

**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

California Energy Commission DOCKETED 12-OIR-1
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M-S-R PUBLIC POWER AGENCY REPLY COMMENTS

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The M-S-R Public Power Agency (“M-S-R”)¹ provides these comments in response to the *Request for Reply Comments* (Request for Replies) issued by Chairman Weisenmiller on August 31, 2012. M-S-R appreciates the opportunity to address the California Energy Commission (Commission or CEC) on the very important issues raised in the Request for Replies regarding potential revisions to the Commission’s Emissions Performance Standard (EPS) Regulation.

In the Request for Replies, the Commission seeks feedback from stakeholders on three issues:

- (1) Whether to establish a filing requirement for all publicly owned utility (POU) investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement;*
- (2) Whether to make any other changes to the EPS to carry out the requirements of Senate Bill (SB) 1368; and*
- (3) Respond to information docketed by the Natural Resources Defense Council (NRDC) and Sierra Club related to the San Juan Generating Station.*

M-S-R urges the Commission to issue a final decision in this proceeding and close the record on all of the matters raised in the January 2012 Rulemaking Order. With regard to the matters addressed in the Request for Replies, the Commission’s decision should include a final

¹ 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.

conclusion noting that there is **no need to require additional filing or reporting requirements for non-EPS compliant facilities**. There is no evidence to support the need for additional requirements, especially in the face of ever increasing pressure from the Governor and the Legislature to reduce the amount of paperwork generated by public agencies. Additional filing requirements will not serve any public purpose, and only increases administrative and compliance costs. The Commission should also issue a decision in this Proceeding concluding that **the EPS should not be lowered**. Not only is it inappropriate to use this Proceeding as a forum to revise the EPS, but 825-850 pounds of carbon dioxide per megawatt hour (lbs CO₂/MWh) is a virtually unattainable level. Furthermore, the Commission's final conclusion on this matter should recognize the crucial role that gas-fired generation plays in helping California reach its aggressive renewable energy goals, and the impact that a lower EPS will have on how those facilities are operated and dispatched. As mandated by SB 1368, any revisions to the actual standard should be done in consultation with the California Public Utilities Commission (CPUC) and the California Air Resources Board (CARB), and also with the California Independent System Operator (Cal ISO).

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

The Commission is seeking further information on whether to establish a filing or notification requirement for all POU investments in non-EPS compliant facilities and asks for input on elements of a proposal put forth by NRDC and Sierra Club that would require POUs to provide URLs for all materials relevant to expenditures in non-EPS compliant facilities, regardless of whether they are considered covered procurements or not. NRDC/Sierra Club further request that "all documents or information needed to allow for an informed understanding of POU investments in non-EPS compliant plants be made available through the notification methods" they have detailed.

While there are no sound public policy reasons to expand the scope of reporting to accommodate one special interest, there are several reasons why such a proposal should be rejected. As more fully set forth below, the scope of both the timing and content proposals for the information to be provided are vague and subjective. Additionally, the requested information is already available to any member of the public, and any new requirements will impose

unwarranted costs on public agencies, which should be rejected in light of the fact that there is no evidence to support the need for additional requirements.²

A. POU's Already Make the Requested Information Publicly Available

The information requested is already publicly noticed and available. As demonstrated during the April 18, 2012 Workshop and in the July 27 Comments filed by the various POU's, the POU's already employ a robust public process for review and analysis of various procurement decisions. These processes are not limited to matters regarding whether any particular investment is a covered procurement or the EPS generally, but also apply to all POU transactions, well as compliance with myriad local, state, regional, and federal regulatory requirements.³ In addition to the public process regarding procurement decisions, POU's are subject to compliance under the California Public Records Act which requires public records be made available upon request.⁴ There is nothing to justify special treatment of this one matter. Indeed, additional reporting to meet special interests presents a poor precedent. It is not sound public policy to allow those with a particular interest in a certain project to impose additional burdens on public agencies. Simply put, this kind of precedent opens the door to a never ending list of potential additional reporting and notification requirements to any number of agencies and organizations.

