

BEFORE THE ENERGY COMMISSION
OF THE STATE OF CALIFORNIA

DOCKET

12-OIR-1

DATE APR 09 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

REPLY 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

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Dated April 9, 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 Reply 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.

As a result of combined regulatory mandates for increased renewable energy, emissions performance standard on fossil fuel generation, energy efficiency, solar roofs, reduction in greenhouse gas (GHG) emissions, and the elimination of once-through cooling (OTC) for coastal power plants, LADWP is undertaking a utility-wide transformation and making billions of dollars in investments on behalf of its ratepayers to replace about 70% of the energy resources over the next 17 years that it has relied upon for the last 50 years. LADWP is making these investments to contribute to clean air, end its reliance on coal, and stop the use of once through cooling, to name just a few of its long-term goals. Nonetheless, it must do so in a responsible and coordinated manner to ensure continued grid reliability and to minimize unnecessary rate impacts to its customers.

As stated in previously filed and oral comments, LADWP has clearly communicated its resolve and outlined a clear path in its Integrated Resource Plan (IRP) to transition out of coal-fired power plants. The divestiture plans for Navajo Generating Station (NGS) by no later than December 2015 are in the implementation phase and the transition plans for Intermountain Power Project (IPP) are in the early phases with the active participation of the owner (Intermountain Power Agency) and California and Utah purchasers. These transition plans are being implemented as part of a much more broad-based Integrated Resource Planning process with community and public participation.

LADWP, along with the other Publicly-Owned Utilities (POU), has opened a productive conversation with the Natural Resources Defense Council and the Sierra Club (Petitioners). While not agreeing with the context of the Petition or the need to reopen the EPS rulemaking, LADWP is encouraged by the Petitioners' interest in

working with the POU's on the transition plans. Additional discussions are planned with the goal of developing common principles that meet the needs of all parties and finding common ground to reach the ultimate reliability and environmental goals within Senate Bill (SB) 1368's overall vision. With that said, LADWP hereby provides the following reply comments to the Petitioners' comments that were submitted on March 26, 2012.

LADWP's key points are as follows:

- SB 1368 provides the CEC with statutory authority to establish and enforce the EPS, not evaluate alternative investment options;
- POU governing authorities provide the most appropriate public arena for decision-making activities; and,
- The EPS has effectively served its purpose as a backstop measure for GHG emissions in its current form.

II. COMMENTS

LADWP is concerned that the Petitioners are requesting the POU's to file with the CEC each time necessary operations and maintenance (O&M) expenditures are made to continue safely and reliably operating the aforementioned power plants. Such a proposal would shift the burden of safe and reliable operations of any power plant to a third party and will add unnecessary hurdles that can potentially impact grid reliability, contrary to the intent of SB 1368.

Furthermore, the implementation of Assembly Bill (AB) 32 Cap-and-Trade and SB 2 (1X) regulations are forthcoming and there is still much work that needs to be completed at the California Air Resources Board (ARB) and the Energy Commission before both programs are fully implemented. LADWP is eager to add clarity to RPS compliance and to fully achieve the AB 32 targets. POU and CEC resources must be

focused on anchoring down these two major policy cornerstones so that the POU's can have a clearer long-term path to achieving CO₂ reductions quickly. The CEC should remain focused on what it can do to support and facilitate the transformation of the POU's' respective generation portfolios.

LADWP has put in place very aggressive and achievable plans to reduce GHG emissions from its portfolio and has been in compliance with the EPS since its enactment. Therefore, LADWP supports all parties working together to achieve the higher goals of CO₂ emission reductions without additional amendments to the EPS that will slow down the progress of the POU's and will shift the finite resources of both the POU's and the CEC to support activities that are not helpful.

a. SB 1368 Provides the CEC with Statutory Authority to Establish and Enforce the EPS, Not Evaluate Alternative Investment Options

The Petitioners suggest that the questions in the CEC Notice “do not request enough information for the Commission to make an informed decision...” and recommend:

“The Commission should request information from the POU's on: 1) All past and planned investments from POU's at non-compliant power plants; 2) Any and all information on alternative investment options considered and under consideration, including alternative investments at the non-compliant plants and alternative energy and capacity supply options; and 3) A full review of all obligations, options, and opportunities for California POU's under their existing contracts at non-compliant plants should the POU's claim that they are contractually bound to make investments at the non-compliant power plants.”¹

The LADWP strongly encourages the CEC to recognize the limitations of its statutory role with regard to the EPS, which does not extend to include the evaluation of

¹ Joint Comments of the Natural Resources Defense Counsel and the Sierra Club in Response to the Energy Commission's Notice of Rulemaking Workshop, Docket No. 12-OIR-1, March 26, 2012, page 2.

alternative investment options. As such, the Petitioners' request for information exceeds what is necessary to evaluate POU compliance with the EPS and exceeds the authority of the CEC.

