



August 17, 2012

Dear Chairman Weisenmiller,

The Natural Resources Defense Council (NRDC) and Sierra Club respectfully request that the attached documents and this cover letter be added to the docket in 12-OIR-1, the Energy Commission's rulemaking addressing possible changes to the Emissions Performance Standard (EPS). The attached documents are:

- 1) An M-S-R Resolution adopted September 28, 2011 and signed by M-S-R President Allen Short "declaring the official intent of M-S-R Public Power Agency" to pay expenditures "relating to federally mandated selective catalytic reduction investment to the Agency's ownership interest in Unit 4 of the San Juan Generating Stations";
- 2) A Staff Report dated September 16, 2011 from M-S-R General Manager Martin Hopper recommending the M-S-R Commission adopt the September 28th Resolution; and
- 3) A Staff Report dated May 21, 2012 from M-S-R General Manager Martin Hooper recommending "the [M-S-R] Financial Management Committee work with our Financial Advisor to develop potential funding plans for both SCR and SNCR installations for consideration by the M-S-R PPA Commission in the development of the Agency's 2013 Strategic Plan and 2013 Budget at its September and November 2012 meetings respectively.

The Sierra Club obtained the attached documents over 45 days after submitting a Public Records Act Request to M-S-R.

These documents are alarming for two reasons. First, they make no mention of the legal requirements of the EPS and do not contemplate or make any cost estimates for reducing carbon emissions to meet the EPS.¹ The CEC's July 9, 2012 Tentative Conclusions and Request for

¹ M-S-R may plan to seek an exemption to the EPS through § 2913 Case-by-Case Review for Pre-existing Multi-Party Commitments. However, there is no indication in these documents that any legal analysis of the EPS has been completed or provided to the board. Equally importantly, § 2913 is only available when "the contract or ownership agreement does not afford the local publicly owned electric utility applying for the exemption the opportunity to avoid making such covered procurements" and there is no indication that M-S-R has exhausted its attempts to seek a compliance pathway with the FIP consistent with the EPS.

Comment maintains the conclusions established in the 2007 Final Statement of Reasons (FSOR) that environmental upgrades are not exempted from the EPS: “POUs are able to make environmental improvements beyond routine maintenance so long as those improvements result in the power plant meeting the EPS. The same is true for any investments needed to comply with legal or regulatory requirements.” (FSOR, 41) While these documents were generated before the release of the July 9, 2012 Tentative Conclusions, the FSOR was available and clearly indicated such investments are prohibited under SB 1368, and the question of SB 1368’s application to SCR or SNCR investments in San Juan was squarely presented to the CEC in November 2011, when NRDC and the Sierra Club filed their Petition for Rulemaking on this issue.

Second, despite its clear relevance to this proceeding, M-S-R failed to disclose these documents, or reference to the board Resolutions, in its comments or filings on the record in this proceeding. The issue of expenditures at San Juan Generating Station and other non-compliant facilities is the central issue in this proceeding and yet M-S-R omitted any mention that they had already made plans to invest between eight and eighty-five million dollars at a non-compliant facility, without any plans to reduce carbon emissions. This omission highlights the shortcoming of the POU proposed self-reporting mechanism and underscores the need for more robust regulatory reporting requirements under the EPS. All documents relating to planned or proposed expenditures at non-complaint facilities should immediately be noticed to the CEC for posting on a publicly available website.

We appreciate the Energy Commission’s attention to this important issue and request the Commission consider the attached documents in 12-OIR-1. Should we discover further indication that M-S-R or any other utility is moving forward with investments in a non-compliant facility of this nature, we intend to request a compliance investigation pursuant to § 2911.

Submitted,



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CC: Bill Carnahan, Martin Hopper, Susie Berlin, Norman Pedersen, Energy Commission Staff

RESOLUTION NO. 2011 - 10

Adopted on September 28, 2011

RESOLUTION OF THE COMMISSION OF THE M-S-R PUBLIC POWER
AGENCY DECLARING THE OFFICIAL INTENT OF M-S-R PUBLIC
POWER AGENCY TO REIMBURSE CERTAIN EXPENDITURES FROM
PROCEEDS OF INDEBTEDNESS

