



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
 COMMISSION OF THE STATE OF CALIFORNIA
 1516 NINTH STREET, SACRAMENTO, CA 95814
 1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET	
12-OIR-01	
DATE	MAR 06 2012
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In the Matter of:

Rulemaking to Consider Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard For Baseload Generation of Local Publicly Owned Electric Utilities

Docket No. 12-OIR-1

RULEMAKING WORKSHOP

Notice of Rulemaking Workshop

PLEASE TAKE NOTICE that the Lead Commissioner assigned to the above-referenced matter invites participation in a public workshop to discuss possible changes to the Energy Commission’s greenhouse gases emission performance standards, which are found at California Code of Regulations, title 20, sections 2900 through 2913.¹

The workshop will take place as follows:

WEDNESDAY, APRIL 18, 2012
Beginning at 10:00 a.m.

CALIFORNIA ENERGY COMMISSION
 1516 Ninth Street
 First Floor, Hearing Room A
 Sacramento, CA 95814
 (Wheelchair Accessible)

Remote Attendance and Availability of Documents

Teleconference Option – Anyone interested in this matter may attend the workshop in person at the above location or by telephone and/or by computer via our “WebEx” web

¹ All further regulatory references are to the Commission’s Regulations (Regs.) contained in California Code of Regulations, title 20, unless otherwise stated.

conferencing system. For details on how to participate by WebEx, please see the "Participation in the Workshop Through WebEx" directions attached to this notice.

Internet Webcast - Presentations and audio from the meeting will be broadcast via the Energy Commission's WebEx Web meeting service.

Document Availability - Documents and presentations for this meeting will be available online at:

[http://www.energy.ca.gov/emission_standards/2012rulemaking/]

Future Notices - To receive e-mail notices for this proceeding, sign up on the List Server on the above website.

Background

Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006)

SB 1368, which was signed into law in 2006 and codified at Public Utilities Code sections 8340 and 8341,² prohibits all load-serving entities and local publicly owned electric utilities from entering into long-term financial commitments, unless the baseload generation complies with greenhouse gases performance standards.³ (§ 8341, subd. (a).)

To implement this prohibition, SB 1368 required the Energy Commission to establish a GHG emission performance standard for all baseload generation of local publicly owned electric utilities. It also required the Energy Commission to (1) adopt regulations for the

² All further statutory references are to the Public Utilities Code unless otherwise specified.

³ A **load-serving entity** is every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in the state. (§ 8340, subd. (e).) A **local publicly owned electric utility** is a municipality or municipal corporation operating as a "public utility" furnishing electric service as provided in Section 10001, a municipal utility district furnishing electric service formed pursuant to Division 6 (commencing with Section 11501), a public utility district furnishing electric services formed pursuant to the Public Utility District Act set forth in Division 7 (commencing with Section 15501), an irrigation district furnishing electric services formed pursuant to the Irrigation District Law set forth in Division 11 (commencing with Section 20500) of the Water Code, or a joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities, or furnishes electric services over its own or its member's electric distribution system. (§ 224.3.) **Long-term financial commitment** means either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation. (§ 8340, subd. (f).) **Baseload generation** means electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent. (§ 8340, subd. (a).)

enforcement of the greenhouse gases emission performance standard and, (2) in consultation with the California Public Utilities Commission and the State Air Resources Board, reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit applicable to local publicly owned electric utilities is established and in operation. (§ 8431, subds. (b)-(g).)

Commission Regulations Implementing SB 1368

In 2007, the Energy Commission adopted a greenhouse gases emission performance standard (EPS) and related requirements, which are found in Regulations sections 2900 through 2913. The EPS and related regulations apply to “covered procurements” entered into by local publicly owned electric utilities.

There are two types of covered procurements. The first is a “new ownership investment” in a baseload generation powerplant. (Regs., § 2901, subd. (d)(1).) Examples of a “new ownership investment” include:

- the acquisition of a new or additional ownership interest in an existing non-deemed compliant⁴ powerplant previously owned by others; and
- any investment in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility that:
 - is designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance;
 - results in an increase in the rated capacity of the powerplant, not including routine maintenance; or
 - is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant. (Regs., § 2901, subds. (d)(1), (j)(2) and (j)(4).)

