

DOCKET**12-OIR-1**DATE MAR 26 2012RECD. MAR 26 2012**BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA**

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 NOTICE OF
RULEMAKING WORKSHOP TO CONSIDER MODIFICATIONS OF THE
REGULATIONS ESTABLISHING A GREENHOUSE GASES EMISSION
PERFORMANCE STANDARD FOR BASELOAD GENERATION OF LOCAL
PUBLICLY OWNED UTILITIES**

RANDY S. HOWARD
Chief Compliance Officer – Power System
Los Angeles Department of Water and
Power
111 N. Hope St., Room 921
Los Angeles, CA, 90012
Telephone: (213) 367 – 0381
Email: Randy.Howard@ladwp.com

VAUGHN MINASSIAN
Deputy City Attorney
Office of the City Attorney
111 N. Hope Street, Room 340
Los Angeles, CA, 90012
Telephone: (213) 367 - 5297
Email: Vaughn.Minassian@ladwp.com

Dated March 26, 2012

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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 Order Instituting Rulemaking (12-OIR-1) to consider modifications to the Emission Performance Standard (EPS) regulations, Title 20, California Code of Regulations, Section 2900 et seq.

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.

The LADWP is undertaking a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace more than 70 percent 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 standard on fossil fuel generation, energy efficiency, solar roofs, reduction 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.

Requiring LADWP and other Publicly-Owned Utilities (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. 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.

II. LADWP has Been and Remains Compliant With SB 1368 Regulations

The City of Los Angeles and the LADWP, reaffirms its 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 Senate Bill (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 these regulations were well designed to effectively implement the EPS, as envisioned under SB 1368.

It is LADWP's belief that the EPS regulation, as adopted in 2007, provides the POUs clarity and regulatory certainty with regard to the treatment of non-EPS compliant facilities.

As it has been already clarified in its previous testimony and Comments filed on this rulemaking, LADWP has an existing contractual arrangement with the Intermountain Power Agency (IPA) for the Intermountain Power Project (IPP) in southern Utah through 2027. As required by the legislation, LADWP has not taken any actions beyond the existing contract, such as procurement of energy for a term of five years or greater.

The LADWP operates four Los Angeles area gas-fired electric generation facilities, some of which exceed the emissions performance standard of 1,100 lbs/Megawatts hour (MWh), but fail to meet the requirement of 60 percent capacity factor baseload generation as set forth in Division 4.1 of the Public Utilities Code¹. Therefore, these facilities are not subject to the EPS requirements.

The LADWP has an ownership interest of 477 megawatts (MWs) (approximately 21.2 percent) in the Navajo Generating Station (NGS) located in

¹ Public Utilities Code, Section 8340(a), "Baseload Generation."

Arizona. Operations and investments decisions are overseen by the Engineering and Operations (E&O) Committee, which is formed by the Operating Agent (Salt River Project) and the other co-owners (including LADWP). The E&O Committee is fully aware of the limitations of SB 1368 as they pertain to the LADWP ownership, and fully understands that LADWP is unable to make investments that will extend the life of the plant by five years or more, or increase the rated capacity of the units not including increases that may result from routine maintenance.

Maintenance activities conducted at the (NGS) include keeping equipment in proper working order as necessary to keep the units running, such as fixing the control and coal-supply systems, etc. Expenditures include replacing transformers, computer systems, excitation system, pipelines, etc. Replacement is usually made with “in-kind” equipment, and again, the E&O Committee understands the limitations of SB 1368 on the investment.

To further support SB 1368 goals, LADWP’s previous 2010 and current 2011 Integrated Resource Plan (IRP) recommends early divestiture of its ownership interest in the NGS 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. 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.

The LADWP hereby provides comments and/or responses to the questions posed by the Commission in its Notice of Rulemaking workshop as well as additional insight as far as LADWP's progress in SB 1368 activities.

III. Responses to the Questions Posed by the Energy Commission

Question 1: Whether to establish a filing/reporting requirement for local publicly owned electric utilities' (POU) investments in non-deemed compliant power plants, regardless of whether the investment comes within the meaning of "covered procurement." (See Regs., Sections 2901, subd. (d), 2907)

The establishment of a filing/reporting requirement for ALL expenditures on non-deemed EPS compliant facilities, including those expenditures outside the definition of a "long-term financial commitment" is inconsistent with and exceeds the statutory authority provided by SB 1368. Had the Legislature intended a long-term financial commitment to include ALL expenditures, even those involving routine maintenance, then the Legislature would have specified that in the statutory language of SB 1368. Instead, the Legislature believed that a long-term financial commitment involved expenditures that were more significant, and specified as much by defining it to include "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."²

² Public Utilities Code, Section 8340(j).

