

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

California Energy Commission  
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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 Electric  
Utilities.

Docket No. 12-OIR-1  
RULEMAKING WORKSHOP

**REPLY COMMENTS OF TURLOCK IRRIGATION DISTRICT**

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In Response to the August 31, 2012 Lead Commissioner’s Request for Reply Comments, Turlock Irrigation District (“TID” or “District”) submits the following reply comments. TID submits these comments in response to the comments of the Natural Resources Defense Council (“NRDC”) and Sierra Club, who request that the Commission lower the Emissions Performance Standard (“EPS”) to 825 – 850 lbs / MWh.

TID is opposed to lowering the EPS to this level for three primary reasons. First, the NRDC/Sierra Club specific proposal was not included in their original petition and was accordingly not the subject of the public review and comment that due process requires. Second, the NRDC/Sierra Club proposal is inconsistent with the purposes of SB 1368 because it exposes California ratepayers and the District’s ratepayer-owners to considerable new, GHG-related costs of regulation. The District’s ratepayer-owners would face substantial risks for investments in natural gas combined cycle (“NGCC”) technologies made in good-faith, which fulfill the purposes of SB 1368. Third, the NRDC/Sierra Club proposal would expose TID’s ratepayer-owners to considerable costs and jeopardize the future reliability in TID’s system by foreclosing new ownership investments in one of TID’s most important resources. The Commission-approved Walnut Energy Center is a NGCC plant that came online in 2006 and provides a

significant part of the District's Balancing Authority needs. In particular, the Walnut Energy Center serves as the foundation for the District's reliability obligations as a Balancing Authority. Despite being a relatively new and highly efficient NGCC plant, the Walnut Energy Center would not likely meet the newly proposed, drastic change to the EPS, in contravention of the principles of fundamental fairness. For these reasons, as discussed in more detail below, TID requests that the Commission reject the unusual and untimely proposal of Sierra Club and NRDC, provide regulatory certainty, and not revise the EPS from the current 1,100 lb/MWh threshold.

**1. The Commission Should Reject The Request To Lower The EPS Because This Issue Was Not Included In The Original Petition For Rulemaking And Not Subject To The Public Review And Comment That Due Process Requires.**

NRDC and Sierra Club's November 14, 2011 Joint Petition for initiation of this rulemaking requested that the Commission consider two issues: "(1) modify Section 2907 to require mandatory reporting requirements when POU's make investments in existing coal plants; and (2) clarify that under current law, POU investments in existing coal plants are subject to the filing requirements of Sections 2908 and 2909."<sup>1</sup>

The Joint Petition makes no mention of lowering the EPS, in general, or to the specific and dramatic changes now sought. In fact, NRDC and Sierra Club raised the proposed changes to the EPS in their comments on the July 9, 2012 Chair and Lead Commissioner's "Tentative Conclusions and Requests for Additional Information." The Tentative Conclusions and Requests for Additional Information was not the call for initiation of a new process with new issues. It was instead a courtesy, graciously extended by the Chair and Lead Commissioner on a narrow set of issues. To expand those issues – and expand them substantively beyond what was even

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<sup>1</sup> See Joint Petition of NRDC and Sierra Club at p. 1, available at: [http://www.energy.ca.gov/business\\_meetings/2011\\_packets/2011-12-14/Item\\_12\\_Emission\\_Performance\\_Standards/2011-11-14\\_SB1368\\_Petition.pdf](http://www.energy.ca.gov/business_meetings/2011_packets/2011-12-14/Item_12_Emission_Performance_Standards/2011-11-14_SB1368_Petition.pdf)

sought in the initial Petition to the opening of this Rulemaking – is a misuse of the additional process afforded by the Chair and Lead Commissioner.

