

NOTICE OF PROPOSED ACTION

Modification of Regulations Establishing a Greenhouse Gases Emission Performance Standard for
Baseload Generation of Local Publicly Owned Electric Utilities

California Energy Commission
Docket No. 12-OIR-1
April 2014

The California Energy Commission (“Commission”) proposes to modify existing regulations establishing a greenhouse gases emission performance standard for baseload generation of local publicly owned electric utilities. The proposed actions are taken under the authority of sections 25213 and 25218(e) of the Public Resources Code and would implement, interpret, and make specific several provisions of Public Utilities Code section 8341.

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

The date set for the adoption of regulations at a public hearing is as follows:

Commission Business Meeting
June 18, 2014
Beginning 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral and written statements, arguments, or contentions regarding the proposed regulations at the hearing, or may submit written comments to the Commission for consideration on or prior to June 18, 2014, by mailing them to:

Docket Unit
California Energy Commission
Docket No. 12-OIR-1
1516 9th Street, MS-4
Sacramento, CA 95814

Or e-mailing them to: DOCKET@energy.ca.gov
Or faxing them to Dockets at (916) 654-4354

PUBLIC ADVISER

The Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228 or contact publicadviser@energy.ca.gov.

STATUTORY AUTHORITY AND REFERENCE (Government Code Section 11346.5(a)(2) and 1 California Code of Regulations 14)

Authority: Sections 25213 and 25218(e), Public Resources Code; 8341, Public Utilities Code.

Reference: Section 54950, Government Code; Sections 224.3, 8340, and 8341, Public Utilities Code.

INFORMATIVE DIGEST (Government Code Section 11346.5(a)(3))

In September 2006, SB 1368 (Stats. 2006, ch. 598) was enacted requiring the California Energy Commission, in consultation with the California Public Utilities Commission (CPUC) and the California Air Resources Board (ARB), to establish a greenhouse gases emission performance standard and implementing regulations for all long-term financial commitments in baseload generation made by local publicly owned electric utilities. On October 16, 2007, regulations adopted by the Energy Commission implementing SB 1368 first went into effect. On January 12, 2012, the Energy Commission adopted an Order Instituting Rulemaking to consider potential modifications to these regulations.

Existing law requires a POU to post notice in accordance with Government Code section 54950 et seq. whenever its governing body will deliberate in public on a covered procurement. These regulations would require such notice also to take place when the POU's governing body will deliberate on any investment of \$2.5 million or more to meet environmental regulatory requirements at a non-EPS compliant baseload facility. These regulations would require the Energy Commission to create, maintain, and make available on its website a master contact list containing the names and e-mail addresses of all persons who have requested to be notified when a POU issues such a notice.

Existing law requires POUs to provide the Energy Commission with the uniform resource locator (URL) that links to the date, time, and location for any meeting to consider covered procurements. These regulations would require that the POU also provide direct notice of deliberations on covered procurements and investments of \$2.5 million or more to meet environmental regulatory requirements at a non-EPS compliant baseload facility to all persons on the Energy Commission's master contact list.

Existing law only requires POU deliberations of covered procurements to be noticed pursuant to Government Code section 54950 et seq., which, among other things, requires a brief description of items to be considered 72 hours before the meeting. These regulations would require POU's to file annually a notice identifying all investments of \$2.5 million or more it anticipates making in the subsequent 12 months on non-EPS compliant baseload facilities to comply with environmental regulatory requirements. These regulations would require the filing to contain a description of the investment and its intended purpose, the associated costs, and an indication of when a decision to move forward is expected. These regulations would also require that the filing describe any investments made in the past 12 months that were not identified in a previous annual notice. These regulations would require that the filing be made within 10 days of a POU's approval of the annual budget for the non-EPS compliant baseload facility. These regulations would exempt from this requirement any POU that has entered into a binding agreement to divest itself of any non-EPS compliant baseload facility within 5 years. These regulations would clarify that investments of \$2.5 million or more to meet environmental regulatory requirements at a non-EPS compliant baseload facility, that are not also covered procurements, are not subject to compliance filings under Section 2909 or compliance review under Section 2910.