Furthermore, as the Tentative Conclusions properly note, neither NRDC nor the Sierra Club, "nor anyone else offer evidence of POU non-compliance" with the EPS⁵ that would justify the imposition of additional requirements. There is nothing in the record to warrant additional filing requirements, nor is there any evidence that indicates that any part of this public process inhibits the ability of interested parties to view POU transactions and deliberations. In fact, the

² POU's already face increasing costs associated with their coal emissions, and many have taken affirmative steps to reduce their reliance on this resource. While POU's may wish to divest or otherwise terminate their interests in coal-fired electricity generation facilities, it is important to note under the current version of the Cap-and-Trade Program Regulation, such activities could be deemed resource shuffling and result in the imposition of significant penalties on the POU. *See* Cap-and-Trade Regulation § 95852(b)(2).

³ The disclosure of public information does have limited exceptions, such as matters pertaining to pending litigation or personnel matters.

⁴ California Government Code §6250, *et. seq.*

⁵ Tentative Conclusions, p. 3.

contrary is true, as demonstrated by the comments filed by the public agencies in this proceeding.

As M-S-R indicated in its July 27 comments, an ever expanding “reporting” requirement results in significant practical and financial implications for POU’s, 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. There is no merit in burdening either the POU’s or the Commission with additional reporting requirements and duplicating notices regarding the availability of information. Nothing in the information presented by NRDC and Sierra Club in their Petition for Rulemaking or their July 27 Comments to the Commission contain compelling evidence to the contrary.

B. The Proposed Timing of Notification is Vague and Subjective

In their proposal, NRDC and Sierra Club aver that providing additional information in the form of URL links to the CEC would be a simple process. However, they also request that the availability of certain information – without specificity – be made available even in advance of Government Code section mandates.⁶ This *ad hoc* revision to public agency notice requirements contained in California law would impose additional administrative burdens on the public agencies and on the CEC. Furthermore, this one administrative task can become cumulatively burdensome if other special interests are successful in lobbying for similar special notification and filing provisions for each of their interest areas. The State has an open meeting law⁷ and a law that govern access to public information⁸, which the POU’s are lawfully complying with. The State has completely occupied this area of the law, and the imposition of additional requirements would be inappropriate. Extra requirements and particular accommodations for special interests are neither required under the Government Code, nor necessary to ensure that the information at issue is timely provided.

⁶ “The CEC should require notice be posted and available to the CEC as soon as the relevant information is available and with sufficient notice to ensure public stakeholders are able to participate.” NRDC/Sierra Club, July 27 Comments, p. 3.

⁷ The Brown Act, California Government Code Section 54950, *et. seq.*

⁸ The California Public Records Act, see footnote 4, above.

C. The Scope of the Information to be Disclosed is Vague and Subjective

In their proposal, NRDC/Sierra Club seek “all documents or information needed to allow for an informed understanding of planned capital and debt expenditures or any contractual amendment or new contract affecting a non-compliant facility be made available” through its proposed notification method.⁹ The description of the type of information requested to be made available is vague and ambiguous. This is an unattainable standard. It allows the recipient – and not the decision-makers – to define the sufficiency. The information that one person may require is not going to be the same for somebody else. Staff Reports are designed to provide the Governing Boards of each POU with the information necessary to make informed decisions regarding the matters at hand. The members of Governing Boards are elected by their constituents.¹⁰ It is these individuals that should be the arbiters of the sufficiency of the information required for the deliberative process. If the data and information provided to those individuals is deemed by them to be sufficient, its sufficiency should not be permitted to be called into question by third parties. Acquiescing to a request to allow anybody other than the decision-makers directly accountable to the constitutes of the POU to determine what is needed to make an informed decision opens a Pandora’s Box of potential “violations” and debates regarding the sufficiency of information. M-S-R urges the Commission to reject this proposal.

D. Additional Reporting Requirements are Contrary to the Governor’s Direction

As the POU have repeatedly demonstrated, as public agencies, they already provide public notice regarding their deliberations. The POU also provide the CEC with a great deal of information relevant to various proceedings and regulatory mandates each year. Beginning in 2013, they will report even more information annually regarding renewable energy procurement and compliance with the 33% renewable portfolio standard (RPS) mandate.¹¹ New reporting and notification requirements create additional burdens on public agencies that are not warranted. Governor Brown has called for less reporting and streamlining of agency reports.¹²

⁹ NRDC/Sierra Club July 27 Comments, p. 3.

