

Decision 07-05-063

May 24, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

ORDER DENYING REHEARING OF DECISION (D.) 07-01-039

The Center for Energy and Economic Development ("CEED") and the Community Environmental Council ("CE Council") filed timely applications for rehearing of Decision (D.) 07-01-039 ("Decision"). In D.07-01-039, the Commission adopted an interim greenhouse gas ("GHG") emissions performance standard ("EPS") consistent with the mandates of Senate Bill 1368 (Stats. 2006, ch. 598) ("S.B.1368"). The adopted EPS applies to all load serving entities' ("LSEs") new long-term commitments to baseload generation on an interim basis until a permanent enforceable EPS is in place. The Natural Resources Defense Council ("NRDC"), Environmental Defense, Southern California Edison Company ("Edison") and Pacific Gas and Electric Company ("PG&E") filed responses to the applications for rehearing.

We have carefully considered all the arguments presented by CEED and CE Council and are of the opinion that no grounds for rehearing have been demonstrated. Therefore, we are denying the application for rehearing.

I. DISCUSSION

A. CEED APPLICATION FOR REHEARING

1. COMMERCE CLAUSE

CEED contends that the Decision's adoption of a load-based EPS violates the Commerce Clause because: (1) it constitutes impermissible extraterritorial regulation; and (2) it precludes out-of-state suppliers from competing in California markets resulting in impermissible economic protectionism. CEED's arguments on these points lack merit and we have already extensively addressed them in the Decision.

As we have discussed, the Commerce Clause provides for federal regulation of interstate commerce. (U. S. Const., art. I, § 8, cl. 3.) The courts have recognized that, "this affirmative grant of authority to Congress also encompasses an implicit or 'dormant' limitation on the authority of the States to enact legislation affecting interstate commerce. [Citations]." (*Healy v. The Beer Institute* (1989) 491 U.S. 324, 326, fn 1.)

Review of state regulations under the Commerce Clause follows a two-tiered approach:

[1] When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. [2] When, however, a statute has only indirect effects on interstate commerce and regulates even-handedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the benefits.

(*Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.* (1986) 476 U.S. 573, 579.)

a) Extraterritorial Regulation

CEED argues that because the Decision's admitted goal is to "force out-of-state generators to modify their facilities to comply with Commission's EPS," it directly regulates out-of-state commerce, and violates the Commerce Clause *per se*. (CEED App. for Rehg., at p. 3.) According to CEED, the alleged extraterritorial regulation is

prohibited by a number of court cases, such as *Healy v. Beers, supra*, 491 U.S. 324, which find that the Commerce Clause prohibits state regulations that seek to control out-of-state conduct. CEED's contentions are unconvincing.

Because CEED raised the extraterritorial regulation argument earlier, we have already discussed and refuted it in the Decision. As the Decision explains, extraterritorial regulation refers to state regulation occurring "wholly" outside the state, and is considered to be invalid per se. (Decision, at p. 220.)¹ The EPS regulation does not violate the Commerce Clause because, "the EPS does not directly regulate commerce that occurs 'wholly out-of-state'," as the states' regulations found to be impermissible have. (Decision, at p. 221.) Rather, the EPS regulation, "regulates the procurement practices and contracts of California LSEs buying for the California retail market." (*Ibid.*) The Decision and responses filed by NRDC, PG&E, and Environmental Defense, all point out that the examples of extraterritorial regulation cited by CEED are distinguishable from the case-at-hand. Moreover, Ninth Circuit cases, and other relevant authority confirm that EPS-type regulation is not considered extraterritorial.

The Decision correctly concludes that the cases relied upon by CEED are not on point. Unlike the EPS regulation, CEED's cited cases concern economic protectionism, the main target of the Commerce Clause. In addition, in CEED's cited cases, the regulations actually control conduct beyond State borders. This is different from the EPS, which has a permissible incidental effect outside California, as opposed to control.