The second type of covered procurement is 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 baseload generation powerplant, unless the powerplant is deemed compliant; or

⁴ A “deemed-compliant powerplant” means any combined cycle natural gas powerplant that was in operation, or for which the Energy Commission had granted a certificate pursuant to Chapter 6 of the Warren-Alquist State Energy Resources Conservation and Development Act on or before June 30, 2007. (Regs. § 2901, subd. (e).)

- any generating units added to a deemed-compliant baseload generation powerplant that combined, result in an increase of 50 MW or more of the powerplant’s rated capacity. (Regs., § 2901, subd. (d)(2).)

Request for Rulemaking

On November 14, 2011, the Natural Resources Defense Council and the Sierra Club (collectively, “Petitioners”) jointly filed a petition asking the Energy Commission to “initiate a rulemaking proceeding to ensure that the current practices of California publicly-owned utilities (POUs) meet the requirements of Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006) and California’s Emissions Performance Standards (EPS).” (Petition, p. 1.)

Petitioners express particular concern relating to existing coal plants, which are “non-deemed compliant” powerplants under the Commission’s EPS regulations. They assert that California POUs have made, and plan to make, substantial capital investments in such plants but the Energy Commission neither requires a transparent review of proposed investments at these coal plants nor monitors investments in coal plants currently under contract to California POUs. Petitioners also question whether POUs have consistently complied with the Commission’s EPS regulations or have instead, misinterpreted the applicability of the regulations to investments in existing coal plants.

Petitioners therefore asked for Energy Commission rulemaking proceedings that would (1) modify Regulations section 2907 to require mandatory reporting requirements when POUs make investments in existing coal plants and prevent POUs from self-regulating; and (2) develop clear criteria for the evaluation of investments at existing coal plants for compliance with the EPS.

At its December 14, 2011 business meeting, the Commission received oral comments on the Petition from the Petitioners, stakeholders, and Commission Staff; granted the Petition; and, directed Commission Staff to prepare an order instituting rulemaking that encompassed the various issues raised during the meeting.

At its January 12, 2012 business meeting the Commission adopted an order instituting rulemaking (OIR) 12-0112-7, which initiated a proceeding to discuss, and if warranted, implement possible changes to the EPS regulations.

Public Comment

Petitioners, stakeholders, Commission Staff, and the public are invited to address the following questions and topics in advance of, and during, the workshop:

- 1) Whether to establish a filing/reporting requirement for local publicly owned electric utilities' (POU) investments in non-deemed compliant powerplants, regardless of whether the investment comes within the meaning of "covered procurement." (See Regs., §§ 2901, subd. (d), 2907.)
- 2) Whether to establish additional criteria for a "covered procurement." (Regs., § 2901, subd. (d).)
- 3) Whether to refine the meaning of "new ownership investment" by, for example, defining the phrase "designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance" or defining the term "routine maintenance." (Regs., § 2901, subd. (j)(4)(A).)
- 4) How and in what instances have POUs applied the terms "routine maintenance" and "designed and intended to extend the life" in deciding whether investments in non-deemed compliant powerplants are consistent with the Commission's EPS regulations and SB 1368? Is there an industry custom or practice that guides these determinations? Provide supporting documentation.
- 5) For the period of 2007 to the present and based on your understanding of existing law, identify all covered procurements for which a POU made or plans to make a "new ownership investment" in an existing, non-deemed compliant powerplant owned by the POU in whole or in part, where the investment was for "routine maintenance." For each such investment, describe the nature and scope of the maintenance. Provide supporting documentation.
- 6) Is the public informed or notified about proposed POU investments that are either "routine maintenance" or "designed and intended to extend the life of one or more generating units by five years of more"? Provide supporting documentation.
- 7) Whether the requirements of Public Utilities Code section 8341, subdivision (f), have been triggered by the State Air Resources Board's (ARB) recent adoption of cap-and-trade regulations⁵ or whether ARB must first verify the efficacy of and compliance with its cap-and-trade regulations before Section 8341, subdivision (f) is triggered. Section 8341, subdivision (f), provides that

the Energy Commission, in a duly noticed public hearing and
in consultation with the [California Public Utilities]