¹⁰ Some POU boards are comprised of individuals appointed by the elected governing boards.

¹¹ Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1.

¹² See Executive Order B-14-11.

The Legislature has similarly supported less and streamlined provision of information.¹³ The imposition of yet another reporting and filing requirement – even in the form of the provision of a URL – is simply contrary to this agenda. No new policy or evidentiary reasons have been presented to the CEC that would justify this additional requirement. Accordingly, M-S-R urges the Commission to reject any calls for additional reporting and filing requirements for public agencies.

The current POU processes do not inhibit public scrutiny, and there is no evidence – oral or written – in the record to support such a claim. M-S-R and other public agencies follow the requirements of the Brown Act and related disclosure laws. The decisions regarding all business matters are addressed in the same way. There is nothing about these practices that inhibit public scrutiny or warrant further reporting and notification. Accordingly, M-S-R recommends that the Commission issue a decision rejecting the proposal for additional reporting and notification requirements.

II. THE EMISSIONS PERFORMANCE STANDARD SHOULD NOT BE CHANGED.

The EPS should not be changed. The current standard was established in accordance with the specific provisions set forth in SB 1368 and no revisions are necessary to carry out the requirements of SB 1368. The statutory triggers to change the standard have not been met, nor has any party presented evidence that would warrant changing the standard. Furthermore, if and when it is determined that the EPS should be updated or modified, that analysis should be based exclusively on California-specific information, must be made in consultation with the CPUC and the CARB in compliance with the provisions of Public Utilities Code¹⁴ section 8341(f), and must be part of a broader rulemaking proceeding to ensure that all interested parties have an opportunity to participate, including the Cal ISO.

¹³ For example Assembly Bill 2227 signed by Governor Brown September 27, 2012, streamlines and consolidates a myriad of discrete POU reports to the CEC into simplified and rational forms.

¹⁴ Unless otherwise indicated, all code references shall be to the California Public Utilities Code.

A. Any Revisions to the EPS Must be Based Exclusively on California-Specific Data

NRDC/Sierra Club suggest that the current EPS be lowered. This suggestion should be rejected. While NRDC and Sierra Club offer interesting evidence regarding theoretical performance standards based on nationally compiled data, nothing in their filing provides evidence that would support revising the *California* EPS. As noted in the Request for Replies, “NRDC & Sierra Club state that the analysis they submitted demonstrates that an EPS of 825-805 lbs/MWh, with potentially a higher EPS for smaller facilities, is feasible and economic today.”¹⁵ Since the proposal is based on national – and not California-specific data – the CEC is seeking information on the implications for California facilities.¹⁶

Specifically, the Request for Replies asks for the following:

a. *“Given that the EPS applies to natural gas plants that are designed and intended to operate as baseload facilities, the Energy Commission seeks input on how many of California’s natural gas fired power plants would be affected by a lower EPS, such as in the range NRDC & Sierra Club have suggested.”*

b. *“Energy Commission is interested in receiving input on the extent to which a lower EPS may impact the design or ability of natural gas plants to operate more flexibly for integrating renewable resources, since the cycling of these plants entails lower efficiencies and requires fast ramp capabilities, and thereby a potential increase in emissions.”*

The Request for Replies properly notes that any record involving revision to the EPS must address the implications to California’s facilities. However, while these comments and the associated comments provided by M-S-R’s member agencies can provide a high-level response to the inquiries set forth above, there is simply insufficient time to undertake the detailed empirical analysis that is necessary to show the full extent of the adverse effect of an 825 or 850

¹⁵ Request for Replies, p. 4.

¹⁶ In addition to being based on national data sources, the majority of the information provided by NRDC and Sierra Club is taken from their filings in support of a Federal emissions standard. The proposed Federal standard is not comparable to the California EPS established pursuant to SB 1368.

lbs CO₂/MWh EPS on California's facilities. Simply put, a reduced EPS would have a detrimental impact on the fossil fuel electric generation facilities of each of M-S-R's members.¹⁷

