are various types of contracts that may constitute a long-term financial agreement related to baseload generation that are not related to procurement of electricity including the following: co-tenancy agreements, energy swap agreements, fuel contracts, fringe contracts, operating agreements, and wheeling contracts. Such contracts are not procurement of electricity and should be exempted from an EPS.

5. The Emissions Performance Standard Should Apply to New Cogeneration/Distributed Generation Units and Not to Existing Cogeneration/Distributed Generation Units

LADWP has some large cogeneration contracts coming up for renewal in which the customers will roll off special rates negotiated several years ago to new negotiated or standard cogeneration rates. The long-term financial planning associated with development of these existing cogeneration plants has been based on their ability to be self-sufficient and sell excess electricity to LADWP. Overall, there are over 30 cogeneration/distributed generation facilities with interconnection agreements to LADWP that constitute approximately 274 MW capacity (Name Plate). Some of these cogeneration facilities include large refineries and universities.

LADWP is obligated to accept the excess electricity from these cogeneration facilities and relies on having these cogeneration resources available to provide approximately 42 MW during peak periods. Renewal of the agreements should not be precluded under SB 1368 as these agreements are with existing generation facilities. If they were to become unavailable, LADWP would need to provide the shortfall from our own generating resources. LADWP recommends that the EPS be applied to new cogeneration facilities, since such new facilities will be required to meet Best Available Control Technology (BACT) requirements under New Source Review and would likely be able to meet the 1,100 lbs/MWh threshold.

6. Adoption of An Effective Emissions Performance Standard Should Serve the Intent of SB 1368 Without Jeopardizing the Opportunity for Meaningful Public Comment

SB 1368 requires that the CPUC adopt an EPS for load serving entities on or before February 1, 2007. The CEC must adopt an EPS that is consistent for POUs on or before June 30, 2007. In order to meet the June 30, 2007 deadline, the CEC must implement an unusually aggressive rulemaking schedule that is already impacting its ability to provide full consideration of issues different from load serving entities for POUs that remain vertically integrated.

It is critical that the Energy Commission adopt an effective EPS that serves the intent of the legislation while providing an opportunity for meaningful public comment. An effective EPS is one that also ensures that conflict is avoided with other State policies supporting renewable energy and cogeneration, and minimizes interference with local governments' ability to govern their electric utilities through decision-making activities, including but not limited to rate structures, contracting and resource planning. The LADWP recommends that the Energy Commission provide a more adequate rulemaking schedule to fully disclose and resolve such conflicts.

7. Establishing a Tiered Emissions Performance Standard May Provide an Opportunity for Meeting the Statutory Deadline While Minimizing Costs to Ratepayers and Ensuring System Reliability

SB 1368 does not preclude the Energy Commission from establishing a standard that is either phased in or tiered over time. If the deadline for establishing an EPS is inflexible, the LADWP recommends that the Energy Commission consider a tiered EPS that establishes a threshold at 1400 lbs/MWh initially and then ramps down. A one-size-fits-all standard cannot effectively meet the intent of the legislation to encourage new long-term financial commitments to zero- or low-carbon generating resources without having unintentional consequences if not planned properly. This phased or tiered approach is prudent and would accommodate a shift to cleaner generation resources while minimizing costs to ratepayers and ensuring system reliability by avoiding the shutdown of essential facilities in the near term.

8. The EPS Should Provide Self Certification for the Publicly Owned Utilities (POU's) Governing Boards

For LADWP, it is our governing board and City Council that set procurement policy and approve contracts subject to SB 1368. It is also these governing authorities responsibility to set electric rates. POUs are defined in Public Utilities Code Section 9604 as a municipality or municipal corporation furnishing electric service, a municipal utility district furnishing electric service, a public utility district furnishing electric service, an irrigation district furnishing electric service, or a joint powers authority that includes one of these agencies and owns generation or transmission or furnishes electric service

over its own or its member's electric distribution system. Therefore, POUs are municipalities; joint powers authorities or special districts.

Unlike for profit entities, the IOUs and energy service providers (ESP), over which the CPUC must ensure compliance with its EPS, POUs are public entities. Special districts are defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries".¹ As such, POU governing boards are responsible for approving electric supply plans and the rates that are required to cover the costs of those electric resources whether owned or purchased through contract.

Because governing boards are responsible for setting the policy for and/or approving POU procurement decisions, it is POU governing boards that should be the entities charged with ensuring compliance with the requirements of SB 1368.

At the present time, many governing boards approve the very long-term financial commitments in baseload generation covered by SB 1368. For example, the LADWP governing board must act on all competitive contract awards that exceed \$150,000 dollars. This dollar amount covers all major resource additions for baseload generation. In addition, LADWP's board must act on all purchases, sales and exchanges of electricity for terms longer than eighteen months. For agreements longer than three years, the City Council must act.

Because POU governing boards make resource planning and procurement decisions and/or set the policies governing such actions by their POU, they are in the best position to ensure that these commitments meet the requirements of SB 1368.

SB 1368 places a new legal requirement on governing boards of POUs regarding procurement by stating, "No . . . local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied . . . complies

¹ Cal. Gov. Code §56036(a).

with the greenhouse gases" EPS.² This legal requirement applies to POUs regardless of any action taken by the Energy Commission. Many governing boards have explicit policies requiring that they act in compliance with the law.

Because POUs are required to act in accordance with applicable law and many POU governing boards already have specific policies to act in accordance with the law, POUs are already obligated to conduct the operations of their POU in accordance with the mandates of SB 1368.

Therefore, in the case of LADWP, the Energy Commission's compliance check is the third board level review of long-term financial commitments for baseload generation. It is because of this triple layer of review that compliance for POUs should differ from compliance with IOUs.

Thank you for the opportunity to provide preliminary comments on the implementation of SB 1368 Emission Performance Standard. As mentioned above, more detailed comments in response to the staff report will be forthcoming in a subsequent comment letter. The LADWP supports the establishment of an effective Greenhouse Gas Emissions Performance Standard and appreciates the efforts of CEC staff to carefully address the issues raised above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Randy S. Howard", is positioned above the printed name.

Randy S. Howard
Executive Assistant to the
Chief Operating Officer - Power System
Los Angeles Department of Water and Power

² Cal. Publ. Util. Code §8341 (a).