

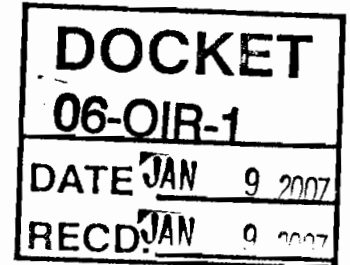
**Post-Workshop Comments of the Natural Resources Defense Council (NRDC) and
the Union of Concerned Scientists (UCS) on the
“Staff-Proposed Regulations for Implementing the Greenhouse Gases Emission
Performance Standard for Local Publicly Owned Electric Utilities”**

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The Natural Resources Defense Council (NRDC) and Union of Concerned Scientists (UCS) appreciate the opportunity to offer these comments on the California Energy Commission's (Commission or CEC) "Staff-Proposed Regulations for Implementing the Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities" Staff White Paper, Publication #CEC-700-2007-001 (Staff White Paper or proposed regulations).

We commend the CEC for the leadership role it has taken in establishing a statewide greenhouse gas (GHG) emission performance standard (EPS or standard), which the Commission advanced as one of its primary recommendations in the 2005 *Integrated Energy Policy Report*. We strongly support the Commission's efforts to design and implement the EPS, which is an essential regulation that will protect Californians from the significant financial and reliability risks associated with additional investments in highly GHG-intensive generating technologies and help meet California's GHG reduction goals.

Our comments are summarized as follows:

- We strongly support the staff's efforts to follow the CPUC Proposed Decision as closely as possible, and we encourage the Commission to continue coordination with the CPUC to ensure the implementation of as uniform a statewide standard as possible.

- NRDC/UCS strongly encourage the CEC to adopt an upfront approval compliance mechanism to ensure EPS compliance before commitments are made.
- NRDC/UCS strongly support Staff's proposal to prohibit long-term contracts for unspecified baseload power.
- NRDC/UCS strongly support the proposed regulations' definition of "new ownership investment."
- NRDC/UCS strongly support the proposed regulations' adoption of an EPS level of 1,000 pounds of carbon dioxide per MWh of electricity.
- We urge the Commission to reconsider its 10 MW size threshold to ensure consistency with the CPUC's PD and with SB 1368.

We also anticipate submitting additional comments following the workshop to be held on January 11, 2007.

1. We strongly support the staff's efforts to follow the CPUC Proposed Decision as closely as possible, and we encourage the Commission to continue coordination with the CPUC to ensure the implementation of as uniform a statewide standard as possible.

The California Public Utilities Commission (CPUC) released on December 13, 2006 its Proposed Decision (draft decision or DD) on its rules for implementing the EPS for its jurisdictional load-serving entities (LSEs). We have filed both opening and reply comments in the relevant proceeding on the CPUC's DD, which we support as being consistent with SB 1368 in nearly every regard. We focus our comments here mainly on those aspects of the proposed regulations that differ from the DD, but we also refer the Commission to our opening and reply comments submitted in response to the DD on Jan.

We fully support the Staff White Paper statement that "staff believes that it is best to follow the proposed decision as closely as possible" (p. 1). This will ensure that a statewide standard that as uniform as possible is implemented for all LSEs and publicly-owned utilities (POUs). In addition, we note that the CPUC's DD is scheduled to be voted into final form on January 25, 2007. We strongly encourage the Commission to continue its coordination with the CPUC to ensure consistency with the final decision and any changes from the DD that may be made by the CPUC.

2. NRDC/UCS strongly encourage the Commission to adopt an upfront approval compliance mechanism to ensure EPS compliance before commitments are made.

