

**BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

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

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**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY,
M-S-R PUBLIC POWER AGENCY, AND CITY OF ANAHEIM
RESPONSE TO TENTATIVE CONCLUSIONS AND
REQUEST FOR ADDITIONAL INFORMATION**

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The Southern California Public Power Authority (“SCPPA”),¹ the M-S-R Public Power Agency (“M-S-R”),² and the City of Anaheim (“Anaheim”) (hereinafter, the “Joint Parties”) appreciate this opportunity to respond to the Tentative Conclusions and Request for Additional Information (“Tentative Conclusions”) released by the Lead Commissioner for the captioned proceeding on July 9, 2012.³

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Colton, Glendale, and Imperial Irrigation District.

² M-S-R Public Power Agency is a joint powers agency whose members are the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R holds a 28.8 percent ownership interest in San Juan Project Unit 4.

³ Anaheim holds a 10.04 percent ownership interest in San Juan Project Unit 4. SCPPA owns a 41.8 percent interest in San Juan Project Unit 3. The SCPPA members which participate in San Juan Project Unit 3 through SCPPA are the Imperial Irrigation District and the cities of Azusa, Banning, Colton, and Glendale.

This response follows the structure of the Tentative Conclusions. The Joint Parties believe that there is no need to require additional reporting by the publicly owned utilities (“POUs”) to the Commission, and further support the Lead Commissioner’s conclusion that there is no basis for further refining or defining “routine maintenance,” “designed and intended to extend the life,” or “covered procurement” as those phrases are used in the Emission Performance Standards (“EPS”) regulation.⁴ However, the Joint Parties urge the Lead Commissioner to reconsider his conclusion that the Air Resources Board (“ARB”) Cap-and-Trade Regulations⁵ do not establish an emissions limit on POUs that triggers a reevaluation of the EPS regulation under section 8341(f) of the Public Utilities Code. The Joint Parties also urge the Lead Commissioner not to expand the scope of the proceeding to include revising the emission performance standard of 1100 pounds of carbon dioxide per megawatt hour of electricity.

I. WHETHER TO ESTABLISH A FILING REQUIREMENT FOR ALL POU INVESTMENTS IN NON-EPS COMPLIANT FACILITIES.

The Regulation should not be revised to require additional reporting requirements. Under the Regulation, POUs are required to submit compliance filings whenever they enter into a covered procurement. (Regs., §§ 2909, 2010) The compliance filings are only required for covered procurements. The Regulation also includes a provision that allows the Commission to make a determination regarding whether or not a prospective procurement is a covered procurement or not. (Regs., § 2907) POUs that are not able to reach a determination regarding whether or not a prospective procurement would fall within the definition of § 2901(j)(4) can seek a determination by the Commission whether or not a prospective procurement is a covered

⁴ 20 Calif. Code of Regulations §§ 2900-2913.

⁵ 17 Calif. Code of Regulations §§ 95801-96022.

procurement. Despite comments to the contrary, the lack of such filings is in no way indicative of non-compliance with the Regulation, and the Tentative Conclusions properly note that neither the Natural Resources Defense Council, nor the Sierra Club, “nor anyone else offer evidence of POU non-compliance.”⁶ Indeed there is no link between these two provisions, and the fact that POUs have not needed to seek guidance from the Commission regarding whether or not a prospective procurement meets the requirements of § 2904(j) speaks directly to the fact that the terminology used in the Regulation is neither unclear, nor ambiguous. As the Tentative Conclusions state, these definitions have undergone considerable scrutiny, and their meanings are clear.⁷ POUs perform their legal responsibilities in full view of the public, and indeed the decision makers are directly accountable to those that appoint or elect them. That is the premise upon which the legal presumptions that POUs are performing their duties as required lies.