The CEC's authority to establish and enforce the GHG EPS for the POUs is not the same as the California Public Utilities Commission's (CPUC) authority over the Investor Owned Utilities (IOUs). The CPUC's broad constitutional and statutory powers give it full plenary authority over the IOUs' operations, retail rates, long-term procurement plans, and renewable energy procurement plans, among other matters.

As a POU, it is LADWP's governing authority, the Los Angeles Board of Water and Power Commissioners along with the Mayor and Los Angeles City Council, and not the CEC, that oversee its investment decisions, set its electric rates, and guide its long-term plans for meeting multiple regulatory mandates, of which the EPS is only one mandate. The Petitioners should recognize that the CEC is not the de facto governing body over POUs, nor is it in a position to begin reviewing hundreds (or even thousands) of filings related to necessary expenditures at generating stations, let alone evaluate "alternative investment options" for each POU.

Furthermore, the CEC has clearly stated that "[SB 1368] is not intended to shut down currently operating power plants"² or lead to their deterioration; its focus clearly excluded maintenance activities from its definition of "covered procurement." Since the intent is not to shut down currently operating power plants, the need to provide "alternative energy and capacity supply options" is not only unnecessary, but is also not supported by existing rules, and falls under the full and exclusive jurisdiction of a POU's governing authority. If the Petitioners' request is granted, the safe and reliable operation

² CEC, Final Statement of Reasons, Docket No. 06-OIR-1, page 30.

decisions will not only be bogged down by more procedural hurdles, but also be diluted through complicated and vague processes. This will introduce elements of degraded safety and reliability standards. LADWP recommends that the CEC disregard this request.

b. POU Governing Boards Provide The Most Appropriate Public Arena For Decision-Making Activities

The Petitioners suggest that the POU's public process is lacking:

"[The Commission] has no way to verify that there has been uniform or adequate compliance with the EPS, let alone a meaningful public process. [SB 1368] gave the Commission authority to oversee investments to ensure compliance. Varying levels of public process at each of the state's POU's should not be a substitute for the Commission's independent responsibility under the statute." Footnote 7 of the Petitioners' filing cites PUC Code Section 8341(c).³

First, the CEC's authority under PUC Section 8341(c) is NOT to "oversee" POU investments as suggested by the Petitioners, but instead to 1) *adopt regulations* for the enforcement of the EPS regulations for POU's, 2) establish the *emissions level* no higher than emissions for a combined-cycle natural gas baseload generation, and 3) determine whether a long-term financial commitment is for *baseload generation* (i.e. meets an annualized plant capacity factor of at least 60 percent). The CEC has met the requirements of PUC Section 8341(c) regardless of the POU public process that is in place.

Second, the Petitioners have neither demonstrated nor provided evidence that LADWP or any other POU has violated the EPS, or diminished the public's access to or

³ Joint Comments of the Natural Resources Defense Counsel and the Sierra Club in Response to the Energy Commission's Notice of Rulemaking Workshop, Docket No. 12-OIR-1, March 26, 2012, pages-5-6.

participation in its decision-making activities related to expenditures or long-term resource planning efforts. It is not clear exactly how the CEC would be better suited than the POU governing authorities, which are already subject to the Brown Act requirements to provide a “meaningful public process” for the POU ratepayers by holding public meetings. As an example, LADWP has embarked on a rate-setting process that started in 2010 as well as a full community outreach program for its Integrated Resource Plan (IRP)⁴. The 2010 IRP was updated in December 2011 and LADWP has commenced yet another IRP process in 2012 as part of a continuing effort to update the utility’s planning to address technology, customer demand and power resource cost changes. All of the efforts by LADWP to review its power resource plans and rate consideration processes have included an extensive public process. The CEC is not positioned to provide the same level of public outreach or public access, nor does it have the statutory authority to evaluate expenditures or balance competing resource needs for each POU in California. LADWP recommends that the CEC disregard the Petitioners’ characterization of the POU’s public process.

c. EPS Has Served Its Purpose as a Backstop Measure Effectively In Its Current Form

The Petitioners suggest that SB 1368 never contemplated elimination of the standard once an enforceable cap was established under the California Global Warming Solutions Act of 2006 (AB 32), pointing out that the law says the CEC “shall ‘reevaluate and *continue, modify or replace*’ the standard (emphasis added).”⁵ In 2006, SB 1368

⁴ LADWP’s Integrated Resource Plan can be found at: www.lapowerplan.org. Community outreach activities for the IRP are described at the following link: <http://lapowerplan.org/community-outreach-summary>

⁵ Joint Comments of the Natural Resources Defense Counsel and the Sierra Club in Response to the Energy Commission’s Notice of Rulemaking Workshop, Docket No. 12-OIR-1, March 26, 2012, page 6.

was the only check against GHG emissions, in advance of the AB 32 regulations taking effect.