Routine Maintenance

During the original EPS rulemaking³ in 2007, the LADWP and several other parties expressed concerns that routine maintenance includes necessary and beneficial expenditures to ensure continued safe and reliable plant performance and operation, and that such expenditures must be allowed to go forward under the EPS. The CEC agreed and responded that:

“The Energy Commission understands LADWP’s concern that certain maintenance activities not be precluded by these regulations. Therefore, section 2901(j)(4)(A) has been modified in 15-day language to make explicit that ‘routine maintenance’ does not trigger the EPS. Instead of having to apply for an exemption for maintenance activities that would otherwise trigger Energy Commission oversight...these activities are exempted outright. This should also address any due process concerns as the POU’s do not have to wait for an exemption to be processed.”⁴

The CEC further clarified in the original rulemaking in 2007 that the EPS does not apply to ALL expenditures and as such specified in Public Utilities Code, Section 2901(j)(4)(A) that expenditures associated with “routine maintenance” are excluded. The CEC recognized that the Legislature’s intent was to prevent backsliding and locking in new long-term commitments in high-emitting resources in advance of an enforceable greenhouse gas emissions cap under AB 32. The Legislature recognized that establishing the regulations to achieve the AB 32 statewide 2020 emissions cap would take several years to establish. The CEC clarified as follows:

*“The record is replete with comments from the POU’s that if they are not allowed to perform routine maintenance on their facilities, then both reliability and their ability to comply with environmental laws will degrade. **SB 1368 is not intended to shut down currently***

³ CEC, Docket No. 06-OIR-1.

⁴ CEC, Final Statement of Reasons, Docket No. 06-OIR-1, page 14.

*operating power plants; its focus is ensuring that substantial investments are not made that would lead to further costs when AB 32, or a similar program establishing a greenhouse gases emissions limit, is implemented. Routine maintenance may include replacing parts when they wear out. New parts are sometimes made better than previous iterations and improvements in some parts (e.g., turbine blades) can lead to an increase in efficiency and capacity. The Energy Commission determined that it is necessary to ensure that **POUs are not prohibited from maintaining the operation of their power plants** simply because there might be an incidental increase in capacity resulting from such maintenance. Allowing up to a 10% increase in capacity strikes an appropriate balance and is fully in keeping with SB 1368.” [emphasis added]⁵*

Existing Contracts

The LADWP does not support reporting or filing requirements that extend to include existing contracts. The Legislature was clear when it defined “long-term financial commitment” to apply to *new* and *renewed* contracts, and not existing contracts. Had the Legislature felt it prudent to expand the EPS beyond new and renewed power contracts, it would have included existing contracts in the statutory language. NRDC appeared to understand and agree with this distinction during the 2007 EPS rulemaking as well:

NRDC/UCS recommends that “the definition of ‘covered procurement’ be clarified such that existing contractual obligations through joint ownerships are not included.” NRDC/UCS comments that just as SB 1368 was not intended to apply to existing contracts, it should also not apply to “existing contractual obligations, such as joint ownerships or joint power arrangements (JPA). However, in the event that a POU recommits or refinances its involvement or changes its stake in such a joint ownership, that represents a new financial commitment that should be subject to the requirements of SB 1368.”⁶

⁵ CEC, Final Statement of Reasons, Docket No. 06-OIR-1, page 16.

⁶ CEC, Final Statement of Reasons, Docket No. 06-OIR-1, page 30.

Administrative Burden

Additional filing/reporting requirements would be too cumbersome, unrealistic, unmanageable and beyond the original scope of SB 1368. Considering the CEC's required duties on a variety of matters (i.e. the Integrated Energy Policy Report, the Renewable Portfolio Standard Regulations and Guidebook proceedings, RPS certification, advising the State Water Resources Control Board on its Once-Through Cooling Policy, etc.), LADWP believes that the Energy Commission is not in a position to begin reviewing hundreds (or even thousands) of filings related to necessary expenditures at generating stations. As stated above, these expenditures are not so much "investments" as they are "costs" of maintaining a generating station in safe, efficient and reliable operation.

It is LADWP's belief that the EPS regulation, as adopted in 2007, provides the POUs clarity and regulatory certainty with regard to the treatment of non-deemed EPS compliant facilities. The existing regulation has been in place for roughly 5 years and has accomplished its goal; it is inappropriate to now add sudden regulatory uncertainty and burdensome reporting requirements.