The proposed regulations (§2921 and 2922) leave EPS compliance entirely up to the POU's own governing boards through an annual attestation compliance filing that, in the absence of any upfront verification by the CEC, solely relies on what appear to be after-the-fact spot audits. We remain convinced that this method of compliance is not a sufficient enforcement mechanism. We also made the same arguments against self-certification for the CPUC enforcement of the EPS for energy service providers and community choice aggregators. If a commitment is found after-the-fact to be out of compliance with the law, the damage will already have been done; it will be extremely difficult to undo that commitment. As we have stated in our earlier comments, SB 1368 specifically gives the CEC regulatory enforcement authority to ensure compliance with the standard by the POU's (see Public Utilities Code sections 8341(c)(1) and 8341(c)(2)). We emphasize that the upfront compliance process for POU's need not be the exact same procurement approval process required of the investor-owned utilities (IOUs) at the CPUC. Enforcing the standard on an upfront basis for all POU's and LSEs will help ensure a uniform statewide standard.

3. NRDC/UCS strongly support Staff's proposal to prohibit long-term contracts for unspecified baseload power.

NRDC/UCS strongly supports §2908 of Staff's proposed regulations, which states: "A contract of five years or more for unspecified baseload power is not compliant with the EPS." This is entirely consistent with Conclusions of Law 36 and 37 of the CPUC DD. The DD convincingly explains why none of the proxy emissions rate estimates that parties have suggested for assignment to system power are currently capable of accurately approximating system power emissions. In addition, the DD notes that any method to impute emissions rates to unspecified power leads to a binary outcome that "results in enormous pressure to game the methodology and input assumptions used for this purpose, thereby making it very difficult and contentious to implement this

particular approach to addressing unspecified contracts.” (CPUC DD Finding of Fact 126)

Furthermore, the DD correctly concludes that “[p]ermitting LSEs to enter into new or renewed long-term unspecified contracts with high GHG-emitting facilities through the use of an imputed emissions value for system power could put them, and their customers, in a vulnerable position when the AB 32 reporting requirements take effect in 2008 for the implementation of the statewide, load-based GHG emissions limits.” (CPUC DD Finding of Fact 140)

Considering the lack of any currently available proxy estimates to accurately reflect the emissions characteristics of unspecified power, and the overwhelming temptation for utilities to game any method to impute emissions to system power, staff’s proposed provision that long-term contracts for unspecified baseload power are not compliant with the EPS is eminently reasonable. As the CPUC DD indicates, the emissions attributed to unspecified power will be deliberated at length in the context of AB 32 reporting requirements, which will resolve the unspecified power issue by no later than 2008. Given the imminent regulatory deadlines imposed by SB 1368, it makes perfect sense for both the CPUC and the Energy Commission to defer the attribution of emissions to unspecified power to the ARB, thus avoiding the potential harm to LSEs and ratepayers that might be caused by the use of inconsistent methodologies. If necessary, the Commission may choose to revisit the issue once the AB 32 reporting requirements are in place.

4. NRDC/UCS strongly support the proposed regulations’ definition of “new ownership investment.”

The proposed regulations (§2901) propose to use the same definition of “new ownership investment” as proposed in the CPUC’s DD, such that covered procurements subject to SB 1368 includes long-term financial commitments to POUs’ own retained baseload generation that extend the life of one or more units of that facility by five years or more. We strongly support this definition, as it is entirely consistent with SB 1368.

5. NRDC/UCS strongly support the proposed regulations' adoption of an EPS level of 1,000 pounds of carbon dioxide per MWh of electricity.

We strongly support Section 2902 of the proposed regulations, which adopts an EPS level of 1,000 pounds of carbon dioxide per megawatt hour (MWh) of electricity. We support the adoption of a consistent standard at both the CEC and CPUC. We fully support the CPUC's DD's finding that this level is reasonable.

6. We urge the Commission to reconsider its 10 MW size threshold to ensure consistency with the CPUC's PD and with SB 1368.

The proposed regulations address only facilities that are 10 MW and larger. We support the CPUC's PD's finding that a size threshold is not consistent with the language of SB 1368. We urge the CEC to not adopt a size threshold for the EPS to be consistent with the CPUC and to ensure consistency in a statewide standard by ensuring that the EPS applies to the same type of facilities for all POU's and LSEs.