

**THE STATE OF CALIFORNIA
BEFORE THE
CALIFORNIA ENERGY COMMISSION**

In the Matter of:)	
)	Docket No. 12-OIR-1
Rulemaking to Consider Modification of)	
Regulations Establishing a Greenhouse)	RULEMAKING WORKSHOP
Gases Emission Performance Standard)	
For Baseload Generation of Local Publicly)	September 28, 2012
Owned Electric Utilities)	

**Reply Comments
Of the
California Municipal Utilities Association**

The California Municipal Utilities Association (CMUA) respectfully submits these Reply Comments in Docket No. 12-OIR-1, in response to the Requests for Reply Comments issued by the California Energy Commission (CEC) on August 31, 2012.

CMUA is a statewide organization of local public agencies in California that provide water, gas, and electricity service to California consumers. CMUA membership includes over forty electric distribution systems and other local public agencies directly involved in the electricity industry (POUs). CMUA members own and operate significant local and interregional transmission facilities for the benefit of their customers and all of California. In total, CMUA members provide electricity to approximately one quarter of Californians.

This docket was initiated by issuance of an Order Instituting Rulemaking (OIR) on January 12, 2012, to consider possible modifications to the Emission Performance Standard (EPS) as part of regulations promulgated to implement Senate Bill (SB) 1368 (Perata, Stats. 2006, Ch. 598, Sec. 2) that applies to “covered procurements” entered into by local POUs. Many of our members actively participated in the OIR, and CMUA supports those comments.

In short, CMUA urges the CEC to reject any suggestion to make fundamental revisions to lowering the EPS, based on cursory pleadings by the National Resources Defense Council and the Sierra Club (NRDC/SC) submitted in this docket. The issue of lowering the EPS, and the impact that change may have on future investment in the existing fleet, is a serious and complex matter. Not only does it involve a technical assessment of the EPS itself, but also how lowering the EPS would affect the existing fleet, particularly with respect to any repowering of existing units with the intent to increase flexibility and enable renewable resource integration. Reducing the EPS by approximately 25 percent, from the current 1,100 lbs/MWh level down to between 800-

850 lbs/MWh, is unnecessary and has the potential to cause system reliability and flexibility issues. Furthermore, stakeholders, particularly those not affected by the initial main rulemaking topic, have not had sufficient notice to engage adequately in a major change to the current EPS level.

Background:

CMUA acknowledges that the original scope of the OIR includes a catch-all provision to consider making “any other changes to carry out the requirements of SB 1368.”¹ However, it must also be acknowledged that the vast majority of this proceeding has been focused on the mechanics of EPS application to the POU, possible POU-specific regulations, and what constitutes a “covered procurement.” Lowering the EPS was not included in the Joint Petition filed by NRDC/SC, nor was the issue specifically mentioned in the January OIR that established this proceeding.

In contrast, the CEC adopted the EPS based on considerable record and public input, and consistent with the standard adopted by the California Public Utilities Commission (CPUC) for CPUC-jurisdictional entities. A quick review of the subsequent pleadings submitted in this proceeding by numerous parties, including the NRDC/SC Post-Workshop Comments, and pleadings by the California Wind Energy and the Solar Energy Industry Associations, make no arguments or mention of proposals to lower the EPS, until comments sent on July 27th, where the NRDC/SC make specific arguments to lower the EPS. To refocus this proceeding on the technical derivation of the EPS level itself would lead to poor decision-making based on a cursory record on this issue.

The State’s Cap & Trade Program:

Lowering the EPS is also at odds with the direction the CEC has taken in this docket to focus on POU compliance mechanisms. In its Tentative Conclusions, the CEC rejected calls from POU to “reevaluate and continue, modify, or replace” the EPS in light of the Cap and Trade Program regulations under AB 32. The CEC found that it would not “reevaluate and continue, modify, or replace” the EPS at this time, and based its tentative conclusion on the finding that the trigger to modify the EPS pursuant to the provisions of SB 1368 had not been met because “there is currently no greenhouse gases emission limit applicable to POU.”² Thus, based on the CEC’s own conclusions, the focus on this proceeding was much narrower than the overall future and level of the EPS.

