

JOINT PETITION OF THE NATURAL RESOURCES DEFENSE COUNCIL AND THE
SIERRA CLUB
FOR INITIATION OF A RULEMAKING REGARDING
CALIFORNIA'S EMISSIONS PERFORMANCE STANDARD

I. INTRODUCTION

Pursuant to Title 20, Section 1221 of the California Code of Regulation,¹ the Natural Resources Defense Council (NRDC) and Sierra Club jointly file this petition to request the California Energy Commission (CEC) initiate a rulemaking proceeding to ensure that current practices of California publicly-owned utilities (POUs) meet the requirements of Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006) and California's Emissions Performance Standard (EPS). Specifically, NRDC and Sierra Club request the following actions:

- (1) modify Section 2907 to require mandatory reporting requirements when POUs make investments in existing coal plants; and
- (2) clarify that under current law, POU investments in existing coal plants are subject to the filing requirements of Sections 2908 and 2909.

A review of past and planned expenditures at existing coal power plants owned or contracted to California POUs shows that POUs have made and plan to make substantial capital investments in plants that do not meet the EPS. In light of these past and planned expenditures, we request that the CEC initiate a rulemaking to amend its existing regulations implementing the EPS in order to ensure ongoing transparency and monitoring of any investment at POU-owned and contracted coal plants. As part of this rulemaking, we request that the CEC clearly articulate a set of criteria for POUs to consider in determining whether a particular investment is subject to the requirements of SB 1368 and the EPS.

At this time, NRDC and Sierra Club do not seek to initiate an enforcement action for any particular violation of the EPS. Rather, we request a prospective rulemaking to clarify that POUs fully understand the requirements imposed by the EPS and to ensure that future investments by POUs do not violate existing law. Nothing in this petition constitutes a waiver by NRDC or Sierra Club of their right to request at a later date an enforcement action pursuant to Section 2911 for past or future violations of the EPS.

II. BACKGROUND

¹ Unless otherwise stated, all further references to code sections refer to the Energy Commission's regulations under Title 20 of the California Code of Regulations.

SB 1368 was signed into law on September 29, 2006. The law requires the California Public Utilities Commission (CPUC) and the CEC to establish a greenhouse gas emissions performance standard and to implement regulations for all long-term financial commitments in baseload generation made by load serving entities (LSEs) and POUs, respectively. The CPUC adopted its regulations for the investor-owned utilities (IOUs) and other LSEs in January, 2007. The CEC adopted EPS regulations for POUs in October 2007.²

The regulations implemented by the CPUC and CEC under SB 1368 are expected to result in significant GHG emissions reductions. The greenhouse gas emissions performance standard is not to exceed the rate of greenhouse gases emitted per megawatt-hour associated with combined-cycle, gas turbine baseload generation. The CEC's regulations establish an emissions performance standard of 1,100 pounds (0.5 metric tons) of carbon dioxide per megawatt hour of electricity. This standard was established in consultation with the CPUC and the California Air Resources Board and is the same standard adopted by the CPUC.

The objectives of the EPS regulations are to avoid new long-term investments in highly polluting power generation to minimize the significant and under-recognized cost of greenhouse gas emissions, and to reduce potential financial risk to California consumers for future pollution-control costs. The law has two effects: (1) to close off the possibility of California utilities or energy service providers (ESPs) developing or signing new contracts with baseload power plants that do not meet the EPS; and (2) to require California utilities and ESPs to refrain from making any new ownership investments in their existing non-compliant coal plants, unless they can bring those plants into compliance with the EPS.

Since the passage of the California EPS, no California utility has proposed investment in the development or purchase of new coal plants. Utilities appear to clearly understand that the EPS prohibits investments in new coal plants without carbon capture and sequestration because they would not meet the standard. However, past and planned expenditures at existing coal plants suggest that utilities do not properly understand the requirements of the EPS with respect to existing plants.