The Woodland 2 Power Plant, brought online by the Modesto Irrigation District (MID) in 2003, is a natural gas 83 Megawatt (MW) LM6000 combined cycle power plant. Woodland 2 operates as a load-following baseload unit and has an emissions profile of approximately 1,000 CO₂ lbs/ MWh. Similarly, in 2005, the City of Santa Clara began serving its customers with electricity from its Donald Von Raesfeld (DVR) Power Plant. DVR is a natural gas-fired, combined cycle, wet-cooled generating facility consisting of two General Electric LM-6000PC Sprint combustion turbine-generators (CTGs) and a single condensing steam turbine generator (STG), natural gas-fired, combined-cycle electric generating facility with the ability for peak firing up to 147 MW. DVR's 2011 emissions profile was 921 lbs CO₂elbs/MWh. The City of Redding's Redding Power Plant (Redding Power) is a 185 MW natural gas electricity generating facility that was constructed incrementally to provide peaking power and base load generation for the City. Redding Power's combined-cycle operations currently meet the 1,100 lbs CO₂/MWh requirements. None of these electric generating facilities would be able to meet the EPS proposed by NRDC and Sierra Club. Despite the fact that each of the facilities at issue was constructed with the best available technologies, and indeed, the new plants operated by MID and Santa Clara represented the latest in combined-cycle technologies, they would each be rendered non-EPS compliant by a reduced standard.

As more fully explained in the comments submitted by M-S-R's member agencies, the EPS proposed by NRDC and Sierra Club would detrimentally impact all small to medium size facilities, forcing the state to rely on large generation facilities. Due to their location and the need to ensure reliable electricity close to load, it is not technically feasible, nor in the best interest of utilities or their ratepayers to rely solely on remotely located and larger generation sources of electricity generation. Accordingly, California must retain the flexibility to ensure that smaller generation facilities can continue to be part of the utilities' resource planning portfolios. This is not only prudent planning, but necessary to ensure resource adequacy and reduce the adverse impacts of unexpected outages or grid emergencies.

¹⁷ In these comments, M-S-R highlights the adverse impacts that would result from a lower EPS, and supports and incorporates the individually filed comments of its member agencies, the City of Santa Clara/Silicon Valley Power, the City of Redding/Redding Electric Utility, and the Modesto Irrigation District.

It is also important to note that a decreasing EPS will have a detrimental and adverse impact on the ability of California's electric utilities to meet the current 33% RPS. A determination that these facilities are non-EPS compliant would adversely impact M-S-R's members' ability to provide reliable and cost-effective electricity to their businesses and residents, and would also subject each entity to additional costs associated with meeting the State's ever increasing renewable energy mandates. This is due to the fact that when these facilities are used incrementally to firm and shape renewable energy being delivered in California, they are necessarily operating at less than their peak, which results in increased emissions. California cannot ignore the RPS mandate when framing its overall energy strategy.

California is in the unique position of having adopted one of the most aggressive renewable energy standards in the nation. The State is also about to embark on the most aggressive, overall emissions reduction schemes in the country with the implementation of the cap-and-trade program.¹⁸ Together these two measures, along with the existing EPS, will continue to result in lower GHG emissions across the State – ultimately meeting the objectives of both Senate Bill 1368 and Assembly Bill 32. It is not necessary to change the current EPS to ensure that the requirements of SB 1368 are met.

In fact, an 825 to 850 lbs CO₂/MWh emission standard would make certain facilities obsolete that have been heralded as state-of-the-art as recently as last month.¹⁹ Even facilities that are able to meet this standard would not be able to do so if they are used to firm and shape renewable resources, or are otherwise necessary to supplement the provision of renewable energy into California. It is imperative that any review of the EPS be based solely on an extensive review of *California operations* taking into account the specific impacts that geography and altitude may have on the standard, and considering the use of these generating facilities for augmenting and facilitating the provision of ever increasing amounts of renewable energy in California.

¹⁸ Title 17, California Code of Regulations, Article 5: California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms (Cap-and-Trade Program).

¹⁹ The Lodi Energy Center (LEC) was brought online by the Northern California Power Agency (NCPA) in August 2012. Details regarding the impacts of a reduced EPS on this facility are addressed in NCPA's reply comments.