WHEREAS, the Modesto Irrigation District (the "District"), an irrigation district in the State of California, the City of Santa Clara ("Santa Clara"), a charter city and municipal corporation in the State of California, and the City of Redding ("Redding"), a general law city and municipal corporation in the State of California, have heretofore executed a Joint Exercise of Powers Agreement (the "Joint Powers Agreement"), dated as of April 28, 1980, as amended and restated as of November 17, 1982, as amended by Amendment Number 1 to the Amended and Restated Joint Exercise of Powers Agreement, dated June 26, 1990, and Amendment Number 2 to the Amended and Restated Joint Exercise of Powers Agreement, dated January 24, 2006, by and among the District, Santa Clara and Redding, which such Joint Powers Agreement creates and establishes the M-S-R Public Power Agency (the "Agency"); and

WHEREAS, pursuant to the Joint Powers Agreement and Article 4 of Chapter 5 of Division 7 of Title 1 of the Governmental Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985" or the "Act"), the Agency is authorized to undertake a revenue bond financing for public capital improvements, working capital, liability and other insurance needs or projects whenever there are significant public benefits, as determined by the Agency; and

WHEREAS, the Agency intends to [acquire, construct, improve, rehabilitate certain capital improvements relating to federally mandated selective catalytic reduction investment to the Agency's ownership interest in Unit 4 of the San Juan Generating Station and related facilities] (the "Project");

WHEREAS, the Agency expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with the Project prior to the issuance of indebtedness for the purpose of financing costs associated with the Project on a long-term basis;

WHEREAS, the Agency expects that debt obligations in an amount not expected to exceed \$85,000,000 will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Agency to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Agency as follows:

Section 1. The Commission hereby finds and determines that the matters set forth in the preambles to this Resolution are true and correct.

Section 2. This declaration is made solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This declaration does not bind the Agency to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 3. The Agency hereby declares its official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Commission of the M-S-R Public Power Agency this 28th day of September, 2011.

AYES: Modesto Irrigation District, City of Santa Clara, City of Redding

NOES: None

ABSENT: None

APPROVED:

By Allen Short
President of M-S-R Public Power Agency

ATTEST:

By Stewart G. Goss
Secretary of M-S-R Public Power Agency

M-S-R Public Power Agency Staff Report

Date: September 16, 2011

From: Martin R. Hopper, General Manager

To: M-S-R PPA Commission

Subject: Reimbursement of Prospective Capital Expenditures Pertaining to the San Juan Project: Resolution 2011 – 10 Declaring The Official Intent Of M-S-R Public Power Agency To Reimburse Certain Expenditures From Proceeds Of Indebtedness

To ensure timely compliance with the Environmental Protection Agency's (EPA) Regional Haze Federal Implementation Plan promulgated for the San Juan Project, the San Juan Project Operating Agent, the Public Service Company of New Mexico (PNM) has commenced certain design and engineering activities for the installation of a Selective Catalytic Reduction (SCR) system as mandated by EPS's Best Available Retrofit Technology (BART) determination. Although no formal determination has been made to accept such a determination, no agreement to install SCRs has been reached, nor have all appeals of EPA's determination been exhausted, Prudent Utility Practice requires PNM to make diligent efforts to comply with these regulatory requirements. Bond Counsel has recommended M-S-R PPA adopt a reimbursement resolution at this time to allow any costs forthwith incurred related to this potential project to be reimbursed out of any future financing. Adoption of this resolution does not bind the Agency to make any expenditure, incur any indebtedness, or proceed with the Project. The proposed resolution has been reviewed by the M-S-R Financial Management Committee which concurs in recommending its adoption by the Agency.

Staff recommends the Commission adopt Resolution No. 2011 – 10 declaring the official intent of M-S-R Public Power Agency to reimburse certain expenditures from proceeds of indebtedness.

RESOLUTION NO. 2011 - 10

Adopted on September 28, 2011

RESOLUTION OF THE COMMISSION OF THE M-S-R PUBLIC POWER
AGENCY DECLARING THE OFFICIAL INTENT OF M-S-R PUBLIC
POWER AGENCY TO REIMBURSE CERTAIN EXPENDITURES FROM
PROCEEDS OF INDEBTEDNESS

WHEREAS, the Modesto Irrigation District (the "District"), an irrigation district in the State of California, the City of Santa Clara ("Santa Clara"), a charter city and municipal corporation in the State of California, and the City of Redding ("Redding"), a general law city and municipal corporation in the State of California, have heretofore executed a Joint Exercise of Powers Agreement (the "Joint Powers Agreement"), dated as of April 28, 1980, as amended and restated as of November 17, 1982, as amended by Amendment Number 1 to the Amended and Restated Joint Exercise of Powers Agreement, dated June 26, 1990, and Amendment Number 2 to the Amended and Restated Joint Exercise of Powers Agreement, dated January 24, 2006, by and among the District, Santa Clara and Redding, which such Joint Powers Agreement creates and establishes the M-S-R Public Power Agency (the "Agency"); and