For example, CEED cites *Healy, supra*, where the court found that a Connecticut law regulating beer prices violated the Commerce Clause. The Connecticut law required beer brewers and importers to post their prices for in-state wholesalers and insure that those prices were no higher than the prices in neighboring states. (*Healy*,

¹ Citing *Edgar v. MITE Corp.* (1982) 457 U.S. 624, 642-43 (plur. opn.); *See, e.g., Brown-Forman Distillers Corp. v. New York State Liquor Authority* (1986) 476 U.S. 573, 579.

supra, 491 U.S. 324, at p. 326.) As we noted, in declaring the regulation unconstitutional, *Healy* relies on whether the “practical effect is to control conduct beyond the boundaries of the State,” and the Connecticut law had the effect of controlling beer prices in neighboring states. (*Id.*, at pp. 336, 338.) The EPS, on the other hand, “only regulates the procurement practices and contracts of California LSEs buying for the California market.” (Decision, at p. 221.) Moreover, unlike the regulation in *Healy*, the EPS “does not have the effect of setting price, or any other conditions, of sales in other states.” (*Ibid.*)

Other cases CEED cites are similarly inapposite. In *National Solid Waste Management Ass’n v. Meyer* (7th Cir. 1995) 63 F.3d 652, the Court invalidated a solid waste program that required other states to have adopted “effective” community recycling programs in order to receive waste from them. *C&A Carbone, Inc. v. Town of Clarkstown*, (1994) 511 U.S. 383 concerned an ordinance requiring that waste in the town be processed at a designated transfer station before leaving the town. These and other CEED cases, “are distinguishable from the EPS which contains no mandatory preferences for in-state goods, no mandatory reciprocity agreements, nor does it require other states to comply with California regulations.” (Decision, at p. 222, fn 325.) Moreover, as the Court explained in *Carbone*, the “central rationale [of the dormant Commerce Clause] is to prohibit state or municipal laws whose object is local economic protectionism...” (*Carbone*, at p. 390.) The EPS is not in this category, and therefore does not implicate the Commerce Clause.

As we explained in the Decision, the EPS is more similar to regulations that have been upheld as permissible in-state regulation in *Minnesota v. Clover Leaf Creamery* (1981) 449 U.S. 456 (Minnesota law banning sale of milk in plastic nonreturnable containers), *Cotto Waxo Co. v. Williams* (8th Cir. 1995) 46 F.3d 790, 794 (Minnesota law banning sale of petroleum-based sweeping compounds in Minnesota), and *National Electrical Manufacturers Association v. Sorrell* (2d Cir. 2001) 272 F.3d 104, 110-111 (Vermont statute requiring hazardous waste warning label on all lamps sold in Vermont). These cases illustrate that a regulation’s non-discriminatory incidental

burden on out of state commerce does not constitute extraterritorial regulation in violation of the Commerce Clause. (See *Clover Leaf Creamery*, at p. 472.) Moreover, as the Decision states, unlike the EPS, which is a contractual requirement imposed on in-state LSEs, cases finding extraterritorial regulation “deal with laws that regulate out-of-state parties directly, not through contract.” (*Gravquick A/S v. Trimble Navigation International Ltd.* (9th Cir. 2003) 323 F.3d 1219, 1224.)

As the Ninth Circuit explained, out-of-state “economic consequences ... are significantly different from ‘economic penalties’,” and the former do not make a regulation extraterritorial where the regulation does not target out-of-state entities. (*S.D. Myers, Inc. v. City and County of San Francisco* (9th Cir. 2001) 253 F.3d 461, 468- 472.) In *S.D. Myers*, the Ninth Circuit upheld a San Francisco ordinance that required contractors with the City to provide equal benefits to same sex couples. The Court found that the ordinance did not violate the Commerce Clause, even though it affected the practices of companies with no employees or activities in San Francisco. (*Id.*) *S.D. Myers, supra*, demonstrates that there is no Commerce Clause violation where a legitimate local contract regulation has an incidental impact on out-of-state behavior.

Because none of the cases cited by CEED are on point, and other case authority supports our adoption of the EPS, the EPS cannot be considered an extraterritorial regulation in violation of the Commerce Clause

b) Discriminatory Impact on Out-of State Suppliers

CEED also argues that the discriminatory effect that the EPS will have on out-of-state generators violates the Commerce Clause. (CEED App. Rehg., at p. 5.) Relying on *City of Philadelphia v. New Jersey* (1978) 437 U.S. 617, CEED maintains the EPS constitutes economic protectionism, and violates the Commerce Clause *per se*, because most California generators will be exempt from the EPS, but out-of-state suppliers will be precluded from competing in the energy market. Again, CEED reiterates arguments which it raised and which we thoroughly addressed. Moreover, CEED fails to develop its argument or rebut the reasoning in the Decision. CEED

overstates the impact of the EPS on interstate commerce, and entirely neglects to balance these against the legitimate local concerns that we discussed in the Decision. For these reasons, CEED's arguments lack merit.

