

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division
Electric Generation Performance Branch

Resolution EGPB-8
September 10, 2009

RESOLUTION

**RESOLUTION GRANTING APPROVAL OF
THE FINAL REPORT ON THE AUDIT OF THE
DELTA ENERGY CENTER GENERATING
STATION PERFORMED BY THE ELECTRIC
GENERATION PERFORMANCE BRANCH OF
THE CONSUMER PROTECTION AND SAFETY
DIVISION, AND AUTHORIZING PUBLIC
DISCLOSURE OF THE FINAL AUDIT REPORT**

SUMMARY

This Resolution grants the request of the Consumer Protection and Safety Division (“CPSD” or “staff”) for approval of the Electric Generation Performance Branch’s (EGPB) Final Report on the Audit of the Delta Energy Center owned by Calpine Corporation, (“Delta” or “the Plant”) dated May 29, 2009, (“Final Audit Report”). This Resolution also authorizes disclosure of the redacted Final Audit Report.

BACKGROUND

General Order 167, “Enforcement of Maintenance and Operation Standards for Electric Generating Facilities” (effective September 2, 2005) sets forth maintenance, operation, and logbook standards for electric generating facilities in California (referred to as “Generating Asset Owners” or “GAOs” in the General Order.) General Order 167 was adopted in response to legislation enacted by the California Legislature in 2002, codified in Public Utilities Code 761.3, which requires the Commission to “implement and enforce standards ... for the maintenance and operation of facilities for the generation of electric energy” in

California. Section 11.1 of General Order 167 notifies GAOs subject to the General Order that regular and systematic audits will be conducted in order to ensure compliance with General Order 167.^[1]

The Delta audit is the eighth audit conducted by CPSD for compliance with General Order 167. The Delta Final Audit Report is the result of an iterative process between CPSD staff and Delta staff. The process included: the review of data requests; a five-day on-site visit by the CPSD audit team; issuance of the Preliminary Audit Report; review and receipt of Delta's response and corrective action plan; a meet-and-confer teleconference; and the issuance of a semi-final report reflecting corrective actions taken by Delta.

Section 15.4 of General Order 167 allows GAOs to request confidential treatment of information by indicating the specific law or statutory privilege prohibiting disclosure. CPSD's practice is to issue a public version of all final audit reports and request Commission approval by way of a resolution. Delta submitted a request for confidential treatment of the Final Audit Report; CPSD has deleted and or redacted certain confidential information in response to this request, and a redacted version of the final report will be prepared for public disclosure.

DISCUSSION

1. Final Audit Report Findings and Recommendations

On January 4, 2007, CPSD notified the plant of the General Order 167 audit. From March 26, 2007 to March 30, 2007, the CPSD audit team comprised of Ron Lok, Chuck Magee, Chris Lee, and Rick Tse visited the Delta Energy Center to determine compliance with Logbook, Maintenance and Operations Standards in General Order 167.

During the audit, CPSD's team focused on:

- A. Safety training;
- B. Balance of maintenance, work management, maintenance procedures and documentation;
- C. Spare parts and procurement management;
- D. Equipment performance and engineering support;

^[1] See also, D.04-05-018, pp. 15-16; additional detail on audit procedures is found in the "Maintenance Standards for Generators with Suggested Implementation and Enforcement Model, Section 3, Verification and Audit Process," Appendix C to D.04-05-018.

- E. Chemistry control and other regulatory requirements;
- F. Equipment history;
- G. Maintenance facilities and equipment;
- H. Routine inspection and records of operation;
- I. Performance testing and emergency grid operations;
- J. Plant security and readiness; and
- K. Logbook standards;

The methods used to conduct the audit included:

- Review of plant performance;
- Preparation of detailed data requests;
- An on-site visit from March 26 through 30;
- Discussions with plant management;
- Reviews of procedures and records;
- Observations of operations and maintenance activities;
- Interview with rank and file employees; and
- Inspections of equipment and infrastructure.

A full description of the audit, including the procedure, findings, recommendations and conclusions is contained in the Final Audit Report attached as Appendix A to the Final Resolution.^[2]

CPSD's Preliminary Audit Report, which CPSD provided to Delta on April 15, 2008, identified twenty-one potential violations of the Operations and Maintenance Standards. CPSD asked the Plant to respond by May 30, 2008 with a Corrective Action Plan. The Plant requested and CPSD granted an extension of this deadline. The Plant submitted its response on July 15, 2008. The CPSD audit team and Delta held meet and confer meetings at the Delta plant site on September 11, 2008 and January 28, 2009 to discuss the Plant's response, during which CPSD and the Plant resolved all outstanding issues. CPSD also verified completed corrective actions, and acquired further documentation of corrective action.