III. TIMING

Recent and upcoming EPA regulations will require owners of existing coal-fired power plants to decide whether to make significant capital investments in environmental compliance retrofits, or whether to pursue a different strategy that could lead to retirement or natural gas re-powering of coal plants. As discussed in more detail below, all existing coal plants are "non-deemed compliant" facilities under the EPS because their greenhouse gas emissions exceed the standard. Yet California faces the prospect that several POUs will commit hundreds of millions of dollars toward compliance retrofit costs to these facilities. Such investments could significantly extend the effective lives of these plants, contrary to the intent of SB 1368. The CEC's oversight is therefore

² 20 CCR 11 § 2900 *et seq.*

necessary to provide a clear and transparent criteria and review of all POU long-term capital investments in coal-fired power plants.

IV. IDENTIFICATION OF PETITIONERS (§ 1221(A)(1))

NRDC is a non-profit membership organization with over 250,000 members and online activists in California and a longstanding interest in minimizing the societal costs of the reliable energy services that Californians demand. Sierra Club is a national, non-profit membership organization with over 600,000 members nationwide, and over 150,000 members in California. Sierra Club's most important priority is to help speed the country's transition from an energy economy dependent on fossil fuels to a robust clean energy economy based on renewable energy.

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V. NATURE OF EXISTING EPS REQUIREMENTS FOR INVESTMENTS IN EXISTING FACILITIES (§ 1221(A)(2))

The CPUC monitors proposed investments in non-compliant facilities by California's IOUs. Last year the CPUC ruled on a petition for modification from Southern California Edison (SCE) regarding SB 1368's applicability to proposed retrofit investments at the Four Corners coal plant in New Mexico.³ The CPUC's ruling explicitly limited new long term investments by SCE in the plant. The ruling provided a clear signal to SCE and other IOUs that California law does not allow further investments in non-compliant facilities.⁴

Similar to the IOUs, various California POUs have significant contractual or ownership stakes in out-of-state coal plants that do not meet the EPS. (See Attachment 2.) However, unlike the CPUC, the CEC does not yet require a transparent review of proposed investments at these coal plants. As a result, it is unclear whether POUs have consistently complied with the EPS, or whether POUs have misinterpreted the applicability of the CEC regulations with respect to investments in existing facilities.

³ D.10-10-016 October 14, 2010 (R. 06-04-009).

⁴ Id.

The prohibition in SB 1368 against further capital investment in coal-fired power plants is clear, providing that:

No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d), for a load-serving entity, or by the CEC, pursuant to subdivision (e), for a local publicly owned electric utility.⁵

Thus far, the CEC has not monitored investments in existing coal-fired power plants that are currently under contract to California POUs, none of which meet the EPS. To this point, **not a single POU has submitted compliance filings for covered procurements at existing power plants.** This lack of transparency is likely the result of a potentially incorrect and non-uniform interpretation by POUs of the compliance requirements established by the CEC.

The CEC's EPS regulation, at 20 CCR 11 § 2907, allows a POU to request CEC review of proposed investments or "prospective procurements."⁶ POUs must also make compliance filings under 20 CCR 11 § 2908 and 2909 for "covered procurements,"⁷ which the regulations define to include "new ownership investments."⁸ Notwithstanding these provisions, not a single POU has filed a request for review or a compliance filing for investments in existing coal plants.⁹ These omissions presumably stem from unilateral determinations made by POUs that such investments are not "prospective procurements" or "covered procurements" and therefore are not subject to the CEC's regulations. This interpretation by POUs has potentially led to incorrect and non-uniform interpretations of the definitions of "covered procurement" and "new ownership investment":

"Covered procurement" means:¹⁰

(1) A new ownership investment in a baseload generation powerplant, or

(2) A new or renewed contract commitment, including a lease, for the procurement of electricity with a term of five years or greater by a local publicly owned electric utility with:

(A) a baseload generation powerplant, unless the powerplant is deemed compliant, or

⁵ Cal. PU Code 8341 (a)

⁶ 20 CCR 11 § 2907

⁷ 20 CCR 11 §2901 (d)

⁸ 20 CCR 11 §2901 (j)

⁹ CITE (make at least some mention of how we know that)

¹⁰ 20 CCR 11 §2901 (d) (emphasis added)

(B) any generating units added to a deemed-compliant baseload generation powerplant that combined result in an increase of 50 MW or more to the powerplant's rated capacity.