Contrary to CEED's argument, the EPS does not violate the Commerce Clause *per se*, because it does not discriminate against out-of-state commerce. Unlike the statute in question in *City of Philadelphia, supra*, which prohibited the importation of waste from outside the State, the EPS is geographically neutral. As the Decision states, "An LSE is free to enter into long-term contracts with both in-state and out-of-state generators because the EPS makes no distinction between in-state and out-of-state sources of electricity." (Decision, at p. 207.) Because the EPS is geographically neutral, neither *City of Philadelphia* nor the other discrimination cases CEED cites (CEED App. Rehg., at p. 8) are on point.

Moreover, the burden is on CEED, as the party challenging the regulation, to demonstrate discriminatory impact of the EPS (*Hughes v. Oklahoma* (1979) 441 U.S. 322, 336), and it fails to do so. CEED maintains that a large portion of out-of-state suppliers will be excluded from the California market because they will be unable to meet the EPS, and that most California generators, but not out-of-state generators, will be exempt from the EPS. (CEED App. Rehg., at pp. 5-9.) The Decision counters CEED's arguments by explaining that under the terms of the EPS regulation, the California market is still available to high-GHG emitters under existing contracts, or new or renewal contracts for less than five years. (Decision, at p. 206.) In addition, the Decision notes that technology that could reduce GHG emissions is emerging and may allow high-GHG emitters to meet the EPS. (Decision, at p. 206-211.) Although in its rehearing application CEED reiterates its earlier arguments that technology to reduce carbon dioxide emissions is not feasible, the Decision noted that technology to sequester carbon emissions is already being implemented. (Decision, at p. 211.) CEED is essentially rearguing its factual contention on this matter, but the Commission concluded that CEED's contentions were not convincing. Since the Commission's conclusion is based on adequate evidence that such technology is beginning to be utilized (*Opening*

Comments/Legal Brief on Final Workshop Report of NRDC/TURN/UCS/WRA, October 18, 2006, p. 22), CEED has no basis to claim legal error.

CEED also argues that the 60 percent capacity factor minimum for the EPS to apply exempts most in-state generators from the EPS, and primarily precludes out-of-state suppliers from competing in the California market. As adopted, the EPS only applies to baseload generation, which is electricity generation from a powerplant designed and intended to operate at a plant capacity factor of at least 60 percent (Pub. Util. Code, § 8340 (a).) The reason for this limit is to ensure system reliability. (Decision, at pp. 102, 209.) CEED maintains that because California has mostly higher cost generating resources, few in-state generators meet the 60 percent capacity threshold for the EPS to apply. According to CEED, a “large” portion of California’s baseload power needs come from out-of-state generators, and therefore the Decision will primarily impact out-of-state suppliers.

Once again, this argument was raised and refuted in the Decision, and fails for a number of reasons. First, CEED’s vague assertions that the EPS would disproportionately impact out-of-state generators fall far short of meeting CEED’s burden of showing discrimination in support its claim of a Commerce Clause violation. In fact, CEED’s claims that few in-state generators would be affected was specifically refuted by the Attorney General, who cited California Energy Commission (“CEC”) data indicating that in-state baseload generation facilities would also be impacted the EPS. (Decision, at p. 210.) Furthermore, as the Decision notes, baseload and non-baseload generation facilities are not similarly situated, because they fill different roles in the electricity market. (Decision, at p. 209.) Because, the two types of generation are not similarly situated, it cannot be considered discriminatory to treat baseload differently from non-baseload generation. Finally, as the Decision concludes, any suggestion that the EPS will cause a shift away from out-of-state resources is speculative and unsubstantiated at this time. (Decision, at p. 210.)

We do not deny that the EPS may have an incidental impact on interstate commerce, by imposing certain restrictions on contracts with California LSEs. However,

such burdens are acceptable under the Commerce Clause as long they are non-discriminatory and outweighed by a legitimate local interest. (*Brown-Forman Distillers Corp.*, *supra*, 476 U.S. 573, 579; *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142.) Although CEED cites the *Pike* balancing test, it neglects to make any argument that the burdens of the EPS are greater than the local benefits. The Decision discusses local benefits including: (1) protecting California ratepayers from the costs of future laws and regulations to limit GHG emissions; and (2) protecting the California environment and coast line from the impact of GHG emissions. (Decision, at pp. 213-215.) Significantly, CEED does not challenge the value of these local benefits. Accordingly, CEED has not demonstrated that the EPS' impact on interstate commerce is "clearly excessive" in relation to its local benefits in violation of the Commerce Clause. (See *Pike*, at p. 142.)