Furthermore, based on a review of the transcript from the April 18 Workshop and the materials submitted in this Rulemaking process, the Joint Parties continue to be concerned that the proposed reporting requirement would be expanded to include a “CEC review and approval” process for all POU transactions, which is clearly not authorized by SB 1368. An ever expanding “reporting” requirement also imposes significant practical and financial implications for POUs, as any additional requirements would increase compliance costs for public agencies already sharing in the state’s financial hardships, and would create even more administrative requirements on the CEC itself relative to enforcement.

The Joint Parties do not believe that there is any merit in burdening either the POUs or the Commission with additional reporting requirements. However, in order to provide the

⁶ Tentative Conclusions, p. 3.

⁷ Tentative Conclusions, pp. 4-6.

Commission with even more detailed information regarding the transparency of the POU process, the Joint Parties provide the following responses to the Lead Commissioner's request for:

Copies of written procedure and policies for approving expenditures, particularly expenditures relating to non-compliant powerplants.

A description of the procedure for bringing expenditure or investment requests to the governing body. Explain what threshold point or point trigger submitting a particular investment for governing body approval.⁸

A. M-S-R Response to Request for Additional Information

M-S-R's only ownership interest in a non-EPS compliant facility is the San Juan Generating Station (SJGS), a coal-fired, electricity generation facility in New Mexico. M-S-R's procedures for approving expenditures in the San Juan Generating Station are embodied in a combination of the Ralph M. Brown Act⁹, the Regulations themselves, the Agency's organic documents, agreements among M-S-R and its Members, and the various agreements and bond covenants that govern M-S-R's ownership in SJGS. M-S-R is required by these agreements to adopt a written budget each year.

M-S-R has a formal process for review and approval of expenditures. That process involves review and approval of the total SJGS budget, as well as specific expenditures set forth therein. Since M-S-R is required by these aforementioned agreements to adopt a written budget each year, the contents of the approved SJGS budget are then incorporated in the proposed M-S-R Budget and considered and adopted by the M-S-R Commission after public hearing. M-S-R staff, General Manager and Member representatives to the M-S-R Technical Committee review

⁸ Tentative Conclusions at 4.

⁹ Cal. Government Code §§ 54050-54963.

the proposed SJGS budget for conformance with the adopted M-S-R Strategic Plan and Prudent Utility Practice (especially with respect to the efficient and economic operation of SJGS) prior to adoption by the SJGS Participants. The industry standard is to ensure that all necessary maintenance is done as part of the normal operation of the plant. New technologies or non-standard parts replacements that are designed solely to increase the generation output of a facility or increase the life of a plant would not necessarily be considered routine maintenance and would be identified for further review to screen out potentially covered procurements.

To date M-S-R has rejected one proposal put forth by the SJGS Operating Agent (PNM) as being contrary to the intent of SB1368 – replacing nozzle blocks installed in the 2007 HP/IP turbine rotor replacement project that give the efficiency improvements guaranteed by General Electric, but failed to give a corresponding increase in net capacity. The subsequent replacement was only intended to increase capacity; accordingly, M-S-R and the other Participants determined not to proceed and the corresponding capital budget item was removed from the SJGS Budget.

As a custom and practice, since the adoption of the CEC regulations in 2007, the M-S-R Commission has reviewed, and will continue to review, every proposed capital budget item contained in the annual SJGS budget and emergent capital budget items proposed by the SJGS Operating Agent during the course of each year. The M-S-R Commission makes determinations whether or not such items are a covered procurement as that term is defined in the Regulation, i.e. – specifically by reviewing the criteria specified in § 2901(j)(4) as to whether it extends the life of the project or causes the capacity to increase by 50 MW or greater. The M-S-R Commission also considers whether the proposed item is required under a standard of Prudent Utility Practice for the continued efficient and economic operation of SJGS or is otherwise

required for the public health, safety or welfare. Since the adoption of SB 1368, none of the 155 proposed capital budget items submitted to the M-S-R Commission could be found to be a “covered procurement.” All reviews and determinations made by the M-S-R Commission are conducted and made during meetings open to the public that are properly noticed and agendized in accordance with the Brown Act and memorialized in a duly adopted resolution.