“New ownership investment” means:¹¹

- (1) Any investments in construction of a new powerplant;
 - (2) The acquisition of a new or additional ownership interest in an existing non-deemed compliant powerplant previously owned by others;
 - (3) Any investment in generating units added to a deemed-compliant powerplant, if such generating units result in an increase of 50 MW or more to the powerplant's rated capacity;
- or

(4) Any investment in an existing, non-deemed compliant powerplant owned in whole or part by a local publicly owned electric utility that:

(A) is designed and intended to extend the life of one or more generating units by five years or more, not including routine maintenance;

(B) results in an increase in the rated capacity of the powerplant, not including routine maintenance; or

(C) is designed and intended to convert a non-baseload generation powerplant to a baseload generation powerplant.

The CEC's EPS compliance requirements apply to “covered procurements,” which in turn incorporates the term “new ownership investments.” While “new ownership investments” clearly include construction of new powerplants, POUs appear to have interpreted the term to exclude various types of investments in existing coal facilities. For example, the Southern California Public Power Authority (SCPPA) issued a resolution in 2009 finding that a proposed investment in the San Juan Generating Station “constitutes routine maintenance and is not a ‘Covered Procurement’ pursuant to the regulations promulgated by the California CEC...pursuant to SB 1368.”¹² While we make no judgment at this time on SCPPA's determination regarding the applicability of SB 1368 to that particular investment, it is an example of the type of non-uniform and *ad hoc* interpretation that raises concern.

As discussed further below, NRDC and Sierra Club found ample reason to believe that California POUs have made investments and are considering further significant investments in existing coal plants that do not meet the EPS. Although the POUs may have reason to believe that making, or considering, investments in coal plants are not

¹¹ 20 CCR 11 §2901 (j)

¹² SCPPA Resolution No. 2009-23, February 19, 2009 (Attachment 3).

“new ownership investments” subject to the EPS, under current practices those determinations are not independent or subject to public scrutiny.

We request that the CEC develop clear criteria for POUs to guide them in determining whether a particular investment in an existing plant is subject to the filing requirements of 20 CCR 11 §§ 2908 and 2909.

We further urge the CEC to amend its reporting and compliance regulations to require the POUs to submit compliance filings for all past¹³ and planned investments in plants not meeting the EPS. Such a filing would allow the CEC to publicly, transparently, and consistently review past and planned investments to independently determine compliance with SB 1368 in a manner that individual review by POUs cannot achieve.

VI. A REVIEW OF PAST AND PLANNED INVESTMENTS DEMONSTRATES A NEED FOR CEC RULEMAKING (§ 1221(A)(3))

A. Existing Ownership Interests

The table included at Attachment 2 identifies the California POUs that have significant interests in out-of-state coal power plants, which do not meet the EPS. During the period after the passage of SB 1368, POUs continued to make substantial capital investments in several coal plants. The following are a few examples of such investments.

1. San Juan Generating Station

The San Juan Generating Station provides a troubling example of continued long-term investments by California POUs in an old and dirty facility that does not meet the EPS.

- In response to a 2005 consent decree, the owners of the San Juan Generating Station began a four-year \$340 million pollution upgrade project to bring the plant into compliance with air quality laws for particulate matter, NO_x, and SO₂ emissions.¹⁴ SCPPA alone paid approximately \$80 million in capital costs.¹⁵
- On February 19, 2009, SCCPA authorized the replacement of a high pressure/intermediate pressure turbine for San Juan Generating Station unit 3.¹⁶ At the time SCPPA made its decision to undertake this upgrade, PNM

¹³ Commencing with the passage of SB 1368 in September, 2006.

¹⁴ Rebuttal Testimony in Support of Stipulation of Patrick J. Themig, *In the Matter of the Application of Public Service Company of New Mexico for Revision to its Retail Electric Rates, etc.*, April 25, 2011, New Mexico Public Regulation Commission Case No. 10-00086-UT, p.7.

¹⁵ SCPPA San Juan Unit 3 Status Report, July 2008 (Attachment 4).

¹⁶ SCPPA Resolution No. 2009-23, February 19, 2009 (Attachment 3).

estimated the total cost for the turbine at approximately \$14.3 million.¹⁷ SCPPA's resolution approving the expenditure concluded that for purposes of SB 1368, the turbine replacement constituted "routine maintenance" and therefore did not violate the emission performance standard. However, there is no CEC guidance or history of enforcement that indicates whether SCPPA's own interpretation of the turbine expense as "routine maintenance" is valid.