In short, we have thoroughly explained that the EPS, by its terms, does not discriminate against out-of-state generators, and that any incidental interstate burdens are acceptable pursuant to the dormant Commerce Clause. CEED has not demonstrated any discrimination in the Decision or excessive impact on interstate commerce. Therefore, CEED has not shown that the Decision violates the Commerce Clause.

2. PREEMPTION

a) Federal Regulation

CEED argues that, even if there is no conflict with the Public Utilities Regulatory Policies Act ("PURPA") (16 U.S.C. § 824a et seq.), the Federal Power Act ("FPA") is "meant to ease ... barriers to participation in the wholesale market, and the EPS impliedly conflicts with this federal interest." (CEED App. Rehg, at p. 22.)

CEED fails to cite authority in support of its vague assertion. Because there is no specific statutory or regulatory provision identified to support the contention that there is a conflict, there is no basis to CEED's preemption claim. As the Decision points out, federal preemption analyses, "start with the assumption that the historic police powers of the State were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. [Citations]." (*Medtronic, Inc. v. Lohr* (1996) 518

U.S. 470, 485.) CEED provides no indication that any such purpose exists. The Decision explains that the FPA regulates wholesale markets and generators, while the EPS regulates LSEs in the retail market. In fact, as we have pointed out, under the FPA, Congress specifically preserved the States' authority over retail electric service and the public utilities that provide that service. (16 U.S.C. § 824(b)(1), Decision, at p. 202.) Therefore, CEED's argument that the FPA preempts the Commission's ability to adopt the EPS has no basis.

CEED also suggests that the EPS "could conflict" with national policies "that may be implemented in the future." (CEED App. Reh'g., at p. 22.) This argument is unsubstantiated, and in any event, wholly speculative. As Environmental Defense notes, CEED's premise that state law is preempted when it "could conflict" with future national policies, is an inversion of actual preemption law. States are free to legislate unless a field is entirely occupied or there is a conflict with a clear federal policy. (See *Medtronic, supra*, at p. 485.)

b) Foreign Policy

CEED also reprises its argument that the EPS regulation is preempted because it conflicts with the federal government's foreign policy regarding GHG. CEED maintains that the President has articulated a foreign policy against the United States committing to unilateral reductions in GHG emissions. Accordingly, CEED contends, "The Commission's attempt to implement a statewide GHG control policy at this time is an intrusion upon and is at odds with the President's Foreign Policy Powers." (CEED App. Reh'g., at p. 20.) CEED's foreign policy argument is entirely unconvincing. As the Decision notes, unlike any of the cases CEED cites in support of its foreign policy argument, there is no conflict here between the EPS and the United States' foreign policy.

As we have explained, CEED's assessment of the federal foreign policy concerning GHG emissions is not accurate. CEED points out that President Bush has opposed mandatory unilateral reduction in GHG emissions. (CEED App. Reh'g., at p. 20.) However, regardless of whether a Presidential statement can preempt state utility law, a state's voluntary efforts to reduce GHG emissions does not in any way conflict

with these foreign policies. We note more recent statements of federal foreign policy emphasize that state efforts to reduce GHG emissions are complementary. For example, the Decision quotes recent statements from James L. Connaughton, Chairman of the White House Council on Environmental Quality in which he explains the President's goal of reducing domestic GHG emissions, acknowledging with approval state and federal efforts to regulate GHG emission. (Decision, at p. 198; *Attorney General's Phase I, Draft Interim Decision: Greenhouse Gas EPS Reply Brief of the People of the State of California*, January 8, 2007.)

CEED's support for its position that the EPS conflicts with foreign policy is unpersuasive. In addition to the fact that the quote from Presidential Bush does not conflict with the EPS, the statement is from 2001, and GHG policy has evolved greatly in the past six years. The more recent statements cited in the Decision are far more relevant to current foreign policy. Moreover, CEED refers to EPA's out-of-date position that regulating GHG emissions would conflict with foreign policy. (CEED App. Rehg., at p. 20.) Since CEED filed its application for rehearing, the United States Supreme Court issued *Massachusetts v. Environmental Protection Agency*, slip. op., (2007) __ U. S. __, 2007 U.S. LEXIS 3785 ("*Mass v. EPA*"). In *Mass v. EPA*, concerning EPA's Clean Air Act regulation, the United States Supreme Court rejects EPA's position, that "regulating greenhouse gases might impair the President's ability to negotiate...." (*Id.*, at p. 31.) The Supreme Court concluded that, because EPA is bound by domestic law to promulgate GHG regulations, it cannot decline to do so based on the President's foreign policy. (*Ibid.*) In light of *Mass v. EPA*, EPA's earlier position regarding foreign policy preemption is no longer viable.