B. SCPPA Response to Requests for Additional Information.

SCPPA’s “written procedure and policies for approving expenditures” for the San Juan Project is the EPS regulation itself. As explained by SCPPA’s representative at the April 18, 2012 workshop in this proceeding,¹⁰ SCPPA has a representative who sits on the various San Juan Project committees including the Engineering and Operating Committee, the Fuels Committee, and the Coordinating Committee. Each time that SCPPA is asked to vote on a capital project, the SCPPA staff examines the investment to determine whether the investment falls within any of the categories set forth in section 2902(j)(4) of the EPS regulation:

(A) is designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance;

(B) results in an increase in the rated capacity of the powerplant, not including routine maintenance; or

(C) is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant.¹¹

With one exception, every time SCPPA has been called upon to vote on a capital investment, the investment has clearly fallen outside the subsection criteria (A) through (C) as set forth in the EPS regulation.

¹⁰ Transcript 13:13-14:6; 92:5-23.

¹¹ EPS Regulation, § 2902(j)(4)(A)-(C).

The sole exception involved the need for a rotor blade replacement at San Juan Unit 3 in 2009. There was a question about whether replacement of the rotor blades would fall within criterion (B), “results in an increase in the rated capacity of the powerplant, not including routine maintenance,” so as to be a covered procurement. It appeared that the installation of new rotor blades might increase the capacity of San Juan Unit 3 slightly.

Accordingly, the SCPPA staff presented the investment to the SCPPA Board of Directors (“SCPPA Board”) for consideration. As discussed in the March 26, 2012 Comment filed by SCPPA and Anaheim in this proceeding,¹² the SCPPA Board adopted SCPPA Resolution No. 2009-23 finding that the installation of the rotor blades constitutes routine maintenance and would not be a covered procurement: “[The] proposed San Juan Unit 3 High Pressure/Intermediate Pressure turbine replacement project is consistent with Prudent Utility Practice, constitutes routine maintenance and is not a Covered Procurement pursuant to the EPS regulation.”¹³ As a result of the adoption of Resolution 2009-23, the SCPPA representative on the San Juan Engineering and Operating Committee and the Coordinating Committee subsequently voted for the investment in replacing the rotor blades.

The SCPPA Board considered Resolution 2009-23 in accordance with the Brown Act. Accordingly, a notice of the SCPPA Board’s consideration of the resolution was posted on SCPPA’s website and was physically posted at Pasadena City Hall on February 13, 2009, to provide the public with notice and an opportunity to comment on the item at the Board’s meeting on February 19, 2009, at which Resolution 2009-23 was to be considered. No representatives from either the Natural Resources Defense Council (“NRDC”) or the Sierra Club, the two parties

¹² SCPPA and Anaheim Comment, p. 12 (March 26, 2012).

¹³ SCPPA Resolution No. 2009-23, p. 3.

that filed the petition that resulted in the initiation of the captioned proceeding, appeared at the February 19, 2009 meeting to comment on the Board's action.

The replacement of the turbine rotors at San Juan led to a subsequent staff-level decision to reject a proposal for a project that would result in an increase in rated capacity and would not be routine maintenance. Although the replacement of the turbine rotors was projected by GE to result in a slight increase and rate of capacity, the increase did not materialize when the rotor replacement project was completed. Subsequently, GE proposed further work that would yield the originally projected increase in capacity.¹⁴ The SCPPA staff, like M-S-R, rejected GE's proposal to undertake the project specifically because the work was designed solely to provide an increase in the rated capacity. Insofar as the GE proposal was not consistent with the criterion in section 2902(j)(4)(B) of the EPS regulation, the SCPPA staff rejected the proposal without bringing the proposal to the SCPPA Board for consideration.

