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APR. 19 2013

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

In the matter of:)

)
Rulemaking to Consider Modifications of)
Regulations Establishing a Greenhouse)
Gases (GHG) Emission Performance)
Standard (EPS) for Baseload)
Generation of Local Publicly)
Owned Utilities (POUs))

Docket No. 12-OIR-1

COMMENTS FROM
THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP)
TO THE CALIFORNIA ENERGY COMMISSION'S (Energy Commission's, or CEC's)
PROPOSED FINAL CONCLUSIONS

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Dated: April 19, 2013

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

In the matter of:

Rulemaking to Consider Modifications of
Regulations Establishing a GHG
EPS for Baseload Generation of
Local POUs

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Docket No. 12-OIR-1

**COMMENTS FROM
THE LADWP
TO THE ENERGY COMMISSION'S
PROPOSED FINAL CONCLUSIONS**

Pursuant to the procedures established by the CEC, the LADWP respectfully submits these Comments regarding the CEC's request for written comments on its Proposed Final Conclusions related to non-EPS compliant baseload generation facilities in its Notice, dated April 5, 2013, as part of the rulemaking (Docket 12-OIR-1) to consider modifications to the EPS regulations, Title 20, California Code of Regulations, Section 2900 et seq.

I. INTRODUCTION

The LADWP remains committed to reducing its GHG emissions as intended by Senate Bill (SB) 1368 and Assembly Bill (AB) 32. All actions and comments by LADWP in this proceeding and other policy discussions related to GHG emissions unequivocally support this position. On March 19, 2013, LADWP took historic steps toward eliminating coal from Los Angeles' power supply when it announced that representatives of LADWP and Salt River Project have reached sufficient progress on the principle terms to sell its stake in Navajo Generating Station for the two utilities to move forward to negotiate a definitive agreement that would end Los Angeles' use of coal-fired power from the plant

by the end of 2015. If a final agreement can be reached and approved by each party's governing bodies, this will end LADWP's role in NGS more than four years earlier than mandated by California state law. Additionally, the LADWP's Board of Water and Power Commissioners approved a contract amendment that will enable LADWP to completely transition out of coal power from the Intermountain Power Plant in Delta, Utah by 2025 at the latest, with efforts to begin that transition no later than 2020. The contract amendment is pending consideration at the Los Angeles City Council.

LADWP strongly believes it has always remained compliant with the rules established by SB 1368. Nonetheless, LADWP wishes to support the Proposed Final Conclusions, but with some clarifying amendments, as a reasonable approach to the EPS that allows LADWP and other POU's to continue the important business of reducing our respective GHG emissions in a thoughtful manner that maintains grid reliability, minimizes rate shock for our customers, and ensures environmental integrity. Detailed comments responding to the Energy Commission's Proposed Final Conclusions are provided below in relation to the four original topics outlined in the Order Instituting Rulemaking (OIR).

II. SPECIFIC COMMENTS

a. Whether to establish a filing requirement for all POU investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement.

i. Section 2908(a): Notification Requirement

The Energy Commission concludes that "the threshold for reporting under Section 2908 should be set at \$2.5 million," which is a higher threshold for reporting than the Petitioners' proposed \$250,000 threshold. While LADWP prefers a higher reporting threshold, this \$2.5 million threshold can be workable, so long as the Energy

Commission provides further clarification that this threshold is specific to the individual investment of a POU and is not applicable to the non-EPS compliant baseload facility as a whole. Accordingly, LADWP recommends that the Energy Commission further amend Section 2908(a)(1) as follows (reflects changes to CEC's proposed amendments):

*"At the posting of the notice of a public meeting to consider a covered procurement or any ~~expenditure~~ **other investment** over \$2.5 million by a local publicly owned electric utility to meet environmental regulatory requirements at a non-EPS compliant baseload facility, the local publicly owned electric utility shall notify the Commission and all persons on the Commission's most current Climate Change service list of the date, time and location of the meeting so the Commission may post the information on its website..."*