Moreover, there has clearly not been sufficient public review and comment on this newly-proposed matter. As a matter of law, there is no substantial evidence in the record of this proceeding to support the requested relief. This lack of substantial evidence is no surprise, given the late stage of this proceeding and the narrow calls for comment by the Chair and Lead Commissioner. As a matter of sound public policy, the Commission should reject the invitation to accept what amounts to an effort to “end run” the usual and customary regulatory process in favor of new proposals in response to the Tentative Conclusions.

The Commission should reject the request to modify the EPS because this issue was not included in the Petition for this rulemaking, was not subject to adequate public review and comment as a matter of law, and is wholly inappropriate at this late stage in the proceeding as a matter of sound public policy.

**2. Lowering The EPS To The Levels Proposed By Sierra Club and NRDC Is Inconsistent With The Requirements Of SB 1368, Exposing The District’s Ratepayers-Owners To New GHG Costs And Risks, Jeopardizing System Reliability, And Significantly Increasing Costs To Customers.**

NRDC & Sierra Club have requested that the Commission lower the EPS because “updating the standard would continue to fulfill the purpose of SB 1368.” To the contrary, lowering the EPS to this level is not necessary to “continue to fulfill the purpose of SB 1368.” The purpose of SB 1368 was *not* to ensure that California utilities and POUs only procure highly efficient resources. Instead, the fundamental purpose of SB 1368 was to require utilities to mitigate the future risk of GHG regulation – not punish the District’s ratepayer-owners for decisions made that either pre-date SB 1368 or were made consistent with SB 1368. As noted in the legislative declarations for SB 1368, the bill was intended to cause utilities to “internalize the significant and under-recognized cost of emissions... and to reduce California’s exposure to

costs associated with future federal regulation of these emissions.”<sup>2</sup> SB 1368 *has achieved* this purpose by limiting the ability of utilities to enter into long term contracts or make new ownership investments in high emitting resources.

Lowering the EPS retroactively will not further the purpose of reducing California’s exposure to costs of GHG regulation. The EPS level proposed by NRDC and Sierra Club would actually be contrary to the purpose of SB 1368 because it will expose California ratepayers and the District’s ratepayer-owners to an entirely new GHG-related regulatory risk, having already absorbed other recently imposed GHG mandates derived from AB32 such as the Mandatory Reporting of Greenhouse Gases and Cap & Trade. Utilities and POU’s that invested in NGCC units that meet the 1,100 lb/MWh standard would also face significant new GHG risk by being constrained in their future management of those NGCC units. This in turn would also have potentially significant impacts on system reliability if these units, procured in good faith as EPS compliant, were to suddenly be made unavailable or otherwise curtailed.

Moreover, in establishing an EPS, SB 1368 requires the Commission to consider more than emissions rates for combined cycle baseload generation. In particular, Public Utilities Code Section 8341(e)(7) requires the Commission to “consider the effects of the standard on system reliability and overall costs to electricity customers.” Lowering the EPS to levels proposed by NRDC and Sierra Club would cause a serious detriment in TID’s ability to manage its existing portfolio at a reasonable cost to its ratepayer owners. In sum, NRDC and Sierra Club’s proposal to lower the EPS is inconsistent with the fundamental purpose of SB 1368 because it would expose ratepayers to new GHG costs and risks, jeopardize system reliability, and significantly increase costs to customers.

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<sup>2</sup> See SB 1368 Legislative Declarations, Sec. 1(g), available at: [https://www.lexis.com/research/retrieve?\\_m=d3a960b2bc7869a6cffe95876d6c5e3&csvc=toc2doc&cform=byCitati on&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzV-zSkAb&\\_md5=073497273c40eb3b0fca94731f7e19e2](https://www.lexis.com/research/retrieve?_m=d3a960b2bc7869a6cffe95876d6c5e3&csvc=toc2doc&cform=byCitati on&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzV-zSkAb&_md5=073497273c40eb3b0fca94731f7e19e2)

**3. Adoption of the EPS Proposal Would Expose TID's Ratepayer Owners To Significant Costs And Risks By Jeopardizing The Future Viability Of The Walnut Energy Center, a Highly Efficient NGCC Resource That Provides Electric Reliability in a Cost-Effective and Environmentally Superior Fashion.**

TID has a long history of protecting its ratepayer-owners by anticipating customers' energy needs and moving in a timely manner to develop new resources well in advance of when they are needed. That is exactly what occurred when the District decided to move forward with constructing a new and environmentally superior power plant in response to the residential and commercial growth of the region and in anticipation of future demand for highly efficient and reliable resources.