As exemplified by the staff's submission of the issue about the replacement of the rotor blades to the SCPPA Board, the threshold point for submitting a particular investment to the SCPPA Board for approval is whether there is any question that the subject investment might trigger criteria (A) through (C) as set forth in the EPS regulation.

The SCPPA staff considers about 100 capital investment items for San Juan Project Unit 3 each year.¹⁵ Examples include replacing worn or obsolete equipment or systems, purchasing spare pumps and motors to be prepared for equipment failures, and modernizing control equipment. The investments run from \$50,000 to millions of dollars.¹⁶ In each instance with the exception of the replacement of the rotor blades and the subsequent GE proposal to increase

¹⁴ This expenditure involved replacing nozzle blocks installed in the 2007 HP/IP turbine rotor replacement project.

¹⁵ Transcript 92:13.

¹⁶ Transcript 92:20-21.

rated capacity, it has been self evident to the staff that none of the investments met criteria (A) through (C) of the EPS Regulation.

C. Anaheim Response to Requests for Additional Information.

Like M-S-R and SCPPA, Anaheim has representatives on each of the Engineering and Operating, Fuels, and Coordinating Committees, and Anaheim uses the criteria set forth in subsections (A) through (C) of section 2902(j)(4) of the EPS regulation as Anaheim's "written procedures and policies for approving expenditures". Similar to M-S-R and SCPPA, each time a vote on a capital project is required, Anaheim's respective committee members examine and evaluate the investment to determine whether the investments trigger the criteria of subsections (A) through (C). With the exception noted *infra*, every time Anaheim has been asked to vote on a capital investment, the investment has clearly fallen outside the criteria of subsections (A) through (C) as set forth in the EPS regulation.

The sole exception involved the need for a rotor blade replacement at San Juan Unit 4 in 2007.¹⁷ Like M-S-R and SCPPA, Anaheim raised questions about whether replacement of the rotor blades would fall within one of the criteria listed in the EPS regulation because it appeared that the installation of new rotor blades might slightly increase the capacity of San Juan Unit 4. Anaheim's representatives on the Engineering and Operating Committees and the Coordinating Committee voted "no" on that capital investment.

As discussed in SCPPA and Anaheim's March 26, 2012 Comments, even though Anaheim votes "no" on capital investments, when the investments are made without regard of Anaheim's vote, Anaheim is required to bear its proportional cost of the investments.¹⁸

¹⁷ This expenditure involved replacing nozzle blocks installed in the 2007 HP/IP turbine rotor replacement project.

¹⁸ SCPPA and Anaheim Comment, pp. 14-17 (March 26, 2012).

Anaheim's 10.04 percent ownership interest in San Juan Project Unit 4 is not large enough to block a vote by other Unit 4 owners to prevent an investment at Unit 4. Likewise, Anaheim's 5.07 percent interest in equipment or facilities common to Units 3 and 4 is not large enough to block investments in such equipment or facilities, and Anaheim's 3.1 percent interest in equipment or facilities common to all four units at San Juan is not large enough to block investments in such equipment and facilities. In each instance, a vote by an 82 percent majority of the Common Participation shares of the participants and a sixty-six and two-thirds majority of the individual participants is sufficient to approve an investment even if Anaheim votes against the investment.¹⁹ Furthermore, even in the absence of the requisite super majority vote, the SJGS Operating Agent is empowered to act as it deems necessary to maintain the efficient and economic operation of the San Juan Project.²⁰

Anaheim's technical review of capital projects follows the same process as M-S-R and SCPPA, but Anaheim's approval process for those capital projects is slightly different. Prior to the beginning of each calendar year, the Operating Agent for the San Juan Project prepares a budget that includes all expenditures including capital expense items that is submitted to the San Juan Engineering and Operating Committee for review and approval.²¹ Prior to Anaheim voting on the San Juan budget that has been submitted to the San Juan Engineering and Operating Committee for review and consideration, the Anaheim Public Utilities Department ("Department") obtains authority from the Anaheim City Council to expend funds pursuant to an approved Department budget which includes the San Juan Project. The Department's overall

¹⁹ San Juan Participation Agreement, Section 18.4.