Existing law allows a POU to petition the Energy Commission for an exemption from application of the emission performance standard for covered procurements required under the terms of a contract or ownership agreement that was in place as of January 1, 2007. Existing law allows the Energy Commission to exempt such covered procurements if the POU demonstrates that the covered procurements are required under the terms of the contract or ownership agreement and the contract or ownership agreement does not afford the POU applying for exemption the opportunity to avoid making such covered procurements. These regulations would clarify that a POU may seek an exemption for any investment meeting the criteria, not just those it has concluded are covered procurements.

The broad objective of these regulations is to provide more notice and transparency into POU decision making regarding whether an investment in a non-EPS compliant baseload facility is consistent with SB 1368, which prohibits covered procurements that exceed the EPS, without imposing onerous financial and administrative burdens. The benefits of these changes would be to allow interested persons more awareness of planned POU investments in non-EPS compliant baseload facilities and more time to examine and consider such investments so that they may be more prepared to participate meaningfully in POU deliberations. Overall, these regulations help protect the environment and public health and safety by limiting long-term investment in high GHG emitting power plants. They are also intended to reduce California's financial risk exposure to the compliance costs associated with future GHG emissions (state and federal) regulations and associated future reliability problems in electricity supplies. The changes proposed would further the purposes of this benefit by providing greater transparency in large investment decisions involving these plants.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS (Government Code Section 11346.5(a)(3)(D))

The Commission has conducted an evaluation for any other regulations in this area and has concluded that these are the only regulations concerning greenhouse gases emission performance standards for long-term financial commitments in baseload generation for local publicly owned electric utilities. Therefore, the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations. The changes merely augment current reporting and noticing requirements that are narrowly limited to long-term investments by POU's in high GHG-emitting power plants.

DOCUMENTS INCORPORATED BY REFERENCE (1 California Code of Regulations Section 20(c)(3))

The proposed regulations would not incorporate any documents by reference.

FEDERAL LAW (Government Code Section 11346.2(c) and 11346.9)

There are currently no existing comparable federal regulations or statutes.

LOCAL MANDATE DETERMINATION (Government Code Section 11346.5(a)(5))

If adopted, the proposed regulations would impose a mandate on local agencies. Pursuant to Government Code section 17556(d), the costs would not be required to be reimbursed because the local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Public Utilities Code sections 10001 et seq., 11501 et seq., and 15501 et seq. provide revenue sources for the affected entities to recoup any costs incurred through compliance with these proposed regulations.

ECONOMIC IMPACTS (Government Code Section 11346.5(a)(6))

The Energy Commission has made the initial determination relating to the economic and fiscal impacts of the proposed regulations by checking box A-1(h) on the Form 399 *Economic and Fiscal Impact Statement*. The regulations will not result in any private sector cost impacts because sellers of non-EPS compliant electricity remain able to sell electricity to POU's in compliance with the proposed regulations.

FISCAL IMPACTS (Government Code Section 11346.5(a)(6))

Implementation of the proposed regulations would result in minor costs to one state agency – the California Energy Commission. It is estimated that implementation of the proposed changes to the regulations would require an additional .05 person-year, costing the Commission approximately

\$6,000 per year. This cost is incurred mainly in maintaining the master contract list and reviewing for completeness and uploading the new annual filings required in Section 2908. In addition, staff time would be needed to review petitions and determine their compliance with the exemption provisions as modified in Section 2913.

The proposed regulations could impose costs to local agencies in the amount of approximately \$75,000 per year for all agencies combined for the additional noticing requirements and preparation of the annual report. Pursuant to Government Code section 17500 et seq. these costs would not be required to be reimbursed. There are no costs requiring reimbursement imposed on school districts. There would be no other non-discretionary costs or savings to local agencies and no costs or savings in federal funding to the state.