CEED's reliance on *Central Valley Chrysler-Jeep v. Witherspoon* (E.D. Cal 2006) 456 F.Supp.2d 1160 is also misplaced. *Witherspoon* concerns car dealerships' challenge to prevent the enforcement of California Air Resources Board ("CARB") regulations limiting motor vehicle GHG emissions. (*Id.*) The Court denies CARB's motion for judgment on the pleadings in part, and holds that the dealerships' claim that CARB's GHG regulations are preempted by foreign policy could go forward whether or

not there was a statute or executive agreement in support of the preemption argument. (*Id.*) CEED cannot rely upon *Witherspoon* for a number of reasons. First, as mentioned in the Decision, the *Witherspoon* decision is only a preliminary decision on a motion for judgment on the pleading. Any statements in *Witherspoon* that go beyond the adequacy of the pleadings are purely dicta. Notably, the Attorney General subsequently motioned for summary judgment with new evidence concerning the President's foreign policy, but this motion has not been resolved. (Decision, at pp. 197-198.) Second, *Mass v. EPA*, *supra*, issued after *Witherspoon*, disapproves the argument that the President's foreign policy regarding GHG preempts all domestic GHG regulation. (*Mass v. EPA*, slip. op., at p. 31.) Moreover, whether or not a statute or executive agreement is required for a foreign policy preemption claim, here CEED has not demonstrated any clear foreign policy that conflicts with the EPS regulation. For this reason, CEED fails to show preemption whether or not an agreement or statute is required.

As the Decision notes, unlike the regulations in the cases cited by CEED in support of its federal preemption argument,² the EPS does not conflict with or interfere with federal foreign policy. CEED has made no showing to the contrary. For this reason, CEED cannot claim that foreign policy regarding GHG emissions preempts the Commission's EPS regulation.

3. DESIGN GOALS

CEED reiterates earlier comments that the Decision errs because the EPS fails to meet the design goals developed in the Phase I Workshop, and contained in S.B. 1368. According to CEED, the EPS regulation fails to adequately minimize costs to ratepayers, address reliability concerns, or encourage advanced technology development. CEED's contentions about the proceeding's design goals are policy arguments that it already presented to the Commission. For the most part, CEED is not alleging legal error, as is required by Commission Rule of Practice and Procedure 16.1. Rather, CEED

² *Am. Ins. Ass'n v. Garamendi* (2003) 539 U.S. 396; *Crosby v. Nat'l Foreign Trade Council* (2000) 530 U.S. 363.

restates factual and policy arguments about the degree to which certain goals are being met. The Decision adequately explains how the EPS furthers the goals of the proceeding.

CEED alleges that the Decision fails to comply with the legislative policy to “encourage the development of cost-effective, highly-efficient, and environmentally-sound supply resources to provide reliability and consistency with the state’s energy priorities.” (CEED App. Rehg, at p. 11.) CEED also cites the Public Utilities Code section 8341(d)(6) which requires the Commission in developing GHG regulations, “to consider the effect of the standard on system reliability and overall costs to electricity customers.” CEED incorrectly alleges that we fail to meet these requirements.

Although CEED presented evidence in the proceeding that the EPS would harm the California economy and system reliability, we did not find CEED’s evidence convincing. Rather, we noted that a number of factors guard against excessive cost or unreliability. First, it should be noted that the EPS is interim and we contemplate reevaluating its effectiveness and its impact. (Decision, at pp. 34-35.) In this way, if any unforeseen impacts occur the EPS can be modified. Moreover, as the Decision explains, the EPS protects against reliability issues and high compliance future compliance costs by setting a standard for covered procurements. (Decision, at p. 224.) In addition, system reliability is safeguarded because the EPS only applies to baseload generation, and not to “the types of procurement that the LSE is most likely to need for system reliability,” such as short-term power purchases or contracts with peaking generation facilities. (*Id.*) We also conclude that no party made a showing that unreasonable rates would result from implementation of the EPS. (*Id.*) The Decision’s discussion, and the consideration of these issues throughout the proceeding, meets the section 8341 (d)(6) requirements.

