

BEFORE THE ENERGY COMMISSION  
OF THE STATE OF CALIFORNIA

**DOCKET**

**12-OIR-1**

DATE Jan 11 2012

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In the Matter of: )  
 )  
Rulemaking to Consider Modifications of )  
Regulations Establishing a Greenhouse Gases )  
Emission Performance Standard )  
For Baseload Generation of Local )  
Publicly Owned Utilities )

Docket No. 12-OIR-1

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER  
TO THE CALIFORNIA ENERGY COMMISSION'S POSSIBLE ADOPTION OF AN  
ORDER INSTITUTING RULEMAKING TO CONSIDER CHANGES TO  
THE GREENHOUSE GASES EMISSION PERFORMANCE STANDARD (EPS)  
REGULATION**

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Pursuant to the procedures established by the California Energy Commission (Energy Commission, or CEC), the Los Angeles Department of Water and Power (LADWP) respectfully submits these Comments on the CEC's possible adoption of an Order Instituting Rulemaking (12-OIR-1)<sup>1</sup> to consider changes to the Emission Performance Standard (EPS) regulations, Title 20, California Code of Regulations, section 2900 et seq. The rulemaking proceeding would, among other things, examine whether changes to the regulations are necessary to ensure adequate review of investments in non-EPS compliant facilities, and whether additional changes to the regulations are necessary pursuant to Public Utilities Code 8341(f).

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<sup>1</sup> California Energy Commission, Business Meeting Agenda, Item # 7, ORDER INSTITUTING RULEMAKING (12-OIR-1), dated January 12, 2012.

## **I. INTRODUCTION**

The City of Los Angeles is a municipal corporation and charter city organized under the provisions of the California Constitution. LADWP is a proprietary department of the City of Los Angeles, pursuant to the Los Angeles City Charter, whose governing structure includes the Mayor, 15 member City Council and five-member Board of Water and Power Commissioners. As the third largest electric utility in the state and the nation's largest municipal utility serving a population of over four million people, LADWP is a vertically integrated utility – both owning and operating the majority of its generation, transmission and distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in the City and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles that transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles.

## **II. LADWP HAS BEEN AND REMAINS COMPLIANT WITH SB 1368**

The City of Los Angeles and the LADWP reaffirm their strong support for reducing greenhouse gas (GHG) emissions back to statewide 1990 levels in a manner that, among other things, protects California consumers, keeps California businesses competitive, encourages early action to reduce GHG emissions, and minimizes impacts to low income communities. In 2006-2007 after SB 1368 was signed into law, the CEC embarked on an expedited, but thorough, rulemaking process that included numerous in-person meetings, workshops and hearings. LADWP worked closely with CEC staff and other stakeholders during that

proceeding to make sure that this regulation was well designed to effectively implement the EPS, as envisioned under Senate Bill 1368.

It is LADWP's belief that the EPS regulation, as adopted in 2007, provides the publicly owned electric utilities (POUs) clarity and regulatory certainty with regard to the treatment of non-EPS compliant facilities. Claims have been made by the Natural Resources Defense Council and the Sierra Club (Petitioners) that LADWP – along with other POUs – does not properly understand the requirements of the EPS and has made procurement decisions in an ad hoc manner without public scrutiny. LADWP disagrees with their Petition and argues that the procurement activity has been and continues to be compliant with SB 1368 requirements for Navajo Generating Station, Intermountain Power Project, and its in-basin gas-fired generation facilities.

### **III. LADWP IS TRANSITIONING AWAY FROM COAL-FIRED GENERATION**

Previously, LADWP partially divested of its ownership interests in Mohave Generating Station (Nevada), which closed in 2005, and divested of its power sales contracts with the Colstrip Power Plant (Montana) and Deseret Electric Power Cooperative (Utah). Currently, LADWP has an ownership share in the Navajo Generating Station and power sales contracts related to the Intermountain Power Project in Utah that must be compliant with the California EPS by 2019 and 2027, respectively. Currently, 39 percent of energy delivered to LADWP customers is generated from these two remaining plants.

The LADWP's previous 2010 and current 2011 Integrated Resource Plan (IRP)<sup>2</sup> reflects a clear recognition of the intent of SB 1368 with the recommendation for early divestiture of its ownership interest in the Navajo Generating Station by 2015, four years ahead of the 2019 date triggered by the EPS. LADWP does not make this recommendation lightly and believes that its IRP process remains the appropriate mechanism to guide the LADWP in the coming years to meet the multiple regulatory mandates it faces in the most cost effective manner without compromising reliability or environmental stewardship.

LADWP's IRP is a living document that, prior to approval and submittal to the Board of Water and Power Commissioners, undergoes an extensive public review. In 2010, this included a series of community workshops and stakeholder meetings, held at various venues throughout Los Angeles, as well as third-party review by the Los Angeles City Attorneys Office, Los Angeles City Council, and public workshop held for the Board of Water and Power Commissioners. It should be noted that the Petitioners (NRDC and Sierra Club) were fully engaged in this process and encouraged to bring any SB 1368 compliance matters to the LADWP governing bodies.

