

**BEFORE THE STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION**

In the Matter of:

Notice of Proposed Action For Adoption of
Regulations Establishing and Implementing a
Greenhouse Gases Emission Performance
Standard for Local Publicly Owned Electric
Utilities

Docket No. 06-OIR-1

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**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION
ON EXPRESSED TERMS**

April 18, 2007

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The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Express Terms associated with the proposed Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard of Local Publicly Owned Electric Utilities [Docket No. 06-OIR-1].

Overview

At this time, IEP recommends two changes in the Expressed Terms to ensure consistency with the intent of the authorizing legislation (SB 1368). First, IEP recommends a single modification to Section 2903(a), "*Compliance with the Emission Performance Standard*," in order to properly incorporate and account for the intent of SB 1368 to address "net" emissions from the power sector. Second, IEP recommends additional language to Section 2906(b)(3), "*Substitute Energy*," to ensure consistency with the intent to bound at 15% the use of undifferentiated system power in support of intermittent resources.

Section 2903(a) Compliance with the Emission Performance Standard

As noted in the Commission's "Informative Digest," existing law requires the Commission in determining the rate of emissions of greenhouse gasses for baseload generation, to include the net emissions resulting from the production of electricity by the baseload generation (Public Utilities Code, Section 8341(e)(3)). Specifically, SB 1368 prescribes the following:

"In determining the rate of emissions of greenhouse gases for baseload generation, the commission shall include the net emissions from the production of electricity by the baseload generation." [SB 1368, Chapter 3, 8341(d)(2)]

Presently, the proposed Expressed Terms fail to accurately capture the concept of netting envisioned in SB 1368. Accordingly, IEP recommends the following insertion of the word "net" in Section 2903(a) of the Expressed Terms to make this clear:

§ 2903 Compliance with the Emission Performance Standard

- (a) Except as provided in Subsection (b), a powerplant's compliance with the EPS shall be determined by dividing the powerplant's annual average net carbon dioxide emissions in pounds by the powerplant's annual average net electricity production in

MWh. This determination shall not be based on full load heat rates. Capacity factors, heat rates, and corresponding emissions rates shall reflect the expected operations of the powerplant.

In addition to adding this clarifying language to ensure compliance with existing law, IEP recommends that the Commission establish a formal process that would enable electric generators (or groups of generators representing a similar technology) to seek a certification from the commission, upon the determination envisioned in Section 2903(a), that would enable them to be “deemed compliant” for purposes of long-term contracting. While the commission has made that determination as regards certain powerplants using biomass fuels, hydroelectric powerplants, and nuclear powerplants, SB 1368, Chapter 3, 8341(d)(2) clearly contemplated an opportunity for individual powerplants (or a collection of powerplants representing a specific technology) to approach the commission for a similar determination.

Section 2906(b)(3) Substitute Energy

It is unclear the extent to which “intermittent renewable resources” [defined as solar, wind, or run-of-the-river hydro] would be caught up in provisions such as 2906(b)(3) affecting contracts/financial commitments for resources “designed and intended to provide electricity at an annualized capacity factor of at least 60 percent” (i.e. “covered” resources as defined). However, in spite of this observation, IEP reads this section to potentially foster an outcome in which “system energy” from resources not EPS-compliant could wholly replace the energy expected from the intermittent resource.

Presently, Section 2906 (b)(3) has the potential of undermining the intent of SB 1368 due to the law of unintended consequences.¹ Essentially, Section 2906(b)(3) states the following:

“(3) For specified contracts with intermittent renewable resources, the amount of system energy is limited such that total purchases under the contract, whether from the intermittent renewable resource or from system energy, do not exceed the total expected output of the identified renewable powerplant over the term of the contract.

This proposed language may create an incentive to structure baseload-like contracts with specified intermittent renewable resources that are effectively “capacity only” contracts as it appears to leave unbounded the amount of system power that may be used for actual deliveries from specified intermittent resources. Thus, the proposed language undermines the Commission’s stated intent contained in the Commission’s Informative Digest. Specifically, the Commission’s stated intent is as follows:

“... allow the use of up to 15% of forecast energy production from unspecified sources in certain circumstances. The Commission determined that allowing a small amount of unspecified power was necessary to ensure that there was sufficient flexibility

¹ While the California Public Utilities Commission (CPUC) has adopted similar language as that suggested by the Commission’s Express Terms, the CEC approach of adopting the proposed language as a part of its formal regulations (as opposed to more informal Rulings, Opinions, etc., employed by the CPUC) has the effect of creating additional barriers to modifying the policy if it is subsequently determined to be resulting in unintended consequences.

in the supply of electricity to allow for the firming of deliveries under contracts with specified powerplants. Allowing unspecified power in these limited circumstances, and placing a cap of 15%, ensures consistency with the intent of SB 1368" [emphasis added]

Accordingly, IEP recommends that Section 2906(b)(3) be modified so as to protect against the instance in which undifferentiated system power, containing non-EPS compliant resources, may be used to "backfill" wholly the contractual commitments from specified, intermittent resources. Specifically, IEP recommends the following language:

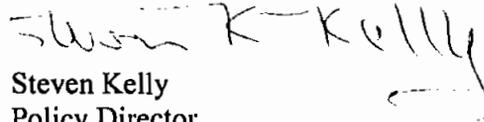
"(b) A new contract for covered resources from identified powerplants may contain provisions for the seller to substitute deliveries of energy under any of the following circumstances:

(1) ...,

(2) ...,

(3) For specified contracts with intermittent renewable resources, the amount of system energy is limited to up to 15% of forecast energy production reasonably expected to occur such that total purchases under the contract, whether from the intermittent renewable resource or from system energy, do not exceed the total expected output of the identified renewable powerplant over the term of the contract.

Respectfully submitted,



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