<p><i>Question 2: Whether to establish additional criteria for a "covered procurement"</i></p>

The LADWP believes that the need for additional criteria for further defining the term "covered procurement" is unnecessary. The definition of "long-term financial commitment" in the statute 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."⁷ The regulatory

⁷ Public Utilities Code, Section 8340(f).

definition of “covered procurement” is consistent with this definition and always has been clear, and effectively guided POUs in their decision-making process.

Question 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., Section 2901 subd. (j)(4)(A)

The LADWP believes that it is unnecessary to refine the meaning of “new ownership investment” because the language that describes that term is very clear, plain English and obvious. There is no doubt about the meaning of “designed and intended” nor is there doubt about the meaning of “routine maintenance.”

As referenced above, the CEC clearly stated that “[S]B 1368 is not intended to shut down currently operating power plants” or to lead to their deterioration; its focus is ensuring that substantial investments are not made on these higher emitting plants to extend their lives, but it clearly excluded maintenance activities from its definition of “covered procurements.”

The LADWP clearly understands that “routine maintenance” may include replacing parts when necessary. LADWP has taken great care to make sure that replacing parts are within the requirements of SB 1368.

The LADWP has notified co-owners in NGS of its intent to sell or to divest and has hired the services of the investment banking firm Goldman, Sachs & Co. to assist in the divestiture⁸. In addition, a Request for Information (RFI) was

⁸ Amendment No. 1 to Agreement No. 47790 Between the LADWP and Goldman Sachs & Co. for Merger & Acquisition Advisory Services, dated June 1, 2011. Available at: http://clkrep.lacity.org/onlinedocs/2011/11-1091_rpt_bwp_6-22-11.pdf

issued to seek EPS-compliant replacement resources, multiple responses were received, and LADWP will be issuing an RFP to procure such EPS-compliant replacement resources.

Question 4: How and in what instances have POU's applied the terms "routine maintenance" and "designed and intended to extend the life" in deciding whether investments in non-deemed compliant power plants 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.

As mentioned in previous comments submitted⁹, here are examples that pertain to LADWP:

Intermountain Power Plant (IPP) – LADWP has an existing contractual arrangement with the Intermountain Power Agency (IPA) which owns IPP. LADWP has not taken any actions beyond the existing contract as covered by the regulation, such as procurement of energy for a term of five years or greater beyond the existing contractual arrangement. The Power Purchase Agreement does require that plant costs are passed through to the end-users of the energy, but under no condition do these capital expenditures extend the term and duration of the existing Power Purchase Agreement. To be clear and to once again clarify a significant misstatement in the Petitioner's written submission to the CEC, neither LADWP nor any of the other California POU participants [Anaheim, Burbank, Glendale, Pasadena and Riverside] have any ownership position in the project.

⁹ 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 Gas Emissions Performance Standard (EPS) Regulation, dated January 11, 2012. Available At: http://www.energy.ca.gov/business_meetings/2012_packets/2012-01-12/Item_07_OIR_EPS/Public_Comments/LADWP_Comments_TN-63352.pdf

LADWP Los Angeles Area generating units – Some of LADWP’s natural gas generating units exceed 1,100 lbs/MWh, but do not operate at or above an annualized plant capacity factor of 60 percent and therefore are not considered baseload generation subject to the EPS. That being stated, all of these facilities are being scheduled for replacement due to OTC requirements. Once the replacement is completed, these generating units should not exceed the 1,100 lbs/MWh threshold.

Navajo Generating Station (NGS) – LADWP has an ownership interest of 477 MWs (out of 2250MWs) in the NGS. LADWP is the only participant subject to SB 1368 in the project. There are four other owners including the federal government as the largest owner. Maintenance, operations and investments decisions are overseen by the Engineering and Operations (E&O) Committee, which is formed by the Operating Agent (Salt River Project) and the other co-owners (including LADWP). The E&O Committee is fully aware of the limitations of SB1368 as they pertain to the LADWP ownership, and they fully understand that LADWP cannot make investments that will extend the life by five years or more, or increase the rated capacity of the units.

Maintenance activities conducted at the NGS include keeping equipment in proper working order as necessary to keep the units running, such as fixing the control and coal-supply systems, etc. Investments include replacing transformers, computer systems, excitation systems, pipelines, intake structures, etc. Replacement is usually made with “in-kind” equipment, and again, the E&O Committee understands the limitations of SB1368 on the investment.

Furthermore, the NGS owners' operations contracts terminate in 2019, but LADWP is moving forward with plans to divest its ownership interest by 2015, as it transforms its resource mix to meet the regulatory requirements that the utility is facing. The details of these activities can be found in LADWP's Integrated Resource Plans at: <http://www.ladwp.com/ladwp/cms/ladwp015021.pdf>.

Question 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 power plant 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.