Through its IRP, LADWP remains focused on its direct investments to replace its remaining coal-fired power with a combination of renewable energy, demand response, energy efficiency, short-term market purchases and conventional gas-fired generation.

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<sup>2</sup> LADWP 2011 Integrated Resource Plan: <http://www.ladwp.com/ladwp/cms/ladwp001967.jsp>.

#### **IV. REGULATORY CERTAINTY IS ESSENTIAL TO MEET MULTIPLE ENVIRONMENTAL MANDATES COST EFFECTIVELY**

LADWP is undertaking a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace about 90% of the energy resources over the next 25 years that it has relied upon for the last 50 years, as a result of combined regulatory mandates for increased renewable energy, emissions performance standards on fossil fuel generation, energy efficiency, solar roofs, reductions in GHG emissions, and the elimination of using once-through cooling (OTC) for coastal power plants. All these mandates put increasingly significant pressure on LADWP's grid reliability; to now consider requiring LADWP and other POUs to file with the CEC each time it must make necessary repairs, maintenance, expenditures to continue safely and reliably operating the aforementioned power plants would add unnecessary hurdles that would further impact grid reliability.

LADWP is pleased that there is now more certainty on the implementation of many of these regulatory efforts, but the cost impacts of implementing these regulatory mandates and the economic challenges facing the ratepayers has caused LADWP to embark on multiple cost-cutting activities, including the elimination of 600 positions over three years. Adding unnecessary rulemaking burdens (not only on LADWP and the POUs but also the CEC) will tax the limited labor and financial resources that are working on the transition activity. LADWP strongly urges the CEC to consider the regulatory uncertainty that would be introduced by a new review and approval process for expenditures that is being called for by the Petitioners.

LADWP and other POUs must have regulatory certainty with regard to SB 1368 that the "rules of the game" will not be changed mid-course as being proposed

by the Petitioners here. LADWP strongly recommends that the CEC focus its efforts on drafting the RPS Guidelines and RPS SB 2 (1X) rulemaking and reject moving forward on reopening SB 1368.

#### **V. FACTUAL ERRORS NEED TO BE CORRECTED FOR THE RECORD**

LADWP is greatly concerned that the CEC has proposed to initiate this new rulemaking on the basis of information submitted by the Petitioners, without conducting a cross-check of these claims. Instead, the Commission has relied on these claims as the basis for possibly initiating this rulemaking, which will take away already limited staff resources from both the CEC and the POU's from more critical proceedings such as the SB 2 (1X) 33% Renewable Portfolio Standard (RPS) rulemaking or the RPS Eligibility Guidebook.

The CEC's decision to consider the institution of a new rulemaking is based upon assertions in the Petition which are either incorrect or significantly misrepresent the facts, including the following:

- Attachment 2 of the Petition entitled "Table: Out-of-State Coal Plants Owned by California POU's" includes Intermountain Power Plant ("IPP") as one of those Generating Stations (emphasis added). This is not correct. IPP is **owned** by a Utah entity known as Intermountain Power Agency ("IPA") and all the California POU's that take energy from IPA do so under contractual obligations until 2027. No California POU's have ownership in IPP or IPA.
- Footnote "ii" to this table in Attachment 2 refers to a link of a 2009 CEC Publication (<http://www.energy.ca.gov/2009publications/CEC-200-2009-019/CEC-200-2009-019.PDF>). On page 46 of 123 (of the pdf numbering) of this CEC publication, it seems to lump LADWP, Glendale, Pasadena, Riverside, and Burbank as having "ownership" shares of IPP but for some reason only Anaheim is listed as having a "contract" share of IPP. In fact, all the POU's have "contract" shares of IPP.
- The Petition claims that "after the passage of SB 1368, POU's continued to make substantial capital investments in several coal plants" and lists IPP

amongst those coal plants. (Petition, pp. 6-7). The Petition cites various modifications at IPP and states those modifications took place after passage of SB 1368 when in fact they were completed prior to such passage of law, between 2002 and 2004.

It is very concerning that the CEC is considering to open a rulemaking proceeding based, in part, on these incorrect statements regarding critical and significant issues such as contractual obligations versus ownership rights and actions taken by POUs prior to versus after passage of SB 1368.

## VI. CONCLUSION

LADWP remains committed to reducing greenhouse gas emissions and transitioning away from its coal-fired generation in a responsible manner. LADWP appreciates the opportunity to submit these comments and recommends that the CEC not proceed with the proposed rulemaking. If the Energy Commission moves forward in this proceeding, LADWP is committed to working with the CEC to ensure that the intent of SB 1368 is met.

Dated: January 11, 2012

Respectfully submitted,

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