WHEREAS, pursuant to the Joint Powers Agreement and Article 4 of Chapter 5 of Division 7 of Title 1 of the Governmental Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985" or the "Act"), the Agency is authorized to undertake a revenue bond financing for public capital improvements, working capital, liability and other insurance needs or projects whenever there are significant public benefits, as determined by the Agency; and

WHEREAS, the Agency intends to [acquire, construct, improve, rehabilitate certain capital improvements relating to federally mandated selective catalytic reduction investment to the Agency's ownership interest in Unit 4 of the San Juan Generating Station and related facilities] (the "Project");

WHEREAS, the Agency expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with the Project prior to the issuance of indebtedness for the purpose of financing costs associated with the Project on a long-term basis;

WHEREAS, the Agency reasonably expects that debt obligations in an amount not expected to exceed \$_____ will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Agency to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Agency as follows:

Section 1. The Commission hereby finds and determines that the matters set forth in the preambles to this Resolution are true and correct.

Section 2. This declaration is made solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This declaration does not bind the Agency to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 3. The Agency hereby declares its official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures.

Section 4. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Commission of the M-S-R Public Power Agency this 28th day of September, 2011.

AYES:

NOES:

ABSENT:

APPROVED:

By _____
President of M-S-R Public Power Agency

ATTEST:

By _____
Secretary of M-S-R Public Power Agency

SECRETARY'S CERTIFICATE

I, Steven C. Gross, Secretary of the M-S-R Public Power Agency, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Commission of said Agency duly and regularly held at Rancho Cordova, California on the 28th day of September, 2011, at which meeting all of the members of said Commission had due notice and at which a majority thereof were present, and that at said meeting said resolution was adopted by the following vote:

Ayes:

Noes:

Absent:

I further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office; that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since the date of its adoption, and is not in full force and effect.

WITNESS, my hand and the seal of the M-S-R Public Power Agency this ____ day of _____, 2011.

Secretary of the
M-S-R Public Power Agency

[SEAL]

M-S-R Public Power Agency Staff Report

Date: May 21, 2012
From: Martin R. Hopper, General Manager
To: M-S-R PPA Financial Management Committee
Subject: Development of Funding Plans For Potential San Juan Project Environmental Compliance Retrofits

On September 28, 2011 the M-S-R PPA Commission adopted Resolution 2011 – 10 declaring the official intent of M-S-R Public Power Agency to reimburse certain expenditures from proceeds of indebtedness pertaining to the potential installation of a Selective Catalytic Reduction (SCR) system as mandated by Environmental Protection Agency (EPA)'s Best Available Retrofit Technology (BART) determination under the Regional Haze Federal Implementation Plan promulgated for the San Juan Project. Adoption of this resolution does not bind the Agency to make any expenditure, incur any indebtedness, or proceed with the Project.

As of this date, the EPA has not acted on the appeals of the BART determination nor on the alternative findings proposed by the State of New Mexico in their State Implementation Plan (SIP). M-S-R PPA's share of the costs of installing a SCR system could reach \$85 million or if the New Mexico SIP is approved, M-S-R PPA's share of the cost of a Selective Non-Catalytic Reduction System (SNCR) could be about \$8 million.

The potential cash flow schedule for an SCR project would be:

Q1 12	\$0 million
Q2 12	\$0 million
Q3 12	\$0 million
Q4 12	\$1 million
Q1 13	\$3 million
Q2 13	\$10 million
Q3 13	\$11 million
Q4 13	\$8 million
Q1 14	\$8 million
Q2 14	\$7 million
Q3 14	\$7 million
Q4 14	\$8 million
Q1 15	\$9 million
Q2 15	\$10 million
Q3 15	\$3 million

If M-S-R PPA were to proceed with the SCR installation, there are likely sufficient funds available in the Operating Fund to cover expenditures without cash calls to the Members prior to the second quarter of 2013. Commencing at that time M-S-R PPA would need to either issue

debt or cash call the Members to continue to fulfill its obligations to fund an SCR installation. Although we do not have a corresponding cash flow available at this time for an SNCR installation, it would likely have a similar shape. Development of potential funding plans for either project will enable the M-S-R PPA Commission to make an informed decision on approval of either installation or alternate actions regarding compliance with Regional Haze regulations.

I recommend the Financial Management Committee work with our Financial Advisor to develop potential funding plans for both SCR and SNCR installations for consideration by the M-S-R PPA Commission in the development of the Agency's 2013 Strategic Plan and 2013 Budget at its September and November 2012 meetings respectively.