The CEC needs to clarify this question. According to the current rules in place, it is not possible that a POU would be making a "new ownership investment" in an existing, non-deemed compliant power plant where the investment was for "routine maintenance" because the language of the law has made it clear that the term of art "new ownership investment" does not include "routine maintenance."

Routine Operation & Maintenance projects are fairly common in these facilities. Such projects are not intended to extend the contract term, but are meant to keep the equipment in proper working order as necessary to keep the units running. Below is a table with the Operation & Maintenance costs for facilities in scope of the EPS:

Operation & Maintenance Costs – LADWP’s Share (in \$1,000)					
Generation Station	2011	2010	2009	2008	2007
Harbor Generating Station	18,282.7	16,357.7	15,077.9	13,649.8	16,003.5
Haynes Generating Station*	46,223.4	48,933.4	50,809.1	34,170.6	46,246.0
Scattergood Generating Station	28,686.2	25,659.8	24,300.7	20,318.1	23,545.5
Navajo Generating Station	36,282.4	37,868.0	39,017.5	27,576.7	27,800.2
Intermountain Power Plant	25,157.2	19,429.2	17,806.0	16,538.4	16,955.9
* Haynes CC (units 8, 9, and 10) do not exceed 1,100 lbs/MWh.					

For example, the above Operations & Maintenance costs for Navajo Generating Station (NGS) include the following major jobs performed regularly during every overhaul: Boiler Ash and Gas Side, Boiler Fuel and Ignition, Boiler Water Side, Circulating Water, Condensate, Feedwater, Generator, Exciter, and Subsynchronous Resonance (SSR) Systems, Main Turbine, Precipitator, Boiler Feed Pump/Auxiliary Turbines, Main Transformer, Overhaul Maintenance Supervision, Piping and Header Inspections, Burner Tilting Tips Replacement, and Scrubber Overhaul. In addition to the routine maintenance jobs listed, there were 34 other projects scheduled in 2007, 34 in 2008, 44 in 2009, 38 in 2010, and 31 in 2011.

As stated above, the establishment of a filing/reporting requirement for ALL expenditures on non-deemed EPS compliant facilities will become

cumbersome, unrealistic, unmanageable and beyond the original scope of SB 1368.

Question 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 or more”? Provide supporting documentation.

All LADWP budget expenditure activities are presented to the Board of Water and Power Commissioners for review and consideration in an open public setting. All such documents are available to the public and in most instances posted on the LADWP website. Upon approval by the LADWP Board, all formal budgets are forwarded for consideration by the 15 member city council in additional public meetings. Notices of all these public meetings are posted in advance and the results are similarly posted afterwards.

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

The ARB has an established 2020 statewide greenhouse gas emissions cap of 427 million metric tons of carbon dioxide equivalent (MMTCO₂e) that was approved per ARB Resolution 07-55 on December 6, 2007. This cap includes emissions associated with electricity imports. On October 20, 2011, the ARB adopted the Cap-and-Trade (C&T) regulation and amendments to the Mandatory

Reporting Regulation (MRR) to align it more closely to the C&T regulation. Both regulations include emissions associated with electricity imports. The first compliance period for the C&T program becomes effective January 1, 2013¹⁰ and the emissions reported under the MRR are subject to enforcement effective January 1, 2012.

The LADWP supports the nullification of the EPS regulation upon adoption of an enforceable emissions cap under AB 32. Unlike the EPS that was expedited as a backstop measure in advance of AB 32, the AB 32 program is a comprehensive regulatory proceeding that has involved several years of public vetting to develop a statewide emissions inventory, mandatory reporting requirements, a comprehensive Scoping Plan outlining numerous measures (including a 33 percent Renewables Portfolio Standard), and a C&T regulation to reduce emissions from various economic sectors to meet the statewide 2020 cap. The C&T regulation, alone, has been extensively vetted in multiple arenas and has included consideration of a variety of proposed designs.

The final C&T regulation is one that provides the electricity sector with an aggressive yet steadily declining emissions trajectory and 2020 emission reduction target. Actions by electric utilities to reduce their respective greenhouse gas emissions began immediately at the inception of AB 32, and will continue through 2020. This approach provides LADWP and other electric utilities with the regulatory certainty needed to ensure that any actions, including investments in generation resources are implemented with a clear and full understanding of their respective risks and benefits. The AB 32 program overall recognizes that

¹⁰ ARB Cap-and-Trade Regulation, Section 95840, Page A-71.

emissions from the electricity sector, including electricity imported from out-of-state coal plants, will decline over time as generation resources are replaced with cleaner low- and zero-emitting resources. The AB 32 C&T regulation did not contemplate a potential scenario where the SB 1368 EPS might trigger non-compliance, such that electricity imports from a single major out-of-state facility might cease immediately. Such a scenario would unduly impact grid reliability and ratepayer costs with no clear environmental or economic benefits.