B. The Current EPS is Based on Sound Data and Should Not be Altered

In 2006, in accordance with the provisions of SB 1368, this Commission initiated a Rulemaking to develop an emissions performance standard and rules for enforcement of the standard for POUs.²⁰ Public Utilities Code section 8341(e)(1) provides that:

*“On or before June 30, 2007, the Energy Commission, at a duly noticed public hearing and in consultation with the [CPUC] and the State Air Resources Board, shall establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electricity utilities **at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation.** The greenhouse gas emissions performance standard established by the Energy Commission for local publicly owned electric utilities shall be consistent with the standard adopted by the [CPUC] for load-serving entities. Enforcement of greenhouse gases emissions performance standard shall be immediately upon the establishment of the standard. All combined-cycle natural gas powerplants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emission performance standard.”*

Also in response to SB 1368, the CPUC opened Rulemaking 06-04-009.²¹ Stakeholders in both the CPUC and CEC processes embarked on a review of empirical data and existing facilities' information in order to determine the appropriate EPS “at a rate of emissions of greenhouse gases that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation.”²² In separate but coordinated proceedings, both the CPUC and CEC determined that the EPS should be 1,100 pounds of CO₂/MWh.²³ This figure was based on months of research and scores of empirical data, and accounted for not only the use of California's facilities, but also took into account smaller-sized combined-cycle generating facilities with newer and different technologies. This figure also reflects the variability in heat rates based on different altitudes and ambient temperatures of where the facilities are located. In the CEC's November 2006 Staff Report, it was noted that an EPS between 1,000 lbs CO₂/MWh

²⁰ Public Utilities Code section 8341(c)(1).

²¹ Public Utilities Code section 8341(d)(1) required the CPUC to adopt an EPS for load-serving entities by February 1, 2007. The CPUC issued D.07-01-039 in its Rulemaking 06-04-009.

²² Public Utilities Code §§ 8341(d)(1) and (e)(1).

²³ It is important to note that the CPUC's proposed decision had originally contemplated a 1,000 pound EPS, but later revised that number to 1,100 based on the data in the record.

and 1,100 lbs CO₂/MWh was a compromise between the 800 lbs CO₂/MWh that the most efficient modern combustion turbine combined cycle plant could achieve, and the 1,400 lbs CO₂/MWh that might envelope the majority of natural gas burning technologies.²⁴ This Staff Report also noted that the associated heat rate would result in almost no natural gas units that are not combined-cycle meeting the EPS. This standard was aggressive, but deemed appropriate and reasonable by both agencies. There is nothing to be gained by an attempt to revise the emissions performance standard that is already based on efficient combined-cycle generating facility.

C. A Decreasing EPS Would Adversely Impact Project Financing

Nothing in SB1368 requires retail sellers or POU's to be subject to an ever decreasing EPS, especially one that is not based on a review or analysis of California's specific resource needs. Indeed the very notion of a constantly changing emissions performance standard would undermine the financing of electric facility projects, including new, state-of-the-art projects being brought online at this time. Such a move would adversely impact all new investments in electricity generation, cause extensive and unnecessary increases in the cost of electricity to California's residents and businesses, and thwart the ability of California's utilities to use their existing facilities to facilitate the delivery of renewable energy into the State.

Electric generating facilities have a long life. Those facilities are also financed based on the amount of time that the owner will be able to run them efficiently and economically. Imposition of a changing EPS that could essentially make facilities uneconomical is not sound public policy, as investors would not want to participate in a market with such uncertain and ever changing policies and requirements.

D. The Standard Applicable to POU's Must be Consistent with the Standard Adopted by the CPUC

Although the EPS for POU's and load-serving entities subject to the CPUC's jurisdiction are not required to be the same, they are required to be comparable:

8341(e)(1): . . . The greenhouse gas emissions performance standard established by the Energy Commission for local publicly owned electric utilities shall be consistent with the standard adopted by the [CPUC] for load-serving entities. . . . “

²⁴ California Energy Commission Staff White Paper, November 27, 2006.

Requiring POU facilities to meet an 825-850 lbs CO₂/MWh standard is not comparable to the current 1,100 pound standard adopted by the CPUC for other load serving entities. Such a disparity would unduly prejudice POUs. It would not be lawful for the CEC to adopt an EPS for POUs that is so far under the EPS that is applicable to other facilities in California. Further, as noted above, any change to the EPS – especially one of this magnitude – should be part of a coordinated process that includes not only the CEC, CPUC, and CARB, but the Cal ISO, too.