CMUA notes that California’s Cap and Trade Program structure begins in 2013, and provides ample incentive to procure the most efficient, least GHG emitting, base-load resources that meet the needs of the procuring entity, including consideration of flexibility for integrating renewable resources. CMUA believes that the existence of an emissions cap in 2013 that covers the electricity sector should trigger a review of the need for the EPS, pursuant to SB 1368, and that the current interpretation that the cap

¹ CEC, *Tentative Conclusions and Requests for Additional Information*, Docket No. 12-OIR-1, July 9, 2012, at 2.

² *Id* at 6.

would need to apply on an entity specific level is incorrect. If the EPS is retained, then certainly the Cap and Trade Program establishes a priced carbon obligation under the broad cap, which will lead to full consideration of the lowest emission new procurement. There is no historical experience with this incentive in place, and no record to suggest that it is insufficient.

Current Natural Gas Plants & System Reliability:

SB 1368 was structured to avoid stranding historical investments in natural gas combined cycle power plants by deeming those built or permitted by June 30, 2007, compliant with the EPS. Should the EPS be lowered, it potentially would apply retroactively to power plants built or permitted between this date and today, and potentially act to strand the investments associated with these facilities.

The CEC must consider an EPS for POU's in collaboration with the CPUC and the California Independent System Operator (CAISO), leveling the playing field and avoiding potential impacts on system reliability. Consideration of a lower EPS near the expected end of a rulemaking that was focused on a narrow topic does not give adequate weight to the requirement that an EPS be established in this collaborative fashion.

Lowering the EPS may have considerable consequences on grid operation reliability. It is well documented that integration of renewable resources will entail fundamental changes to how the entire fleet, including the existing thermal fleet, is operated due to the need to respond to generation ramps caused largely by ramps up and down by solar and wind resources for which grid operators have few existing tools to control.³ There is a real question about how existing thermal resources will operate in an environment in which their capacity factor is reduced, need for flexible ramping is increased, and revenue streams from traditional capacity payments are diminished. The CEC held an IEPR workshop this year that spent considerable time on the issue of renewable integration, and the role that the existing thermal fleet will play to follow ramps on intermittent solar and wind resources.⁴

The CAISO has made clear that this will not be a simple matter. Concepts relevant to application of the EPS, such as what is a "baseload" resource, will have to be examined if the EPS were to be reconsidered. Also, how to measure the emissions of a combined cycle natural gas combustion turbine to establish the EPS would need to be examined in any proposal to lower the EPS, given the operational studies, which show that combined cycle natural gas combustion turbines do not always operate at their preferred operating point, and indeed may not be baseload resources in a world in which California has a 33 percent or higher penetration of renewable resources.

³ See, e.g., CPUC R.11-10-023, California Independent System Operator Corporation Submission of Supplemental Information to Proposal, March 3, 2012, Attachment at 13-14.

⁴ See, e.g., *Lead Commissioner Workshop on Renewable Integration Costs, Technologies, and Requirements*, Docket No. 12-IEP-1D, May 24, 2012, available at http://www.energy.ca.gov/2012_energypolicy/notices/2012-06-11_Workshop_Notice.pdf.

Recommended Change to the EPS Rule:

While the CEC may wish to consider some modifications to the regulations on notification, it should not add an entirely new reporting requirement, as suggested by NRDC/SC, for an "... annual compliance plan from each POU with any interest in a non-compliant facility." There is no requirement in SB 1368 for such a plan, and there is no apparent need to add an unnecessary and burdensome "annual report" to the current POU reporting requirements.

CMUA also notes one minor change that should be made to update the EPS regulations with the current RPS structure in California and at the CEC. Section 2904(b) states: "For power plants not eligible for renewable portfolio standard certification that use biomass fuels in combination with other fuel(s)." This language was established prior to the CEC establishing a process where multi-fuel facilities are in fact eligible for RPS certification. The section should be changed to read:

For powerplants ~~not eligible for renewable portfolio standard certification~~ that use biomass fuels in combination with other fuel(s), the powerplant's annual average carbon dioxide emissions are the amount of carbon dioxide produced on an annual average basis by all fuels used other than biomass, biomethane, biogas, or landfill gas.

In summary, if the CEC entertains suggestions to lower the EPS, it should create a separate docket for such a purpose in order to engage all affected parties, coordinate with relevant regulators and the CAISO, and make a reasoned determination based on a complete factual record.

Sincerely:

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