²⁰ San Juan Participation Agreement Sections 18.6 and 19.7, to implement Sections 5.35, 28.3.1 and 28.3.3.

²¹ San Juan Participation Agreement, Section 24.1.

budget is comprehensive, and the information regarding San Juan is provided in line item detail for both operating and capital expenses.

The Department's budget is initially presented to the Anaheim Public Utility Board ("Board") which is governed by the Brown Act, first at a publicly noticed workshop in which the Board reviews the entire budget in detail. In a subsequent publically noticed Board meeting, the Board votes on whether to recommend approval of the budget to the City Council. Consistent with the Brown Act, the agendas and agenda packages for the Board meetings are made available to the public in advance by posting the agendas and through a link on the Department's webpage. The Board meetings are open to the public.

The process is then repeated for City Council approval. There is a publicly noticed and televised workshop to review the Department's budget. The workshop is followed by a publicly noticed and televised City Council meeting where the public may participate. The City Council acts on the overall Department budget, inclusive of the items that are included in the budget to cover Anaheim's share of costs to be incurred at San Juan. The City Council meetings, consistent with the Brown Act, are publicly noticed at City Hall, Anaheim public libraries, and by link on the City Clerk's home page which includes not only the agenda but also the agenda packages for each agenda item, are televised and open to the public. Both the Board and City Council meet or exceed the requirements of the Brown Act for their respective meetings at which the budget of the Department is considered with an opportunity for public participation.

II. FURTHER DEFINING TERMS IN THE EPS REGULATION.

The Tentative Conclusions properly find that there is no basis for modifying the terms "designed and intended to extend the life of one or more generating units by five years or more,"

“routine maintenance,” or “covered procurement” in the EPS regulation.²² The Joint Parties strongly support that finding. As the Lead Commissioner notes in the Tentative Conclusions, the Final Statement of Reasons (“FSOR”) for the EPS regulation explained that further definition of the terms in the EPS regulation would be fraught with difficulties: “To attempt to further define the phrase ‘designed and intended to extend the life’ would be fraught with difficulties and a high likelihood of unintended consequences, because whether an investment will extend the life of a powerplant, or more relevant, is designed and intended to, is heavily dependent upon the factual circumstances of that investment.”²³ It is incumbent upon the POUs to review the specific facts and circumstances that surround each investment. As explained in greater detail above, this review process is carried out in a public forum and takes into account the totality of the circumstances surrounding each individual investment – for those in both EPS compliant facilities and non-EPS compliant facilities.

Given the caution expressed by the Commission in the FSOR about including further definitions of criteria in the EPS regulation, and given the fact that no party to this proceeding has made any specific recommendations for further refining and defining the phrases used in the EPS regulation, this proceeding should be closed with no further defining of terms in the EPS regulation.

III. REEVALUATION OF THE EPS REGULATION IN ACCORDANCE WITH SECTION 8341(f) OF THE PUBLIC UTILITIES CODE.

Section 8341(f) of the Public Utilities Code requires that the Commission “shall reevaluate and continue, modify, or replace” the EPS regulation “when an enforceable

²² Tentative Conclusions at 6.

²³ FSOR, Docket No. 06-OIR-1, p. 40 (August 31, 2007); *See* Tentative Conclusions at 4.

greenhouse gases emission limit is established and in operation, that is applicable to local publicly owned electric utilities.” Section 8341(f) provides in full:

(f) The Energy Commission, in a duly noticed public hearing and in consultation with the 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.²⁴

In the Tentative Conclusions, the Lead Commissioner proposes that the Energy Commission not “reevaluate and continue, modify, or replace” the EPS regulation because “there is currently no greenhouse gases emissions limit applicable to POUs.”²⁵ The Lead Commissioner reaches his conclusion on the basis of “information provided by the ARB.”²⁶ The “information provided by the ARB” was contained in a June 28, 2012 e-mail from Steven Cliff, a member of the ARB staff, to the Commission (June 28 CARB E-Mail).