Additionally, LADWP believes the term "expenditure" is overly broad and inconsistent with the language of the underlying SB 1368 legislation, which controls the EPS regulations. Both the SB 1368 legislation and the EPS regulations consistently use the term "investment" rather than the broader and non-existent term "expenditure." Even the Energy Commission's own Order Instituting Rulemaking recognized the need to use the term "investments" at the beginning of this long process when it pondered whether to "establish a filing requirement for all POU **investments** in non-EPS compliant facilities regardless of whether the **investment** could be considered a covered procurement."¹ Accordingly, using the term "investment" as revised above and mentioned throughout this Comment is necessary not only to be consistent with the controlling terminology of SB 1368 and the EPS regulations, but also with the scope and parameters of this particular rulemaking.

¹ CEC, Order Instituting Rulemaking (OIR) to Consider Modifications of Regulations Establishing a Greenhouse Gases Emission Performance Standard For Baseload Generation of Local Publicly Owned Electric Utilities, adopted January 12, 2012, page 2. (emphasis added)

ii. Section 2908(c): Reporting Exemption for Divestiture

The Energy Commission concludes that it is reasonable for “a new annual reporting requirement to only apply to ownership interests and contracts of five years or longer, so long as there is a binding agreement in place to ensure divestiture occurs within that 5-year timeframe.”² LADWP supports the Energy Commission’s proposal to provide an exemption for reporting on baseload facilities that are in the process of near-term divestiture within five years. However, the proposed amendment adding Section 2908(c) suggests that the exemption only applies after a POU divests of *all* baseload facilities exceeding the EPS. Any binding agreement related to divestiture or conversion of a facility is uniquely specific to that facility and the parties involved in that facility. As these non-EPS compliant baseload facilities start to roll off the POU’s resource mix, so should the reporting requirement under this regulation. As such, LADWP recommends that the CEC modify the language proposed in Section 2908(c) as follows (reflects changes to CEC’s proposed amendments):

“(c) A local publicly owned electric utility that has entered into a binding agreement to divest within 5 years of ~~all-a~~ baseload facility~~ies~~ exceeding the EPS is exempted from compliance with subsection (b) for that baseload facility for as long as the binding agreement is in place or until such time that it has completed divestment of that all non-EPS compliant baseload facility~~ies~~.”

iii. Proposed Section 2908(d): Limitations of Notification Requirement

The Energy Commission also clarifies that its role for the purpose of reporting requirements would be a “notification role,” rather than a “review and approval role.”³ LADWP appreciates the clarification that the Energy Commission’s role of “notification”

² Ibid, page 10.

³ CEC Proposed Final Conclusions, page 8.

does not override or supersede a POU's governing body approval authority for such investments, and is intended to further the goal of transparency only. As such, LADWP recommends that Section 2908 be amended with the following new paragraph:

"(d) Notification and reporting of investments over \$2.5 million for an individual POU to meet environmental regulatory requirements at a non-EPS compliant baseload facility, as specified in subsections (a) and (b) that are not also a covered procurement, are not subject to compliance filings under Section 2909 or compliance review under Section 2910."

iv. Timeline for Advanced Notification

The Energy Commission concludes that it is reasonable to establish a notification requirement within the timelines provided under the Brown Act, including 72 hours in advance of a meeting, or 24 hours in advance of a special meeting, in which a POU is deliberating an investment in a non-EPS compliant facility, and that such notice be provided to persons on the Energy Commission's most current climate change service list.⁴ LADWP supports this reasonable approach to increasing the transparency and awareness related to investments.

v. Annual Prospective Reporting

The Energy Commission concludes that "an additional annual prospective filing requirement," as outlined in Option 3 and advocated by NRDC and Sierra Club, would provide interested parties a longer period of time to examine and consider investments in non-EPS compliant facilities...so that they are prepared to more meaningfully participate in POU deliberations. This annual reporting requirement would include a description of the investment, what it was intended to do, and the associated costs.⁵

⁴ Ibid, page 9.