The Legislature specified in Public Utilities Code, Section 8341(f), that the CEC *shall* reevaluate the EPS when an enforceable emissions limit is in place. The Legislature understood the importance of addressing greenhouse gas emissions in a manner that was comprehensive and thoughtful, and realized that once that process was complete that there would be valid reasons to reconsider the need for the EPS. The cap is in effect now, and therefore the reevaluation requirement of SB 1368 is triggered. The CEC may decide to continue, modify or replace the EPS.

The Petitioners' request for rulemaking is based, in part, on factually incorrect information. It is impractical to conduct a new rulemaking in response to the Petitioners that will overlap the effective enforcement date of the C&T regulation, and ignore or delay the statutorily required reevaluation of the EPS to determine if it is necessary in light of an enforceable cap. LADWP recommends that the CEC first address the statutory requirement of Public Utilities Code, Section 8341(f). If, after such reevaluation, the CEC determines that an EPS

should remain in place, the LADWP recommends that it not be modified as that will introduce new uncertainty with regard to investments.

Question 8: Whether the Petitioners' concern regarding possible violations of the EPS would be better addressed through initiation of the Commission's complaint and investigation proceedings found at the Regulations section 1230 through 1237.

It cannot be stressed enough; Petitioners' claims regarding possible violations of the EPS are based on incorrect information and therefore 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. This is not correct. IPP is owned by a Utah entity known as the Intermountain Power Agency ("IPA") and all the California POU's that take energy from IPA do so under contractual obligations lasting until 2027. No California POU's have ownership in IPP or IPA and no investments in this facility extends the contractual term with the California Utilities.
- 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, POUs 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.

Question 9: Whether any other changes to the Energy Commission’s EPS regulations are necessary to carry out the requirements of SB 1368.

The LADWP does not believe changes to the regulations are necessary; there was an extensive public process leading up to the enactment of SB 1368 regulations and all these issues were addressed at that time prior to the regulations taking effect. Now, 5 years later, Petitioners are asking the CEC to consider changing the regulations, but no factual basis exists in which to support such a decision and in fact significant factual errors are cited as the support behind the Petition. LADWP and the other POUs have been operating under the belief that this is and has been the law for the past 5 years and will continue to be the law in guiding its long-term procurement and resource planning strategies, all of which embrace the eventual elimination of such resources from LADWP’s portfolio.

The LADWP is greatly concerned that the CEC has initiated 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 initiating this rulemaking, which will take away already limited staff resources from both the CEC and the POUs from more

critical proceedings, such as the SB 2 (1X) 33 percent Renewable Portfolio Standard (RPS) rulemaking or the RPS Eligibility Guidebook. The CEC must recognize that it has initiated this rulemaking 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.

Please refer to LADWP's response to Question 8 above for examples of factual errors in the petition. The CEC can rectify this problem by reviewing the comments and responses to its proposed questions which set the record straight and allow the CEC to diligently reach the determination that changes are not necessary to the regulation.

IV. Conclusion

The LADWP remains committed to reducing greenhouse gas emissions and transitioning away from its coal-fired generation in a responsible manner that maintains the integrity and reliability of the electric grid.


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. Also, the establishment of a filing/reporting requirement for ALL expenditures on non-deemed EPS compliant facilities is too cumbersome, unrealistic, unmanageable and beyond the original scope of SB 1368. LADWP supports the nullification of the EPS regulation upon adoption of an enforceable emissions cap under AB 32. Furthermore, there are no


foreseeable documented benefits in requesting utilities to submit their expenditures on non-deemed EPS compliant facilities.

The LADWP appreciates the opportunity to submit these comments and strongly recommends that the CEC not proceed with a new rulemaking, but instead utilize the staffing resources to assist the California utilities with meeting the multitude of mandates in the most cost-effective manner and to ensure the reliability of the electric grid.

Dated March 26, 2012

Respectfully submitted,

By: 
RANDY S. HOWARD
Chief Compliance Officer – Power System
Los Angeles Department of Water and
Power
111 N. Hope St., Room 921
Los Angeles, CA, 90012
Telephone: (213) 367 – 0381
Email: Randy.Howard@ladwp.com

By: 
VAUGHN MINASSIAN
Deputy City Attorney
Office of the City Attorney
111 N. Hope Street, Room 340
Los Angeles, CA, 90012
Telephone: (213) 367 - 5297
Email: Vaughn.Minassian@ladwp.com