- In 2009, SCPPA reported a \$7 million advance payment of O&M in the San Juan Project.¹⁸

2. Intermountain Power Project (IPP)

Over the past several years, the owners of the IPP coal-fired units in Utah made several substantial modifications, including cooling tower additions, high pressure turbine replacements, boiler capacity additions, distributed control system replacement, scrubber outlet modifications and rebuilds, and induced draft fan drive replacement. These modifications have decreased emissions and increased plant efficiency. Importantly for this context, they have also increased the plant's capacity by 140 MW, resulting in a 68 MW increase in available capacity for LADWP.¹⁹

3. Navajo Generating Station

The Navajo Generating Station completed the installation of scrubbers to remove SO_x in all three units of the plant and began to install low-NO_x burners to reduce NO_x emissions starting with Unit 3 in 2009. Stringent NO_x emissions control requirement by the federal government may require Navajo Generating Station to install Selective Catalytic Reduction, which could cost a total of \$600 million, or \$127 million for LADWP.²⁰

The investments described above are just a few examples of ongoing capital investments in non-deemed compliant facilities that California POU's have made after the implementation of SB 1368 and the CEC's EPS regulations. New ownership investments are expressly prohibited by the CEC's regulations, but there is little if any information available to review these procurements. As POU's continue to face significant capital investments at coal-fired generation units due to the aging of the coal fleet as well as new and upcoming regulations, a lack of CEC oversight and enforcement could result in multiple violations of the EPS.

¹⁷ SCPPA San Juan Unit 3 Status Report, December 2008 (Attachment 5).

¹⁸ SCPPA, "Independent Auditor's Report and Combined Financial Statements," 2009, at p.4 available at: http://www.scppa.org/Downloads/Annual%20Report/scppa2008_FINAL_FS.pdf.

¹⁹ LADWP, "2010 Power Integrated Resource Plan: Final," p.F-5 (Dec. 15 2010) available at: <http://www.ladwp.com/ladwp/cms/ladwp014239.pdf>

²⁰ Id. at p. F-5-6.

B. Planned Investments at Existing Coal Plants Constitute “New Ownership Investments”

The CEC must act quickly to provide guidance to POUs and prevent further investments in coal-fired generating units that may violate California law. POUs face substantial capital investment decisions in the very near term. Based on limited publicly available information, the non-EPS compliant plants have already undergone or are considering significant alterations, expansions and investments involving potential long-term investments from California POUs.

For example, proposed regulations may change the way coal combustion residues are handled and stored at IPP and Navajo generating station.²¹ If implemented, the rules would require the phase-out of wet handling systems and surface impoundments of bottom ash and the subsequent permitting and installation of lining under fly ash landfills. The facilities would have to conduct additional groundwater monitoring, and provide closure and post-closure care of the surface impoundments and landfills. California POUs account for 75% of the purchased generation of the Intermountain Power Project in Utah, and LADWP has a contract to receive 21.2% of the Navajo Generating Station output through 2019.²² These coal plants have faced and will continue to face ongoing capital investment requirements for environmental compliance measures that go far beyond routine maintenance expenditures. Continuing to invest in these plants exposes California consumers to financial risks associated with future compliance costs as well as future reliability risks in electricity supplies. SB 1368 expressly identified the reduction of these risks as a goal of the greenhouse gas EPS.²³

The San Juan Generating Station provides perhaps the most substantial example of major capital investments that will be required in the near term. On August 5, 2011, EPA announced its final decision to require the installation of Best Available Retrofit Technology (BART) pollution controls on the San Juan Generating Station coal-fired powerplant near Farmington, New Mexico that would include installation of selective catalytic reduction (SCR) technology.²⁴ EPA estimated that the cost of compliance could reach \$345 million,²⁵ and Public Service Company of New Mexico (PNM), which owns approximately half the plant, estimated the cost of compliance at over \$750 million.²⁶ In either case, the retrofit costs to continue to operate the San Juan Generating Station would be substantial.

²¹ Id. at p.C-23.

