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California Energy Commission
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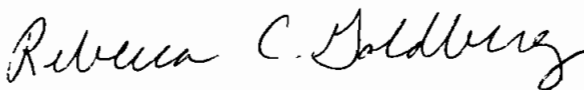
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To Whom It May Concern:

Please find enclosed the Supplemental Comments of the Salt River Project Agricultural Improvement and Power District, as Operating Agent of the Navajo Generating Station (the "Comments") regarding R.06-OIR-1, Proposed Adoption of Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities. A copy of the Supplemental Comments was filed today with the Docket Unit via electronic mail.

Very truly yours,

Salmon, Lewis & Weldon, P.L.C.

By 
Rebecca C. Goldberg

Encl.

cc: John B. Weldon, Jr.

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

In the Matter of:)	
)	
Proposed Adoption of Regulations Establishing a)	
Greenhouse Gases Emission Performance Standard)	R.06-OIR-1
For Baseload Generation of Local Publicly Owned)	(October 30, 2006)
Electric Utilities.)	

**SUPPLEMENTAL COMMENTS OF THE
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT, AS OPERATING AGENT OF THE NAVAJO GENERATING STATION**

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April 24, 2007

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**SUPPLEMENTAL COMMENTS OF THE
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT, AS OPERATING AGENT OF THE NAVAJO GENERATING STATION**

The Salt River Project Agricultural Improvement and Power District (“SRP”), as the Operating Agent of the Navajo Generating Station (“NGS”), herein submits these comments on the Proposed Adoption of Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities (the “Proposed Regulations”) to supplement the comments filed with the California Energy Commission (the “Commission”) on April 5, 2007. SRP submits these comments on behalf of the NGS co-owners, including itself, Arizona Public Service Company, Nevada Power Company, Tucson Electric Power Company, and the Bureau of Reclamation, hereafter referred to collectively as the “Non-Jurisdictional NGS Owners.” The Los Angeles Department of Water and Power of the City of Los Angeles (“LADWP”), another co-owner of NGS, is submitting comments on its own behalf.

In our initial comments, the Non-Jurisdictional NGS Owners expressed their concern that the lack of clarity in the rule as proposed could prevent LADWP from making certain expenditures necessary to ensure the safe and reliable operation of NGS. In our supplemental

comments, we express our concern that this lack of clarity violates the California Administrative Procedure Act and suggest specific language to resolve our concerns.

I. The Administrative Procedure Act Requires Clarity in Regulations

Under the California Administrative Procedure Act, the Office of Administrative Law (“OAL”) is required to review all regulations that are adopted and submitted to it for publication to ensure that the regulations meet the following standards: necessity, authority, clarity, consistency, reference, and nonduplication. See Cal. Gov’t Code § 11349.1(a)(1)-(6). Pursuant to the statute, “clarity” means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” Id. § 11349(c).

The Non-Jurisdictional NGS Owners contend that Section 2901(j) of the Proposed Regulations, containing the definition of “new ownership investment,” will not meet the Administrative Procedure Act’s standard of review for clarity. In Section 2901(j)(4), a “new ownership investment” includes, “[a]ny 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.”

First, a plain reading of the definition of “new ownership investment” in the Proposed Regulations may suggest that the term “any investment” applies to all expenditures of money at a power plant including, for instance, all routine operations, maintenance and repair activities. Yet, there is a distinction between the meaning of the words “investment” and “expenditure.” Black’s Law Dictionary defines the term “investment” to mean “[a]n expenditure to acquire property or other assets in order to produce revenue,” whereas “expenditure” means “spending or payment of money.” Black’s Law Dictionary 835, 577 (6th ed. 1990). However, the Proposed Regulations do not clarify whether the term “investment” is restricted to major investments, such

