

**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
[www.energy.ca.gov](http://www.energy.ca.gov)

<b>DOCKET</b> 06-OIR-1
DATE <u>AUG 1 11 2007</u>
RECD. <u>8/1/07</u>



**Notice of Availability of 15-Day Language  
and  
Notice of Availability of New Documents Added to  
the Rulemaking Record**

**Revisions to Proposed Regulations Establishing and  
Implementing a Greenhouse Gases Emission  
Performance Standard for Local Publicly Owned Electric  
Utilities**

**Docket Number 06-OIR-1**

In response to the Office of Administrative Law's (OAL) June 29, 2007, disapproval decision, the California Energy Commission has revised the proposed regulations to establish and implement a greenhouse gases emission performance standard for California's publicly owned electric utilities. The Energy Commission invites the public to review and comment on the revised regulations.

The proposed revised regulations are included with this notice. Additionally, the proposed revisions and other supporting documents are available on the Energy Commission website at [www.energy.ca.gov/ghgstandards](http://www.energy.ca.gov/ghgstandards). For individuals who do not have access to the internet, you may request copies of the proposed regulations by calling Gary Collord, project manager, at (916) 651-9006 or by regular mail at:

California Energy Commission  
Attn: Gary Collord  
1516 Ninth Street, MS 40  
Sacramento, California 95814-5512

**Background**

Senate Bill 1368 (Stats. 2000, ch. 598) establishes 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 (ARB), 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 legislation directs the Commission to establish the performance standard as one not exceeding the rate of greenhouse gases emitted per megawatt-hour associated with natural gas-fired combined-cycle combustion turbine baseload generation. The law requires that the Commission's standard be consistent with that adopted by the California Public Utilities Commission in a companion proceeding. The implementing regulations are required to include a greenhouse gases emission performance standard and an output-based methodology for calculating and enforcing the emission performance standard.

On October 30, 2006, the Energy Commission instituted a rulemaking proceeding for establishing a greenhouse gases emission performance standard and implementing regulations consistent with the requirements of Senate Bill 1368. A Notice of Proposed Action was published in the California Regulatory Notice Register on March 10, 2007 triggering a 45-day comment period that ended on April 25, 2007. In response to comments received on the proposed regulations, the Electricity Committee published minor changes to the proposed regulations in 15-day language on May 4, 2007, and the Energy Commission adopted the proposed regulations on May 23, 2007. The rulemaking package was submitted to OAL on June 1, 2007. On June 29, 2007, OAL issued a decision disapproving the rulemaking action on the following grounds:

- A. It is unclear whether procurements involving powerplants under 10MW [megawatts] are covered by or exempt from the greenhouse gases emission performance standard established by the CEC. Consequently, the regulations fail to satisfy the Clarity standard of Government Code section 11349.1
- B. The rulemaking record does not demonstrate that the exemption from the greenhouse gases emissions performance standard for investments in generating units added to a deemed-compliant powerplant that results in an increase of less than 50MW is reasonably necessary to implement, interpret, or make specific Public Utilities Code sections 8340 and 8341. Consequently, the exemption fails to satisfy the Necessity standard of Government Code section 11349.1.
- C. It is not clear whether the exemption from the greenhouse gases emissions performance standards for investments resulting in an increase of no more than a 10% increase in rated capacity is limited to investments for routine maintenance.
- D. The record does not show that the public has been given an opportunity to comment on the evidence the CEC is relying upon to demonstrate that the exemption from the greenhouse gases emission performance standard

established by 2901(j)(4)(B) is reasonably necessary to implement the purpose of Public Utilities Code sections 8340 and 8341.

This notice, the enclosed explanation of changes, and the enclosed proposed revised regulations are meant to remedy and correct the deficiencies identified by OAL.

**NOTICE THAT A PUBLIC HEARING IS SCHEDULED:**

The date set for the adoption of the revised regulations at a public hearing is as follows:

Commission Business Meeting  
August 29, 2007  
Beginning 10 a.m.  
California Energy Commission  
Hearing Room A  
1516 9th Street  
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

**Invitation for Public Comments**

The public comment period on these proposed revisions ends on August 27, 2007. Any parties wishing to submit comments on the proposed revisions must ensure that they are received by the Commission no later than 5 p.m. on August 27, 2007. Please send written comments to:

Docket Unit  
California Energy Commission  
Docket No. 06-OIR-1  
1516 Ninth Street, MS 4  
Sacramento, California 95814-5512

Or, parties may submit comments by e-mail to [DOCKET@energy.state.ca.us](mailto:DOCKET@energy.state.ca.us) or by fax to (916) 654-4354.

Any person with questions regarding this notice should contact Gary Collord, project manager, at (916) 651-9006 or [gcollord@energy.state.ca.us](mailto:gcollord@energy.state.ca.us). If you wish assistance in participating in the regulatory process, call the Public Adviser's Office, at (916) 654-4489, toll free in California at (800) 822-6228 or e-mail at [pao@energy.state.ca.us](mailto:pao@energy.state.ca.us). News media inquiries should be directed to Assistant Executive Director Claudia Chandler at (916) 654-4989.

### **Additional Documents to be Added to the Rulemaking Record**

The following documents will be added to the rulemaking file:

California Energy Commission Electricity Committee, "Greenhouse Gases Emission Performance Standard for Implementing Senate Bill 1368." Public Workshop Proceedings, August 2, 2007. Docket No. 06-OIR-1.

California Energy Commission Electricity Committee, "Electricity Committee's Explanation of Changes to Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities in Response to the Office of Administrative Law's Disapproval Decision." Docketed August 10, 2007.

California Municipal Utilities Association, "Comments of the California Municipal Utilities Association on the Office of Administrative Law's Disapproval of the Proposed Regulations Establishing a Greenhouse Gases Emission Performance Standard." Filed in response to California Energy Commission Docket No. 06-OIR-1. July 30, 2007.

California Municipal Utilities Association, "Comments of the California Municipal Utilities Association on the CEC White Paper and Workshop – Triggering And Interpretations Of SB 1368." Filed in response to California Energy Commission Docket No. 06-OIR-1. December 13, 2006.

Los Angeles Department of Water and Power, "Additional Comments of the Los Angeles Department of Water and Power on the Implementation of SB 1368 Emission Performance Standard." Filed in response to California Energy Commission Docket No. 06-OIR-1. December 14, 2006.

Natural Resources Defense Council, "Comments of the Natural Resources Defense Council (NRDC), the Union of Concerned Scientists (UCS), and the Sierra Club California on the Concerns Identified in OAL's Disapproval Decision for Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities." Filed in response to California Energy Commission Docket No. 06-OIR-1. July 30, 2007.

These documents are available on the Energy Commission website at [www.energy.ca.gov/ghgstandards](http://www.energy.ca.gov/ghgstandards). For individuals who do not have access to the

internet, these documents are also available for public inspection, through August 27, 2007, from 9:00 a.m. to 4:30 p.m. at:

Docket Unit  
California Energy Commission  
1516 Ninth Street  
Sacramento, California 95814-5512

Dated August 10, 2007 at Sacramento, California.

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JEFFREY D. BYRON  
Commissioner and Presiding Member  
Electricity Committee

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JOHN L. GEESMAN  
Commissioner and Associate Member  
Electricity Committee

Note: California Energy Commission's formal name is State of California Energy Resources Conservation and Development Commission.