⁵ Information about ARB's cap-and trade regulations is found at [<http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>].

commission and the State Air Resources Board, shall reevaluate and continue, modify, or replace the greenhouse gases emission performance standard *when an enforceable greenhouse gases emissions limit is established and in operation*, that is applicable to local publicly owned electric utilities. (Emphasis added.)

- 8) Whether the Petitioners' concerns regarding possible violations of the EPS would be better addressed through initiation of the Commission's complaint and investigation proceedings found at Regulations sections 1230 through 1237.
- 9) Whether any other changes to the Energy Commission's EPS regulations are necessary to carry out the requirements of SB 1368.⁶

Initial written comments on any or all of these topics must be filed with the Energy Commission Dockets Unit by 5:00 p.m. on March 26, 2012, to be considered during the workshop. Written responses to others' comments must be filed with the Docket Unit by 5:00 p.m. on April 9, 2012, to be considered during the workshop. Include Docket Number "12-OIR-1" in the subject line or first paragraph of your comments.

You may hand deliver or mail comments to:

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-OIR-1
1516 Ninth Street
Sacramento, CA 95814-5512

Alternatively, you may attach your comments to an e-mail and submit the e-mail to the Docket Unit at [docket@energy.state.ca.us]. E-mail attachments should be in Microsoft Word format or in portable document format (PDF).

All written material relating to this workshop will be filed with the Dockets Unit and become part of the public record.

⁶ Note that Regulations section 2901, subdivision (i)'s reference to Public Utilities Code section 9604 will be changed to reference Public Utilities Code section 224.3. Up until 2009, Section 9604, subdivision (d) defined the term "local publicly owned electric utility." The definition is now found in Section 224.3. See footnote 3 for the current definition.

The Commission will accept oral comments during the workshop. The workshop leader may limit oral comments to three minutes per person. Any comments will become part of the public record in this proceeding.

Public Adviser and Public Participation

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in this forum, please contact the Public Adviser's Office at (916) 654-4489 or 800-822-6228 or e-mail at: [publicadviser@energy.state.ca.us].

Information

If you have a disability and need assistance to participate in this event, contact Lourdes Quiroz no less than five days prior to the hearing at 916-654-5146 or e-mail: [lquiroz@energy.state.ca.us].

Please direct all news media inquiries to the Media and Public Communications Office at (916) 654-4989, or by e-mail at: [mediaoffice@energy.state.ca.us].

If you have questions on the technical subject matter of this meeting, please contact Sekita Grant, Advisor to Chair Weisenmiller, at (916) 651-0460, or by e-mail at: [sgrant@energy.state.ca.us].

Dated: March 6, 2012, at Sacramento, California.

Original Signed By:

ROBERT B. WEISENMILLER
Chair and Lead Commissioner
12-OIR-1 Rulemaking

PARTICIPATION IN THE WORKSHOP THROUGH WEBEX
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the meeting number unique to the specific hearing date:

➤ 4/18/12 - meeting number: **928 835 306**

When prompted, enter your information and the meeting password: **ghgwkshop#1**

After you login, a prompt will appear on-screen for you to provide **your** phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

- Please go to <https://energy.webex.com> and enter the unique meeting number.
- 4/18/12 - meeting number: **928 835 306**

When prompted, enter your information and the meeting password: **ghgwkshop#1**

After you login, a prompt will ask for your phone number. Click "CANCEL."

- ***Instead** call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- Call **1-866-469-3239** (toll-free in the U.S. and Canada) and when prompted enter the meeting number:
- 4/18/12 - meeting number: **928 835 306**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [\[http://support.webex.com/support/system-requirements.html\]](http://support.webex.com/support/system-requirements.html).

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.