²² POU contract/ownership status from California Energy Commission, “An Assessment of Resources Adequacy and Resource Plans of Publicly Owned Utilities in California,” staff report (Nov. 2009), available at: <http://www.energy.ca.gov/2009publications/CEC-200-2009-019/CEC-200-2009-019.PDF>

²³ SB 1368 (2006), Sections 1(i)-(j).

²⁴EPA Final BART Rule, 40 CFR Part 52, EPA-R06-OAR-2010-0846.

²⁵Id.

²⁶ PNM Press Release, August 5, 2011, available at www.pnm.com/news/2011/0805_epa_decision_bart.htm.

Several California POU have ownership stakes in the San Juan Generating Station. SCPA holds a 41.8% ownership interest in Unit 3 on behalf of five of its members: the City of Azusa; the City of Banning; the City of Colton; the City of Glendale; and the Imperial Irrigation District.²⁷ The MSR joint powers agency²⁸ owns a 28.7% interest in Unit 4, and the City of Anaheim has a separate 10% ownership interest in Unit 4. Together, these California public entities represent 24.51% of the common ownership interest in the San Juan Generating Station.²⁹ By contract, capital improvements at the San Juan Generating Station that exceed \$5 million require an 82% majority vote of the co-owners.³⁰ Large capital investments such as the SCR controls therefore require at least one California owner to approve the expenditure. If the California owners do not vote to approve the capital investments in SCR, which is prohibited under California law, then the improvements should not go forward and California owners should not have to pay the costs of those improvements.³¹

Given the ownership structure of the San Juan Generating Station, it is within the discretion of the California owners to decide whether to invest hundreds of millions of dollars in the SCR controls required by EPA's BART determination, or whether to refrain from making new capital investments in the plant. The BART compliance costs are not routine maintenance expenses; the SCR controls are substantial investments designed to extend the legal and functional life of the San Juan Generating Station by bringing its old and dirty coal units into environmental compliance under current law. In accordance with SB 1368, the CEC's greenhouse gas EPS expressly prohibits this type of new ownership investment.³²

The SCR costs described above are not the extent of future capital investments at San Juan. Other costs include controls to contain coal ash and scrubber waste, compliance with upcoming greenhouse gas cap-and-trade regulations, and potential remediation liability for groundwater contamination. These mounting environmental compliance costs will continue to accrue if California's POU do not abide by the EPS and cease new ownership investments in these plants.

²⁷ POU contract/ownership status from California Energy Commission, "An Assessment of Resources Adequacy and Resource Plans of Publicly Owned Utilities in California," staff report (Nov. 2009), available at: <http://www.energy.ca.gov/2009publications/CEC-200-2009-019/CEC-200-2009-019.PDF>.

²⁸ MSR is a joint powers agency consisting of the City of Santa Clara, the City of Redding, and the Modesto Irrigation District.

²⁹ Amended and Restated San Juan Project Participation Agreement, § 6.2.6, March 23, 2006 (Attachment 6).

³⁰ Amended and Restated San Juan Project Participation Agreement, § 18.4.2, March 23, 2006 (Attachment 6).

³¹ To the extent that California POU believe they would be forced by contract obligations to participate in SCR or other major investments even after voting against such investments, § 20 CCR 11 2913 requires those POU to file a petition with the CEC requesting an exemption.

³² Title 20, Cal. Code of Regs. §§ 2901(j) and 2902(b).

VII. BASIS OF CEC AUTHORITY (§ 1221(A)(4))

Public Utilities Code section 8341(c) requires the CEC to adopt regulations for the enforcement of SB 1368 with respect to a POU to establish a greenhouse gas emissions performance standard and to implement regulations for all long-term financial commitments in baseload generation made by POUs. The CEC adopted EPS regulations for POUs in October 2007.³³ Public Resources Code section 25213 provides that the CEC shall adopt rules and regulations as necessary. The CEC has the authority to initiate a rulemaking to amend its current regulations as requested by this petition because such amendment is necessary to clarify that existing law prohibits POUs from making capital investments in existing coal plants.

