

**Comments of the Natural Resources Defense Council (NRDC), the Union of Concerned Scientists (UCS), and Sierra Club California on the Concerns Identified in OAL's Disapproval Decision for Regulations Establishing and Implementing a Greenhouse Gasses Emission Performance Standard for Local Publicly Owned Electric Utilities**

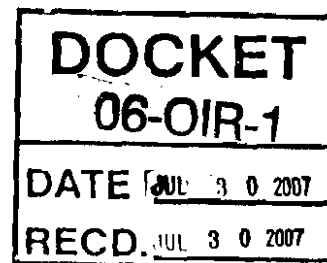
Docket Number 06-OIR-1  
July 30, 2007

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The Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), and Sierra Club California appreciate the opportunity to submit these comments on the concerns identified in the Office of Administrative Law's (OAL) June 29, 2007 decision disapproving the California Energy Commission's (Commission or CEC) submitted Regulations Establishing and Implementing a Greenhouse Gasses Emission Performance Standard for Local Publicly Owned Electric Utilities (proposed regulations). We commend the Commission for working with all stakeholders to develop the proposed regulations for the greenhouse gas (GHG) emission performance standard (EPS or standard) under a short schedule. The EPS 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.

We continue to strongly support the vast majority of the CEC's proposed regulations, and only have limited comments. The OAL's disapproval decision was limited to four areas, each of which we address in turn in these comments. As the June 30, 2007 enforcement date laid out by Senate Bill (SB) 1368 has already passed, we urge the Commission to act quickly and issue additional 15-day language to address OAL's concerns so that they can be adopted by the Commission, approved by OAL, and enforced as soon as possible. Our comments are summarized as follows:

- The CEC regulations should clarify that the EPS established by SB 1368 applies to procurements involving powerplants of all sizes, although the CEC will only enforce the standard for those powerplants 10 MW and larger.
- We support the exemption of added units of 50 MW or less to a deemed-compliant powerplant in section 2901(j)(3) of the proposed regulations.
- The allowance of a 10 percent increase in rated capacity for investments made in existing powerplants is not necessary to effectuate the purpose of SB 1368.

**1. The CEC regulations should clarify that the EPS established by SB 1368 applies to procurements involving power plants of all sizes, although the CEC will only enforce the standard for those power plants 10 MW and larger.**

We support the CEC's position established in the rulemaking record that the EPS does in fact apply to the smaller power plants, although for administrative reasons the CEC has chosen to focus its implementation and enforcement regulations on those power plants 10 MW and larger. We suggest that the proposed regulations be clarified to reflect this fact.

**2. We support the exemption of added units of 50 MW or less to a deemed-compliant power plant in section 2901(j)(3) of the proposed regulations.**

We support the exemption for investments in generating units added to a deemed-compliant power plant that results in increases of less than 50 MW. SB 1368 requires that the regulations adopted by the CEC are consistent with those adopted by the California Public Utilities Commission (CPUC). (Section 8341(e)(1)) The CPUC's adopted EPS rules for load-serving entities also contains this exemption, as further explained in CPUC Decision 07-01-039. Thus, we recommend that the CEC's regulations maintain consistency with the CPUC rules in this regard.

**3. The allowance of a 10 percent increase in rated capacity for investments made in existing power plants is not necessary to effectuate the purpose of SB 1368.**

Section 2901(j)(4)(B) of the CEC's proposed regulations defines "new ownership investment" to apply only when the investment "results in an increase of greater than 10% in the rated capacity of the power plant." We do not believe this exemption is warranted to effectuate the purpose of SB 1368 and suggest that this section of the proposed regulations be changed to be consistent with the definition of "new ownership commitment" adopted by the CPUC in D.07-01-039. It is unclear why an increase of 10 percent in rated capacity should be allowed, when SB 1368 mandates that "No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless *any* baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard." (Section 8341(a), emphasis added) Thus, *any* increase in rated capacity should trigger the EPS, as investments made in these increases to capacity of high GHG-emitting resources present financial and reliability risks to the utilities' customers. Protecting Californians against these financial and reliability risks is the express intent of SB 1368 (see Section 1 (i) and (j) in SB 1368). Allowing a 10 percent increase in capacity would change the application of the standard from what was intended by SB 1368. Moreover, the 10 percent figure is arbitrary and was not factually supported in the record.

We believe the definition of "new ownership commitment" for existing retained generation adopted by the CPUC is appropriate. In D.07-01-09, "new ownership commitment" is defined as new investments "(i) designed and intended to extend the life of one or more units by five years or more, (ii) result in a net increase in the rated capacity of the power plant, or (iii) designed and intended to convert a non-baseload plant to a baseload plant." (CPUC D.07-01-039, Conclusion of Law 11(1)(c)) For consistency, the CEC regulations should use the same definition.

We appreciate the opportunity to offer these comments, and we look forward to discussing them with the Electricity Committee and other stakeholders at the workshop scheduled for August 2, 2007.