The ARB’s June 28, 2012, e-mail misinterprets section 8341(f). The June 28 CARB E-Mail interprets the section 8341(f) phrase, “an enforceable greenhouse gases emissions limit,” as meaning an entity-specific limit that would apply to a single local POU. The June 28 CARB E-Mail goes on to observe that the ARB’s cap-and-trade program creates “an enforceable economy-wide cap covering approximately 85% of California’s greenhouse gases emissions,”²⁷ but does not impose a “specific emissions limit” on a “single entity,” and therefore, Section 8341(f) is not triggered by the cap-and-trade regulation.

²⁴ Cal. Pub. Util. Code § 8341(f).

²⁵ Tentative Conclusions, p. 6.

²⁶ *Ibid*, p. 7.

²⁷ E June 28 CARB E-Mail.

The Joint Parties believe that this interpretation is flawed. Inasmuch as the cap-and-trade program creates an economy-wide cap that includes the POUs at issue, the cap-and-trade program **does** impose a cap on POUs. Despite the June 28 CARB E-Mail's statements to the contrary, section 8341(f) does not require the establishment of entity-specific emissions limits that would apply to individual POUs. Section 8341(f), instead, requires a reevaluation of EPS regulation when "an enforceable greenhouse gas emissions limit" is established that is applicable to "local publicly owned electric utilities" as a group. The term "limit" is singular, while the term "local publicly owned electric utilities" is plural, clearly meaning that a single limit will apply to "local publicly owned electric utilities" as a group rather than to a specific POU.

ARB's cap-and-trade cap program is a single limit that applies to the body of POUs as well as other covered entities. The cap-and-trade regulation establishes a single cap for each year starting at 162.8 million allowances in 2013 which declines at two percent (2%) per year for the years 2013-2014 and three percent (3%) per year for the years 2015-2020.²⁸ POUs are covered by the annual cap as "first deliverers of electricity."²⁹ Thus, starting in 2013, an enforceable greenhouse gases emissions limit will be established and in operation that is applicable to local publicly owned electric utilities as a group along with other covered entities. Accordingly, as of 2013, the conditions of Section 8341(f) will be satisfied so as to trigger a reevaluation of the EPS regulation.

The June 28 CARB E-Mail interpretation of Section 8341(f) as requiring the establishment of a specific limit for each individual POU rather than a limit that applies to the entire body of POUs as well as other covered entities is contrary to the plain meaning of the term

²⁸ ARB Resolution 11-32, p. 4 (October 20, 2011).

²⁹ 17 California Code of Regulations Section 95811(b).

“enforceable greenhouse gases emissions limit” as used in the singular in Section 8341(f) in conjunction with the term “local publicly owned electric utilities” as used in the plural. Statutory interpretation requires careful attention to both the words used in the statute and the way in which the words are used, including the grammar of the statute:

We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose... When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.³⁰

Furthermore, it must be assumed that the Legislature knew what it was saying and meant what it said in the statute:

[T]he better and more modern rule of construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to assume that the Legislature knew what it was saying and meant what it said.³¹

By attempting to interpret Section 8341(f) as requiring the ARB to establish a separate emissions limit for each individual POU as opposed to a single limit that applies to POUs generally as well as other covered entities, the June 28 CARB E-Mail fails to follow the most basic maxims of statutory interpretation.

The Lead Commissioner’s tentative conclusion that Section 8341(f) will not be triggered when the ARB’s cap-and-trade cap becomes effective in 2013 appears to be based entirely on the information provided in the June 28 CARB E-Mail. The Lead Commissioner states: “Based on the information provided by the ARB regarding their interpretation of AB 32, the Energy

³⁰ *Phelps v. Stostad*, 16 Cal. 4th 23, 32, 65 Cal. Rptr. 2d 360, 365 (1997) citing *DuBois v. Workers’ Comp. Appeals Bd.*, 5 Cal. 4th 382, 387, 388, 20 Cal. Rptr. 2d 523, 525-526 (1993) (internal citations and quotations omitted) (emphases added).