With the passage of AB 32, it was the intent of the Legislature that ARB design emission reduction measures to meet the statewide GHG emissions limits in a manner that “**minimizes** costs and maximizes benefits for California’s economy, **improves and modernizes** California’s energy infrastructure and maintains electric system reliability.” (emphasis added)⁶ The ARB was also tasked to consult with the CPUC in the development of emission reduction measures to ensure that electricity and natural gas providers are not required to meet “**duplicative** or **inconsistent** regulatory requirements.” (emphasis added)⁷ The Petitioners’ proposal to expand the EPS runs counter to the Legislature’s intent to thoughtfully lay out a long-term strategy to reduce GHG emissions without undue harm to ratepayers or the economy. The Petitioners’ proposal would lock in expensive market purchases of gas-fired power and diminish the resources available to the POUs to transition their respective generation portfolios.

In June 2008, subsequent to the adoption of the SB 1368 EPS regulations, ARB released its Scoping Plan Discussion Draft for public comment, which included a list of measures under further consideration, including the following measure related to coal-fired electricity imports from out-of-state facilities:

*“**Coal Emission Reduction Standard**...ARB is working with the CEC and the CPUC to evaluate approaches to reduce the carbon dioxide associated with their current coal-based electricity sales, including requiring electric service providers to divest or otherwise mitigate portions of existing investments in coal-based generation.”⁸*

⁶ Health and Safety Code, Section 38501(h).

⁷ Health and Safety Code, Section 38501 (g).

⁸ *Climate Change Draft Scoping Plan: A Framework for Change, June 2008 Discussion Draft*, ARB, page 39.

It should be noted that the ARB considered this measure, in conjunction with the CPUC and the CEC, and ultimately deleted it from further consideration in the final Scoping Plan that was adopted in October 2008. In support of ARB's Scoping Plan development process, the CPUC and CEC also adopted final recommendations for GHG emission reduction strategies (Joint Recommendations) from the electricity and natural gas sectors⁹ that included measures for energy efficiency, renewable energy, and market-based strategies. However, the Joint Recommendations did NOT include any recommendation to ARB for the divestiture or further reduction of GHG emissions from coal-fired electricity imports beyond what was already contemplated under SB 1368 at that time, including 2019 as the EPS trigger date for NGS. In fact, the anticipated emission reductions were reflected in the CPUC's GHG economic impact modeling efforts used to develop the Joint Recommendations and are currently reflected in the ARB's Cap-and-Trade emission allowance schedule.

Now that there is a statewide 2020 emissions cap, and there are measures in the ARB's Scoping Plan that apply to the POUs and LSEs, including energy efficiency, renewables and emissions trading, the only logical fate of the EPS regulation would be, at best, a continuation maintaining the same level of regulatory effect. More logically, if it were to be modified or replaced, it would be done in a manner that recognizes the enforcement power granted to the ARB over how best to address GHG reductions.

Essentially, the CEC is being petitioned to devote an increasing amount of its finite resources and staff time to a backstop GHG regulation that has served its purpose effectively in its current form. The result of the Petitioners' request, if adopted, would run counter to the AB 32 program by introducing new regulatory uncertainty for POUs and

⁹ *Final Opinion and Recommendations on Greenhouse Gas Regulatory Strategies*, CPUC and CEC, October 2008.

ratepayer impacts without any clear GHG emission reduction benefit, and would actually slow down progress being made by the POU's. The state has designated the ARB as the clear authority over GHG emission reductions. LADWP strongly recommends that the CEC avoid this distraction and remain focused on its more central and vital role to support the electric sector's implementation of the Renewable Portfolio Standard Program and Energy Efficiency measures that are needed to meet the AB 32 goals.

III. CONCLUSION

LADWP again reaffirms that it remains committed to reducing GHG emissions and transitioning away from its coal-fired generation in an aggressive, yet responsible and deliberate manner that maintains the integrity and reliability of the electric grid. LADWP supports all parties working together to achieve the higher goals of CO₂ emission reductions without additional amendments to the EPS that will slow down the progress of the POU's and will shift limited resources to support activities that are not helpful. Adding unnecessary rulemaking burdens and the establishment of a filing/reporting requirement for expenditures on non-deemed EPS compliant facilities is too cumbersome, unrealistic, and unmanageable; most importantly, it is beyond the original scope of SB 1368. Furthermore, there are no foreseeable documented benefits in requesting utilities to submit their expenditures on non-deemed EPS compliant facilities.

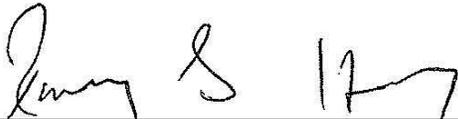
LADWP appreciates the opportunity to submit these comments and strongly recommends that the CEC not proceed with this new rulemaking. LADWP does not believe the petitioners justified the need for a comprehensive review. That being said, LADWP and other impacted POU's have opened active conversations with the

Petitioners in order to determine if a resolution between the Parties could be developed that satisfies the goals of the Petitioners without substantial resource impacts.

LADWP requests that the CEC utilize their limited staffing resources to assist the California utilities with meeting the multitude of mandates in the most cost-effective manner while ensuring the reliability of the electric grid.

Dated April 9, 2012

Respectfully submitted,

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