as those expenses incurred in the acquisition of revenue-producing property or assets, as opposed to normal costs required to maintain equipment and operation systems in good working order at a power plant in accordance with prudent utility practice. For example, at NGS, the co-owners undertake a major overhaul of each of the three generating units every six years to ensure that the equipment and systems are operating safely and efficiently. The co-owners make any necessary repairs or equipment replacement to ensure that the power plant continues to operate safely and efficiently, and the expenditures are not for the purpose of acquiring property or other assets. Because of the lack of clarity under the current draft of the definition of “new ownership investment,” a local publicly owned electric utility is left to speculate as to which costs would be considered “any investment” under the Proposed Regulations. For example, costs incurred to comply with federal and state legal or regulatory requirements would appear to be covered, as would costs associated with installation of equipment for environmental upgrades.

Second, the definition of “new ownership investment” is ambiguous because it includes the condition that “any investment” that “is designed and intended to extend the life of one or more generating units by five or more years” triggers the application of the regulations. Proposed Regulations, § 2901(j)(4). The Proposed Regulations do not offer guidance as to when an extension of the life of a plant is triggered and from what point in time the extension period is calculated. It is unclear whether the extension of life is measured from the time of the investment or is measured as extending the life of the plant for five years beyond its projected end date. For example, the NGS co-owners maintain the power plant as if it would function in perpetuity, which requires ongoing operations, maintenance, and repair activities. Therefore, if an expenditure is made to replace a certain piece of equipment that is designed to last for longer than five years, but will not be operational beyond the projected end date of the power plant, it is

possible that such a replacement would be precluded under the Proposed Regulations even though the equipment is necessary to operate the plant through its projected termination date. The language of the regulations, however, is ambiguous as to what types of investments would extend the life of the plant and does not provide a baseline measurement from which to determine the five year extension.

The Non-Jurisdictional NGS Owners request that the Commission clarify the definition of “new ownership investment” in two respects to make clear (1) whether it applies to all expenditures of money at a power plant or is limited to significant investments; and (2) under what circumstances an investment would extend the life of a plant by five or more years and how such an extension would be calculated.

II. Proposed Revisions to Definitions of “Covered Procurement” and “New Ownership Investment”

As SRP previously stated in Comments filed with the Commission on April 5, 2007, the Non-Jurisdictional NGS Owners are concerned that, unless modifications are made to the definitions of “new ownership investment” and “covered procurement,” the Proposed Regulations would impair existing contractual requirements of the NGS co-owners. Therefore, in order to address these concerns, the Non-Jurisdictional NGS Owners submit to the Commission three alternative proposals for revisions to the Proposed Regulations.

A. Alternative 1: Revise Section 2901(d)

The first alternative proposal is a revised definition of the term “covered procurement.” The Non-Jurisdictional NGS Owners set forth the following revised definition for Section 2901(d), “covered procurement,” of the Proposed Regulations:

- (d) “Covered procurement” means, *except as provided in subsection (3), either:*
 - (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.

(3) A covered procurement does not include financial commitments made by a local publicly owned electric utility for any interest in a power plant owned by such utility as of the effective date of this chapter that are designed and intended:

(A) to perform routine maintenance, repair, and replacement to preserve or improve plant reliability and prevent asset deterioration required by prudent utility practice;

(B) to comply with legal or regulatory requirements; or

(C) to achieve environmental improvements.

The changes suggested by the Non-Jurisdictional NGS Owners to the current definition of “covered procurement” in Proposed Regulations § 2901(d) are noted with emphasis in italics and underlining, as are the two alternative proposals for suggested changes to the proposed definition of “new ownership investment” in Proposed Regulation § 2901(j), including the addition of a new definition for “upgrade” in Section 2901(q).

The suggested changes would prevent the Proposed Regulations from applying to financial commitments made by regulated entities to existing power plants for routine operations and maintenance activities, to comply with legal or regulatory requirements, or to attain environmental improvements at an existing plant. While granting the authority to preserve existing assets, it would apply only to plants that are owned by local publicly owned electric utilities as of the effective date of the regulations and limit such activities to those demanded by

prudent utility practices. The amendment would prevent the impairment of existing contractual obligations and allow utilities to maintain and protect existing power plants.