HOUSING COSTS (Government Code Section 11346.5(a)(12))

The proposed changes to the regulations will not have a significant effect on housing costs.

INITIAL DETERMINATION RE SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (Government Code Sections 11346.3(a), 11346.5(a)(7), and 11346.5(a)(8))

The Commission finds that the proposed regulations will not have a significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, and including the ability of California businesses to compete with businesses in other states. This determination is based upon: (1) the regulations only apply to local publicly owned electric utilities, which are local agencies; and (2) the proposed regulations only make minor changes to reporting and noticing requirements.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (Government Code Section 11346.5(a)(10))

Because the proposed changes are so small and would require only a minimal amount of extra work above what is required by existing jobs, the proposed regulations would not affect the creation or elimination of jobs within California, the creation of new businesses within California, the elimination of existing businesses within California, or the expansion of businesses currently doing business within the state. As discussed above, the proposed regulations provide additional transparency to the implementation of SB 1368 and thus help to protect the health and welfare of California residents and the state's environment by limiting long-term investments in high greenhouse gas-emitting power plants.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (Government Code Section 11346.5(a)(9))

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTS (Government Code Sections 11346.5(a)(11) and 11346.3(d))

The proposed regulations would require POUs to prepare an annual report detailing covered procurements and investments of \$2.5 million or more to meet environmental regulatory requirements anticipated in the next year. POUs are, however, considered local agencies, not businesses. Therefore, this reporting requirement does not apply to businesses.

SMALL BUSINESS IMPACTS (1 California Code of Regulations Section 4(a) and (b))

The proposed regulations would not affect small businesses. As mentioned above, the regulations moderately augment current reporting requirements of POUs, which are not considered small businesses. No small business is legally required to comply with the proposed changes, no small business is required to enforce the proposed changes, no small business is likely to directly derive a benefit from the enforcement of the proposed changes, and no small business would incur a detriment from the enforcement of the proposed changes.

ALTERNATIVES STATEMENT (Government Code Section 11346.5(a)(13))

The Commission must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS (Government Code Section 11346.5(a)(13))

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations, should be directed to Lisa DeCarlo at (916) 654-5195 or by e-mail at lisa.decarlo@energy.ca.gov. The designated backup contact person is Melissa Jones, who can be reached at (916) 654-3794 or by email at melissa.jones@energy.ca.gov.

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT (Government Code Section 11346.5(a)(16))

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Commission's website at: http://www.energy.ca.gov/emission_standards/2012rulemaking/documents/ or contact Melissa Jones at (916) 654-3794 or by e-mail at melissa.jones@energy.ca.gov. Additionally, the Commission has available all the information upon which the proposed regulations are based; copies can be obtained by accessing the above website or contacting the Docket Office at

DOCKET@energy.ca.gov or by calling (916) 654-5076.

AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS (Government Code Section 11346.5(a)(18))

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations pursuant to Government Code section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations. Per section 44, title 1, of the California Code of Regulations, notice of any modified text will be submitted to (1) anyone who submits oral or written comments at the public hearing, (2) anyone who submits written comments to the Commission's docket, or (3) anyone who specifically requests notification of such modifications.

COPY OF THE FINAL STATEMENT OF REASONS (Government Code Section 11346.5(a)(19))

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Commission's website at: http://www.energy.ca.gov/emission_standards/2012rulemaking/documents/ or contacting Melissa Jones at (916) 654-3794 or by e-mail at melissa.jones@energy.ca.gov.

INTERNET ACCESS (Government Code Sections 11346.4(a)(6) and 11346.5(a)(20))

The Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, as well as many other documents in the rulemaking file, have been posted at: http://www.energy.ca.gov/emission_standards/2012rulemaking/documents/.

Served on the following list servers: ghg_emissions, ghgimpacts, climatechange, agendas