VIII. PETITION REQUEST 1: THE CEC SHOULD DEVELOP CRITERIA TO DETERMINE WHETHER A PARTICULAR INVESTMENT IN AN EXISTING COAL PLANT CONSTITUTES A COVERED PROCUREMENT

CEC action is necessary to provide guidance to the California POUs that retain an interest in coal plants to ensure their investment decisions comply with California law. The POUs have interpreted current regulations in a manner that allows them to effectively “self-regulate” by making unilateral determinations on the applicability of the EPS to any given investment. In order to ensure a more consistent and transparent process for evaluating potential investments at POU-owned coal plants, the CEC must develop clear criteria to evaluate whether an investment constitutes a covered procurement under the EPS. These criteria should be added to the existing implementation regulations and should supersede the existing structure for determining “covered procurements.” It is incumbent upon the CEC to monitor and enforce compliance with the EPS if any POU makes unlawful capital investments in non-deemed compliant facilities.

IX. PETITION REQUEST 2: THE CEC SHOULD AMEND THE EPS REGULATION TO REQUIRE MONITORING AND APPROVAL OF ALL PAST AND PROPOSED INVESTMENTS

The various investments that some POUs have made in coal plants since passage of the EPS, as well as the various investments being considered in light of EPA’s pending regulations, lead us to conclude that the goal of SB 1368 -to phase out California investments in coal- will be undermined unless there is a more clear and transparent process to evaluate proposed investments. The CEC should amend its rule to require POUs to disclose and file information on any proposed investment in a non-EPS compliant facility. We have provided recommended language for such a reporting requirement in [Attachment 1](#).

³³ 20 CCR 11 § 2900 *et seq.*

X. CONCLUSION

For the forgoing reasons, we request the CEC:

- 1) Amend 20 CCR 11 §2907 as recommended in Appendix 1, below.

- 2) Develop clear criteria for the evaluation of investments at existing coal plants for compliance with the EPS.

Attachment 1

Reporting requirement recommended language:

(Criteria for evaluation of covered procurements should be added as a new section and is not included here.)

§2907 Request for Commission Evaluation of a Prospective Procurement and Investments

(a) A local publicly owned electric utility ~~may~~ must, at least 90 days prior to any planned investment or procurement, or by January 1, 2012 for past investments, provide complete documentation for that the Commission to evaluate a prospective procurements or investment at any facility emitting more than 1100 lbs/MWhr for any of the following:

~~(1) a determination as to whether a prospective procurement would extend the life of a power plant by 5 years;~~

~~(2) a determination as to whether a prospective procurement would constitute routine maintenance; or~~

~~(3) a determination as to whether a prospective procurement would be in compliance with the EPS.~~

(b) ~~A request for e-~~Evaluation of proposed and past investments under this section shall be treated by the Commission as a request for investigation under Chapter 2, Article 4 of the Commission's regulations.

Attachment 2

Table: Out-of-State Coal Plants Owned by California POUs

Generating Station	Location	Nameplate Capacity (MW) ⁱ	Unit #	CA Owner	CA Owner's Share (%) ²ⁱⁱ	Dependable Capacity (MW)	Expected End of Ownership
Boardman	Boardman, OR	601	1	SDG&E	15.0%	89	12/31/2013 ⁱⁱⁱ
				Turlock	8.5%	56	12/31/2018
Intermountain	Delta, UT	1640	1, 2	LADWP	48.6% ^{iv}	875	6/15/2027 ^v
				Glendale	1.7% ^{vi}	38	6/15/2027
				Pasadena	4.4% ^{vii}	108	6/15/2027 ^{viii}
				Burbank	3.4% ^{ix}	60	6/15/2027
				Riverside	7.6%	37	6/15/2027
				Anaheim	13.2%	236	6/15/2027
Navajo	Page, AZ	2406	1,2,3	LADWP	21.2% ^x	477	12/31/2019
Reid Gardner	Moapa, NV	295	4	CADWR	67.8% ^{xi}	200	2013
San Juan	San Juan, NM	555	3	SCCPA ^{xii}	41.8%	232	10/31/2030
		555	4	MSR ^{xiii}	28.7%	160	10/31/2030
				City of Anaheim	10.0%	50	10/31/2030

ⁱ All capacity data from EIA's "Existing Electrical Generating Units by Energy Source, 2008" (preliminary data); available at: <http://www.eia.doe.gov/cneaf/electricity/page/capacity/existingunitsbs2008.xls>.