The District's Walnut Energy Center ("WEC") is a 250-MW natural gas combined cycle power plant that began commercial operation in February 2006. WEC constitutes approximately half of the District's internal generating capacity and is the major baseload component of the District's resource mix.

In addition to providing the majority of the District's baseload power, WEC proved itself to be among the cleanest fossil fuel power plants in the nation. Plant emissions were rated as much as 85 percent lower than those of older generating facilities currently operating in California. Further, WEC significantly reduces costs for TID's ratepayer-owners. The District estimates that between 2006 and 2025 WEC will save as much as \$350 million – \$150 million more than the cost of developing the plant – on power that otherwise would have to be purchased on the wholesale energy market.

In addition to cost savings, as the cornerstone of the TID Balancing Authority, WEC provides reliability services, including reactive power for voltage support in the TID Balancing Authority. By building the WEC in the load center for the TID Balancing Authority, WEC also substantially avoids reliance on out of area transmission facilities, both improving reliability and

avoiding the economic costs to the District's ratepayer-owners and the potential environmental impacts that come with reliance of distant generating resources for baseload needs. Moreover, WEC provides necessary ancillary services to facilitate Balancing Authority operations locally, and also provides contingency support for the greater Western Interconnect. TID is a member of the Northwest Power Pool Reserve Sharing Group (NWPP RSG), an organization of 17 Balancing Authorities that share Reserves in order to provide response to system contingencies such as the tripping offline of a power plant or the loss of a transmission line. In many ways, TID's decision to invest in WEC is the exact type of activity that was envisioned by SB 1368. TID was able to protect ratepayers from future GHG risks and promote system reliability by investing in an efficient NGCC plant that the District owns and operates.

Despite WEC's beneficial environmental attributes, the facility's operations are likely above the 825-850 lb/MWh proposed threshold, even though WEC is among the cleanest and most efficient modern power plants in California. Most of the recent, efficient Natural Gas power plants built in California are not operating at their most efficient levels because the fleet must stand ready to integrate wind and solar generation and follow the fluctuating demands of the California electrical load. Adoption of the threshold advocated in response to the Tentative Conclusions would seriously jeopardize the future viability of WEC by limiting the District's ability to make new ownership investments in WEC.


The District would effectively be penalized for its environmentally responsible investment in an NGCC resource that is more efficient than most resources in California. This result would expose TID's ratepayer-owners to considerable costs and jeopardize TID's ability to maintain system reliability. This result is both fundamentally unfair and at odds with the central purposes of SB 1368 as discussed above. Accordingly, the requested change to the EPS should be rejected.

**Conclusion and Summary**

The NRDC and Sierra Club proposal to lower the EPS is at odds with the purpose of SB 1368 and should be rejected. The Commission should reject the request to lower the EPS because this issue was not included in the original Petition for rulemaking and not subject to the rigorous public review and comment that due process requires. Further, lowering the EPS to the levels proposed is inconsistent with the requirements of SB 1368. SB 1368 has functioned well in achieving its purpose of limiting California ratepayers' exposure to risks of future GHG regulation. Adopting the standard proposed by NRDC and Sierra Club will expose TID's ratepayer-owners to a whole new set of GHG-related risks, and in the case of TID, threatens the future viability of a resource that provides considerable cost savings and environmental benefits for the District's ratepayer owners. TID therefore requests that the Commission reject the proposal of NRDC and Sierra Club to lower the EPS.

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Respectfully submitted,

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