B. Alternative 2: Revise Section 2901(j)

As an alternative to amending the definition of “covered procurement,” another approach would be to amend the definition of “new ownership investment” in Section 2901(j). To accomplish that end, the Non-Jurisdictional NGS Owners suggest two alternative revisions to Proposed Regulations § 2901(j).

First, the Non-Jurisdictional NGS Owners suggest the following revision, which helps to clarify to what kinds of expenditures at existing, non-deemed compliant powerplants are not considered to rise to the level of “new ownership investment” by adding Section 2901(j)(5) to the definition as follows:

§ 2901(j) “New ownership investment” means except as provided in subsection 5 below, the original financial commitment for a capital expenditure:

- (1) for the construction of a new powerplant;
- (2) for the acquisition of a new or additional ownership interest in an existing non-deemed compliant powerplant previously owned by others;
- (3) 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) in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility as of the effective date of this chapter that:

- (A) increases the emission rate as defined in section 2903(a);
- (B) results in an increase of greater than 10% in the rated capacity of the powerplant; or
- (C) is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant.

(5) A new ownership investment does not include expenditures in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility as of the effective date of this chapter that are designed and intended:

- (A) to perform normal maintenance, repair, and replacement to preserve or improve plant reliability or prevent asset deterioration;

- (B) to comply with legal or regulatory requirements; or
- (C) to achieve environmental improvements.

Second, the Non-Jurisdictional NGS Owners offer another alternative definition of “new ownership investment” that would incorporate a similar concept of excluding routine operations and maintenance activities from the operation of the regulations through the usage of the newly defined term “upgrade.”

§ 2901(j) “New ownership investment” means the original financial commitment for a capital expenditure:

- (1) for the construction of a new powerplant;
- (2) for the acquisition of a new or additional ownership interest in an existing non-deemed compliant powerplant previously owned by others;
- (3) 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) in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility as of the effective date of this chapter that:
 - (A) is designed and intended to upgrade one or more generating units;
 - (B) results in an increase of greater than 10% in the rated capacity of the powerplant; or
 - (C) is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant.

To complement this second alternate definition of “new ownership investment,” the Non-Jurisdictional NGS Owners also set forth the language for the term “upgrade” to include in Proposed Regulations § 2901 as follows:

(q) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of the effective date of this section, but may result in incidental increases in generation capacity.

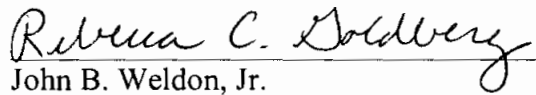
Either of the two suggested changes to Section 2901(j) of the Proposed Regulations would serve to eliminate the noted ambiguity in the definition of “new ownership investment.” In each alternative definition, financial commitments for ongoing operations, maintenance, repair and replacement would not fall within the purview of the regulations, and allow existing power plants to make necessary improvements to continue to operate efficiently and safely. Moreover, either of the revisions of “new ownership investment” would eliminate the uncertainty associated with the issues surrounding the five year extension language. As with the suggested revision to the definition of “covered procurement,” adopting either of the proposed revisions to “new ownership investment” would ensure that existing contractual obligations of local publicly owned utilities are not violated.

III. Conclusion

For the foregoing reasons, SRP, on behalf of the Non-Jurisdictional NGS Owners respectfully requests that the Commission (1) clarify the Proposed Regulations so that the definition of “new ownership investment” is unambiguous with respect to whether all expenditures of money at a power plant are investments and the activities at a power plant that would trigger the five year period; and (2) adopt the modified definition of “covered procurement” for Proposed Regulations § 2901(d) or either of the revised definitions of “new ownership investment” for Proposed Regulations § 2901(j) as set forth above.

Dated: April 24, 2007

Respectfully submitted,


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