⁵ Ibid, page 9.

Although LADWP prefers an annual retrospective attestation filing requirement over a prospective filing requirement, LADWP can accommodate such filing requirement given CEC's clarification that its role is that of notification only and does not include a review and approval role. LADWP appreciates the Energy Commission's clarification that such reporting does not override or supersede a POU's governing body approval authority for such investments, and is intended to further the goal of transparency only. With LADWP's amendment as proposed in the previous comment above to add a new paragraph (d) to Section 2908, LADWP can support this new annual prospective filing requirement.

vi. Effective Date of Regulatory Amendments

The Energy Commission concludes that it is reasonable for the new reporting requirement to take effect no sooner than January 1, 2014, to allow the POUs to make further progress toward their long-term and on-going divestiture efforts.⁶ LADWP supports the Energy Commission's conclusion. Should the amendments be adopted by the Energy Commission prior to January 1, 2014, LADWP requests that an amendment be added to Section 2908 specifying the effective date of January 1, 2014, for investments over \$2.5 million for an individual POU to meet environmental regulatory requirements at a non-EPS compliant baseload facility that are not also covered procurements.

⁶ Ibid, page 10.

b. Whether to establish criteria for, or further define the terms “covered procurement,” including specifying what is meant by “designed and intended to extend the life of one or more generating units by five years or more” and “routine maintenance.”

i. Case-by-Case Review of Investments That Are Not Exempt under “Routine Maintenance”

The Energy Commission concludes that the Petitioners have incorrectly interpreted the conclusions laid out in the earlier EPS Rulemaking and July 8, 2012 Tentative Conclusions, and further concludes that investments for environmental upgrades or legal mandates that fall outside the exception of “routine maintenance” are not “automatically” covered procurements as the Petitioners have asserted. The Energy Commission also concludes that to automatically assume that any investment that goes beyond routine maintenance is a “covered procurement” is inconsistent with the plain meaning of the regulations. Each investment must be analyzed independently to determine if it triggers one of three attributes of a covered procurement: 1) is designed and intended to extend the life of the plant by five years or more, 2) increases the rated capacity of the plant, or 3) is designed and intended to convert from non-baseload to baseload generation. The Energy Commission further concludes that developing criteria or further refining or defining the phrases “designed and intended to extend the life” or “routine maintenance” is unnecessary.⁷ LADWP supports these conclusions and appreciates the Energy Commission’s further clarification on this issue.

c. Whether to make other changes to the EPS regulations to carry out the requirements of SB 1368.

i. Lowering the EPS Standard

Extensive technical and legal comments were submitted by LADWP and other POUs, as well as investor owned utilities discouraging the Energy Commission from

⁷ Ibid, page 15.

lowering the EPS level from 1,100 pounds per Megawatt hour (MWh) to 825-850 pounds per MWh as suggested by the Petitioners. The Energy Commission concludes that SB 1368 requires the Energy Commission's EPS to be consistent with that established by the CPUC and that lowering the Energy Commission's EPS at this time, as recommended by the petitioners, would provide little if any benefit.⁸ LADWP supports this conclusion.

III. CONCLUSION

The LADWP appreciates the opportunity to submit these comments on this rulemaking that has spanned over a year in duration and has required extensive discussion and sharing of information. Through that process, LADWP and the other POUs have demonstrated that the EPS regulations have been followed and therefore have worked as originally intended by the California Legislature. As such, LADWP supports the Energy Commission's conclusions to not modify the EPS as requested by the Petitioners and require limited additional notification and reporting for transparency purposes only. LADWP remains committed to reducing its GHG emissions. LADWP urges the Energy Commission to swiftly bring closure to this rulemaking in order to return attention to the actions that will help bring about the significant resource transformation LADWP has embarked upon without further delay.

⁸ Ibid, page 21.

Dated: April 19, 2013

Respectfully submitted,

By: 

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