ⁱⁱ POU contract/ownership status from California Energy Commission, "An Assessment of Resources Adequacy and Resource Plans of Publicly Owned Utilities in California," staff report (Nov. 2009), available at: <http://www.energy.ca.gov/2009publications/CEC-200-2009-019/CEC-200-2009-019.PDF>.

ⁱⁱⁱ Contract term from SDG&E SEC 10k filing for FY09

^{iv} LADWP is entitled to receive 44.617% of the plant's capacity rating. LADWP has also purchased a 4% entitlement of the plant from Utah Power and Light. Both of these entitlements are valid until the 2027 contract termination date. In addition, LADWP can receive up to an additional 18.168% entitlement under the Excess Power Sales Agreement, however this percentage, or portions of this percentage, can be recalled from LADWP by other IPP participants, given certain defined advanced notices. The Intermountain Power Agency, which operates the plant, budgeted that LADWP would use 8.8% of this entitlement in 2009 for a total share of 53.5%. Over the last several years, some of the Utah municipal participants of the IPP have exercised their recall rights for IPP power. LADWP has been receiving approximately 300 MW from the Utah municipalities under an Excess Power Sales Contract since the start up of the project. In addition, the Utah municipalities have indicated an interest to construct a third IPP unit. LADWP has stated that it will not participate in the ownership of a new IPP unit 3.

<http://www.sao.state.ut.us/lgr/special/2010/10dbipag.pdf>.

^v LADWP's agreement began on February 1, 1983 and ends on June 15, 2027. There is an extension clause providing for continuation of entitlement shares of project output. The CEC reports the contract will expire earlier (12/31/2024), but all other sources – IPA reports; LADWP IRPs – note that all Intermountain contracts with CA POUs expire June 15, 2027. See, e.g. IPA 2009 annual report, available at:

http://www.ipautah.com/data/upfiles/pdfs/2008-2009%20Annual%20Report%20_final%20version_1.pdf; LADWP 2007 IRP, available at: <http://www.ladwp.com/ladwp/cms/ladwp010273.pdf>.

^{vi} Glendale may obtain additional capacity under an Excess Power Sales Agreement and is estimated to have used an additional 0.2% in 2009, for a total share of 1.9%. See note 13, *supra*.

^{vii} Pasadena may obtain additional capacity under an Excess Power Sales Agreement and is estimated to have used an additional 0.8% in 2009, for a total share of 5.2%. See note 13, *supra*.

^{viii} Pasadena Water & Power (PWP) committed to reducing its purchases from Intermountain 35MW by 2016 in its 2009 IRP, available at: <http://ww2.cityofpasadena.net/waterandpower/IRP/exhibits1and2.pdf> PWP claims this reflects the amount of Intermountain capacity that may be feasible to sell under the existing contract arrangements.

^{ix} Burbank may obtain an additional 0.8% under an Excess Power Sales Agreement and is estimated to have used an additional 0.4% in 2009, for a total share of 3.8%. See note 13, *supra*.

^x On March 23, 1976, LADWP, Arizona Public Service Company (APS), Nevada Power Company (NPC), SRP, Tucson Electric Power Company (TEP) and U.S. Department of Interior executed the Navajo Project Co-Tenancy Agreement effecting the participation as co-owners, operation and maintenance of the Navajo Project until December 31, 2019. LADWP's entitlement of the Navajo Generating Station capability is 21.2%. The Navajo Operating Agent is SRP

^{xi} Ownership data from "Management of the California State Water Project" Bulletin 132-05, Chapter 1, page 8, available at: <http://www.swpao.water.ca.gov/publications/bulletin/05/Bulletin132-05.pdf>.

^{xii} SCPPA utilities with ownership interests: Azusa (14.7%), Banning (9.8%), Colton (14.7%), Glendale (9.8%), and Imperial Irrigation District (51%).

Contract term from SCPPA "Independent Auditor's Report and Combined Financial Statements," 2009, available at: http://www.scppa.org/Downloads/Annual%20Report/scppa2008_FINAL_FS.pdf.

^{xiii} MSR is a joint powers agency consisting of the City of Santa Clara, the City of Redding, and the Modesto Irrigation District.