Regarding the goal of encouraging the development of cleaner energy technology, again CEED failed to demonstrate that the EPS imposes “impossible technology hurdles.” (CEED App. Rehg, at p. 14.) Commenting on environmental parties’ evidence that new carbon dioxide sequestration facilities are already planned, we explain:

Thus clean coal technology is now under development. By setting a GHG emissions limit, the EPS would create an incentive to further the development of clean coal technology, rather than hinder it. Conversely allowing California to remain reliant on high GHG-emitting energy sources would serve as disincentive for the advancement of environmentally sound coal technology.

(Decision, at p. 211.) Clearly, we considered whether the EPS would further the development of clean coal technology, and based on the record, conclude that it would. The fact that we were not convinced by CEED's evidence and argument that the EPS would hinder new technology is not error or grounds for rehearing.

In short, CEED has not shown that the EPS fails to meet the design goals set forth in the statute and the Workshop Report. CEED's reargument of its earlier factual and policy arguments does not demonstrate legal error.

B. CE COUNCIL APPLICATION FOR REHEARING

In its rehearing application, CE Council maintains that by failing to consider a net lifecycle emissions analysis for all baseload generation, we have ignored the requirements of Public Utilities Code section 8341(d)(2). (CE Council's App. Rehg., at pp. 3-5.) We have already considered this request and have determined that it was both outside the scope of Phase I of this proceeding and not required under S.B. 1368.

(Decision, at pp. 191-192.)

In their comments on the Proposed Decision ("PD"), CE Council asserted that the term "net emissions" used in S.B. 1368 required a "lifecycle emission analysis." (*Comments of the Community Environmental Council on the Phase I Proposed Decision* ("CE Council Comments"), filed January 8, 2007, p. 3.) In particular, they argued that the EPS should include a lifecycle analysis for liquefied natural gas ("LNG") plants. Acknowledging that we would be unable to complete such an analysis by the February 1, 2007 deadline specified in S.B. 1368 for establishing a GHG EPS, CE Council requested that the PD be modified to indicate that the EPS would be modified in the future to include a lifecycle analysis of natural gas plants using LNG. (*CE Council Comments*, at p. 6.)

CE Council's assertion that a "net lifecycle emissions analysis" is the same as a "net emissions analysis" is unfounded. Not only has CE Council failed to cite to any authority to support this claim, but it has also not provided any convincing arguments that S.B. 1368 intended to treat these two terms interchangeably. Moreover, language in S.B. 1368 supports a conclusion that these two terms are different. Section 8341(d) (2) requires the Commission to "include the net emissions *resulting from the production of electricity by the baseload generation*" in determining the rate of GHG emissions. (Pub. Util. Code, §8341 (d) (2) (emphasis added).) In contrast, section 8341(d)(4) requires that "for facilities generating electricity from biomass, biogas or landfill gas energy, the commission shall consider net emissions from the process of growing, processing, and generating the electricity from the fuel source." (Pub. Util. Code, § 8341 (d) (4).) If the Legislature had intended to treat the terms "net lifecycle emissions analysis" and "net emissions analysis" the same, it would not have been necessary to specify a different methodology for calculating net emissions produced by biomass, biogas and landfill gas-fueled plants. Thus, to interpret the term "net emissions analysis" as requiring a "lifecycle analysis" would be contrary to the rules of statutory construction, as it would expand the requirements of section 8341(d) (2). (See, e.g., *People v. Baker* (1968) 69 Cal.2d 44, 50 [courts should not insert or delete words in a statute or give a different meaning to the words used].) Further, such an interpretation would render section 8341(d)(4) superfluous. (See, e.g., *Dix v. Superior Court* (1991) 53 Cal.3d 442, 459 [to the extent possible, courts should "avoid statutory constructions that render particular provisions superfluous or unnecessary."].)

For these reasons, we have complied with the requirements of section 8341(d)(2), 8341(d)(2), and properly rejected CE Council's request that a "net lifecycle emissions analysis" be performed for all baseload generation.

II. CONCLUSION

Because neither CEED nor CE Council has demonstrated legal error, the applications for rehearing of the Decision should be denied.

THEREFORE, IT IS ORDERED that CEED's and CE Council's applications for rehearing of Decision (D.) 07-01-039 are denied.

This order is effective today.

Dated May 24, 2007 at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners