

**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

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**M-S-R PUBLIC POWER AGENCY COMMENTS ON NOTICE
OF PROPOSED ACTION TO MODIFY THE EMISSION
PERFORMANCE STANDARD REGULATION**

The M-S-R Public Power Agency (M-S-R)¹ appreciates the opportunity to provide these comments to the California Energy Commission (CEC or Commission) in response to the Notice of Proposed Action (NOPA), dated April 24, 2014, to modify the existing regulations establishing a greenhouse gases emission performance standard for baseload generation of local publicly owned electric utilities (Emissions Performance Standard (EPS) Regulation).

M-S-R has been an active participant in this Rulemaking since it was initiated in 2012, and has provided the Commission with comments regarding the issues raised in the original rulemaking notice, on the current EPS Regulation, on M-S-R's practices with regard to public meetings and information disclosures, and M-S-R's other efforts related to compliance with the intent of Senate Bill (SB) 1368 (Stats. 2000, ch. 598) and the requirements of the EPS Regulation. M-S-R believes that the current reporting mandates in the EPS regulation are more than adequate and that the publicly owned utilities' (POUs) current practices are fully compliant with the SB 1368 mandates and the EPS Regulation adopted by this Commission. Indeed, the POUs subject to the EPS are complying with both the letter and intent of the regulation, and the legislation itself. With that said, M-S-R understands that there is a desire for even greater

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 the Unit 4 of the San Juan Generation Station, a coal-fired electric generating power plant.

disclosures and public notice requirements associated with expenditures on non-EPS compliant facilities – regardless of whether or not the expenditures are covered procurements as that term is defined in EPS Regulation. In order to address those concerns, staff has presented the proposed modifications to the EPS Regulation set forth in the NOPA.

At its core, the revisions are intended to increase the scope of reporting on expenditures in non-EPS compliant facilities in the interest of providing greater transparency. To that end, new Section 2908(c) requires POUs to “*file annually a notice indentifying all investments of \$2.5 million or more that it anticipates making in the subsequent 12 months on non-EPS compliant baseload facilities to comply with environmental regulatory requirements.*” The new filing requirement is limited to investments to “*comply with environmental regulatory requirements,*” and does not otherwise revise the compliance obligations associated with “covered procurements.” This distinction was highlighted by the Commission when it declined to revise the definition of covered procurement “based on the extensive record on this issue, both in the original 2007 proceeding and in this rulemaking.”²

After considering information presented by various parties, staff has proposed a \$2.5 million threshold for reporting expenditures. While M-S-R does not believe that the additional reporting is necessary, the agency does appreciate the recognition that “requiring noticing for all investments, including all instances of routine maintenance, on non-EPS compliant facilities . . . would impose a significant burden and go beyond what is necessary and reasonable to ensure POU compliance with SB 1368.”³ The threshold represents a portion of the annual expenditures in facilities such as the San Juan Generating Station, without being set a level that would encompass nearly all expenditures and result in an unduly burdensome obligation.⁴

A key element of the proposed revisions is found Section 2908(d),⁵ which provides that “*a local publicly owned utility that has entered into a binding agreement to divest itself of any non-EPS compliant baseload facility within 5 years is exempted from compliance with subsection*

² 12-OIR-1, *Final Conclusions*, March 19, 2014, at p. 14.

³ 12-OIR-1, *Final Conclusions*, March 19, 2014, at p. 10.

⁴ See *Initial Statement of Reasons; Modification of Regulations Establishing a Greenhouse Gasses Emissions Performance Standard for Baseload Generation of Publicly Owned Electric Utilities* (ISOR), dated May 2014 (docketed May 2, 2014), p. 2.

⁵ *Modification of Regulations Establishing a Greenhouse Gases Emissions Performance Standard for Baseload Generation of Local Publicly Owned Electric Utilities*, docketed May 6, 2014.

(c) for that facility for as long as the binding agreement is in place or until such time that it has completed divestment of the facility.” In this proposed change, the Commission properly acknowledges the sometimes herculean efforts that the POUs are undertaking to divest of coal fired generation resources. Indeed, even before the passage of Assembly Bill 32 and implementation of SB 1368, POUs such as M-S-R and its members were taking steps towards acquiring cleaner generation resources. Along with bringing more low-GHG and renewable resources into the generation portfolio, M-S-R began investigating the potential to divest of interests in coal fired generation, consistent with the underlying objectives of SB 1368. M-S-R appreciates the Commission’s recognition of these efforts, which involve unraveling contractual obligations under multi-party and multi-faceted ownership and bond indenture agreements. Indeed, the ISOR correctly notes that *“it is appropriate to remove the obligation of filing an annual report for those facilities that are the subject of a firm commitment for divestment within that timeframe.”*⁶ The Commission should not adopt any new reporting or filing requirements without also including this limited exemption.

The new reporting provisions have an important caveat in Section 2908(e) wherein it is noted that *“investments of \$2.5 million or more to meet environmental regulatory requirements at a non-EPS compliance baseload facility that are not also covered procurements are not subject to the compliance filing requirement under Section 2909 or compliance review under Section 2910.”* (emphasis added) This section properly recognizes that the new filing and reporting for investments to meet environmental regulatory requirements are not *per se* covered procurements. This provision is consistent with the Commission’s previous determination that all investments in environmental upgrades are *not* automatically covered procurements.⁷

Proposed revisions would also clarify and simplify the process in Section 2913 under which POUs may seek to have the Commission review expenditures required under multi-party contracts. M-S-R supports replacing the term “covered procurement” with “investments” as proposed in Section 2913. As noted in the ISOR, petitioning the Commission for an exemption for investments required under the terms of preexisting, multi-party commitments has always

⁶ ISOR, p. 2.

⁷ 12-OIR-1, *Final Conclusions*, March 19, 2014, at p. 13.

been a part of the EPS Regulations.⁸ However, as drafted, the language required POUs to make a determination that the investment at issue was indeed a covered procurement before petitioning for the exemption, which process can be complex and time consuming. Since the exemption provision of Section 2913 is based not on the type of investment at issue, but rather on “*whether or not the POU is contractually required to make the investment,*”⁹ the clarifying language does nothing to lessen the stringency of the EPS. Indeed, the scope of the Commission’s review of the investment is not impacted at all under the proposed revision. Accordingly, M-S-R urges the Commission to adopt the changes to Section 2913 as set forth in proposed modifications.

IV. CONCLUSION

For the reasons set forth herein, M-S-R urges the Commission, should it adopt the new reporting and filing requirements in Section 2908(c), to also ensure that the provisions of proposed Section 2908(d) and (e) are also adopted. M-S-R also urges the Commission to adopt the proposed revisions to Section 2913, replacing the term “covered procurement” with “investment.”

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Respectfully submitted,



Martin Hopper

General Manager, M-S-R Public Power Agency
P.O. Box 4060
Modesto, CA 95352
Phone: 408-307-0512
Email: msr.general.manager@gmail.com



C. Susie Berlin, Esq.

LAW OFFICES OF SUSIE BERLIN
1346 The Alameda, Suite 7, #141
San Jose, CA 95126
Phone: 408-778-8478
Email: berlin@susieberlinlaw.com

Attorneys for the: **M-S-R PUBLIC POWER AGENCY**

⁸ ISOR, p. 3.

⁹ *Ibid.*