E. This Rulemaking is Not the Proper Forum to Address Revising the Standard

While the Rulemaking does include “make any other changes to carry out the requirements for SB 1368” within the scope of this proceeding, revising the current standard was not specifically 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. A change of this import must be done in conformance with section 8341(f) and in consultation with other affected agencies. A single round of comments responsive to nationwide empirical data is not sufficient to warrant even a further investigation into updating the California emissions performance standard, let alone instigating a rulemaking to change it. The Commission should issue a decision noting that there is no need to revise the standard at this time, and that should the criteria in section 8341(f) be met, the Commission will initiate a separate rulemaking at that time to review this matter.

F. The Statutory Triggers for Changing the EPS Have Not Been Met

The California Air Resources Board has stated that there is not an enforceable greenhouse gases emissions limit established and in operation that applies to local publicly owned electric utilities.²⁵ While M-S-R has argued that there is an applicable cap, and that cap is the best and most effective means to ensure cost-effective and efficient GHG reductions in the state, CARB has concluded otherwise. Based on that position, this Commission issued a tentative conclusion that the EPS should not be revised.

Public Utilities code section 8341 provides that:

²⁵ June 28, 2012 e-mail from Steven Cliff, a member of the CARB staff, to the Commission.

(f) The Energy commission, in a duly noticed public hearing and in consultation with the [CPUC] and [CARB], shall reevaluate and continue, modify, or replace the greenhouse gases emissions performance standard when an enforceable greenhouse gases emissions limit is established and in operation, that is applicable to local publicly owned electric utilities.

(g) The [CPUC], through a rulemaking proceeding and in consultation with the [CEC] and [CARB], 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 load serving entities.”

Accordingly, any revisions to the EPS must be done only once an enforceable cap is in place, and in consultation with CPUC and CARB. M-S-R also believes that input from the Cal ISO should be part of this process.

III. RESPONSE TO NRDC AND SIERRA CLUB AUGUST 17 LETTER

The Request for Replies also permits parties to file replies to the August 17, 2012 letter from NRDC/Sierra Club regarding an M-S-R Resolution and two Staff Reports. The Request for Replies erroneously characterizes these documents as “relating to M-S-R's intent to pay expenditures relating to federally mandated selective catalytic reduction investment in Unit 4 of the San Juan Generating Stations.”

The documents that NRDC and Sierra Club requested to have included in the record for this proceeding are mischaracterized as “documents authorizing the expenditure of funds.” As more fully set forth in M-S-R's August 31 letter to the Commission, the documents that NRDC and Sierra Club requested to have added to the record were for purposes of meeting certain treasury financing requirements associated with the potential issuance of revenue bonds. The Resolution and Staff Reports at issue did not pertain in any way to the approval or disapproval – or even consideration of – a prospective procurement. The documents that NRDC/Sierra Club find “alarming” do nothing more than lay out processes that must be employed to protect M-S-R's legal interests in the facility, and the associated obligation to protect its members and bondholders. Each of the referenced documents specifically states that they **do not bind** M-S-R to make expenditures or commit to projects. As explained in M-S-R's August 31 Reply, that was

neither the purpose nor intent of the documents at issue, and M-S-R has not taken any actions to date regarding the expenditures at issue.²⁶

IV. CONCLUSION

The Regulation should not be revised to require additional reporting requirements. The POU's 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 POU's are performing their duties as required lies. The Commission should reject the NRDC/Sierra Club proposal to provide notification of "potential POU expenditures on non-compliant facilities." NRDC/Sierra Club have long advocated for additional filing and review requirements for POU's; the Commission rejected those proposals in 06-OIR-01, and should do so now. The Commission should issue a decision finding that the current EPS Regulation does not need to be revised, and that no additional reporting or notification requirements should be imposed.

Furthermore, the Commission should reject the proposal to alter the current level of the EPS in any way. Not only have the statutory triggers for changing the EPS not been met, but the current EPS is based on sound empirical data that relates specifically to California facilities and conditions, and should not be changed.

M-S-R urges the Commission to issue a decision reflecting these recommendations and close this proceeding.

Respectfully submitted,



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Dated: September 28, 2012

²⁶ In response to Commissioner Weisenmiller's August 20 email, M-S-R filed a response to the NRDC/Sierra Club letter on August 31, which was docketed by the Commission on that same day.