³¹ *Educational and Recreational Services, Inc. v. Pasadena Unified School Dist.*, 65 Cal. App. 3d 775,782, 135 Cal. Rptr. 594, 598 (1977) (emphasis added).

Commission agrees that no ‘emissions limit’ that applies to publicly owned utilities has been established by the cap-and-trade regulations and that reevaluation of EPS regulations is not triggered.”³² Insofar as the June 28 CARB E-Mail misinterprets Section 8341(f), the Joint Parties urge the Lead Commissioner to reconsider the tentative conclusion that Section 8341(f) will not be triggered when the cap-and-trade cap on greenhouse gas emissions goes into operation on January 1, 2013.

IV. THE EMISSIONS PERFORMANCE STANDARD SHOULD NOT BE CHANGED.

The Tentative Conclusions state that the “Commission is aware that there is an interest in revising the current greenhouse gases emission performance standard,” of 1100 pounds of carbon dioxide per megawatt hour of electricity.³³ However, there is no record evidence in this proceeding regarding quantification of this interest, nor to support a further review or evaluation of the current EPS. Furthermore, revising the 1100 pound standard was not raised as an issue in the November 14, 2011 Joint Petition filed by NRDC and the Sierra Club, nor was the issue specifically mentioned in the January 11, 2012 Order Instituting Rulemaking that established this proceeding.

Pursuant to the provisions of SB 1368, the Commission was directed to establish a standard that was consistent with the rate of greenhouse gases emitted per megawatt hour by natural gas-fired combined-cycle combustion turbine baseload generation. Based on this direction, and after an extensive stakeholder process, the Commission adopted the 1100 pound standard. As directed by the legislature, this standard is also consistent with the standard adopted by the California Public Utilities Commission (CPUC) for CPUC-jurisdictional facilities

³² Tentative Conclusions at 7-8.

³³ And “welcomes comments on this issue,” Tentative Conclusion at 8.

in Decision 07-01-039. As no party has presented any data or arguments that would support changing the current 1100 pound standard, undertaking such a review is not necessary at this time.

If, contrary to the Joint Parties' recommendation, this proceeding were expanded at this late date to include revision of the 1100 pound standard, it would then be appropriate to accommodate a further expansion of the scope of the proceeding to include other revisions of the EPS regulation. For example, it would be appropriate to consider revising Section 2913 to substitute the word "investments" in place of the words "covered procurements." The Joint Parties reserve the right to propose such a revision in the event that this proceeding is expanded to include revision of the 1100 pound standard.

However, given that the issue was not specifically included within the scope of the proceeding, and given that there is no basis in the record to give cause to consider changing the 1100 pound standard, the scope of this proceeding should not be extended to include the issue. Accordingly, the Joint Parties strongly recommend that there be no further expansion of this proceeding and that this proceeding continue to be limited to the issues that were specifically identified as being within the scope of the proceeding in the January 11, 2012 Order Instituting Investigation.

V. CONCLUSION.

For the reasons set forth above, the Joint Parties urge the Commission to make a finding that no additional reporting requirements are necessary under the Regulation, and adopt the Lead Commissioner's tentative conclusion that no further definition of terms in the EPS regulation be adopted at this time. However, the Joint Parties urge the Lead Commissioner to revise the tentative conclusion that Section 8341(f) will not be triggered when the ARB cap-and-trade

program goes into operation on January 1, 2013. Additionally, the Joint Parties urge that this proceeding not be expanded to consider issues beyond the issues that were specifically identified in the January 11, 2012 Order Instituting Investigation, and specifically not make any revisions to the current EPS itself.

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