The Final Audit Report details staff's preliminary findings and recommendations, the corrective actions that the Plant has taken to date, and CPSD's recommendations for follow-up action. In most instances, Delta has already

^[2] The Public Version of the Draft Resolution does not include Appendix A. Appendix A is attached to the Confidential/Non-Public Version of the Draft Resolution, and will be attached to the Final Resolution if disclosure is authorized and the Final Report approved by the Commission.

resolved the finding by taking corrective action. In only one instance, CPSD has requested that the Plant report on the progress of its corrective actions and submit an additional progress report.

The results of CPSD's audit indicate that the continued implementation of the proposed corrective actions will adequately address all of the findings in the Final Audit Report. CPSD found no need for formal enforcement action based on the audit findings. CPSD does, however, request that the Commission order Delta to complete implementation of Findings 2.13, 2.14 and 2.18 of the Final Audit Report contained in Section 2 of the Final Audit Report.

We hereby grant CPSD's request for approval of the Final Audit Report. CPSD's General Order 167 audits provide a wide-ranging assessment of the Plant's efforts to comply with General Order 167's maintenance, operation, and logbook standards. Our approval of the findings and recommendations in the Final Audit Report endorses the findings therein and requires Delta to implement the corrective action measures identified in the Final Audit Report and provide progress or status reports as requested by CPSD.

2. Public Disclosure of the Final Audit Report

As we have indicated above, General Order 167, section 15.4, allows GAOs to make a request for confidential treatment of information that it believes should not be disclosed to the public. Section 15.4 places the burden on the GAO to prove why all or part of any document should be withheld from the public, and to indicate the specific law or statutory privilege prohibiting disclosure. This is the eighth of CPSD's audits to come before the Commission; CPSD's policy and practice is to make all of the Final Audit Reports public documents. As we stated in Resolution EGPB-1,

“[I]mportant public interests may well be served by disclosure of General Order 167 audit reports. These include the public's right to know that generating facilities providing the electric service it relies on are operated in conformance with regulatory requirements. In addition, the release of audit reports will increase awareness of safety issues and best practices within the generating community. Allowing public access to audit reports will provide an incentive to GAOs to maintain their plants in top condition, which may lead to increased reliability. Moreover, in enacting Public Utilities Code 761.3, the Legislature found that “electric generating facilities and powerplants in California are essential ...[to protect] the public

health and safety of California residents and business,” and that it is in the public interest to ensure that they are “appropriately maintained and efficiently operated.”^[3]

(Resolution EGPB-1, p. 7.)

We also stated, “Future audit reports conducted under General Order 167 will also be subject to public disclosure, unless it can be demonstrated that under the specific circumstances, the public interest in nondisclosure clearly outweighs the public interest in disclosure.” (*Id.*)

Here, Delta Energy Center requested confidential treatment of certain information in the report by letter dated July 27, 2009. Delta’s request for confidentiality covers three main areas: sensitive plant security information, employee identifying information, and information subject to third-party confidentiality arrangements. It is CPSD’s policy not to disclose sensitive plant security information, or employee identifying information; therefore, these portions of the Final Audit Report will be redacted or deleted as necessary. With respect to the information that Delta claims is covered by an third-party agreement with an equipment manufacturer, CPSD’s audit team also agrees to redact the requested information, because the request is very limited in scope, is reasonable, and does not compromise the integrity or informational value of the audit report. Based on the foregoing, we find that the requested redactions should be made, and a redacted version of the Final Audit Report should be made available to the public.

COMMENTS

The Draft Resolution of the CPSD in this matter was mailed to the parties in interest on June 18, 2009, in accordance with Public Utilities Code § 311(g) (1) and Rule 77.7 of the Rules of Practice and Procedure.

Comments were received on July 27, 2009. Delta requested that certain corrections and clarifications be made to the Final Audit Report by CPSD. CPSD has carefully reviewed the comments and made corrections where they are timely and warranted. CPSD’s practice is to revise the Preliminary Audit Report with any and all corrective actions reported by the Plant, including those completed or underway. However, it does not make revisions to the Final Audit Report to reflect additional actions taken in the weeks or days prior to the Commission Resolution approving the final audit. Thus, although CPSD commends Delta for continuing to work to resolve the findings in the Final Audit Report dated May 29,

^[3] SB 39XX, Ch. 19, Section 1, approved April 25, 2002; filed April 25, 2002.

2009, certain measures taken in June and July 2009 will not be incorporated into the final report.

CPSD did not agree with Delta's request to characterize its findings as "potential" violations. While CPSD has used the term "potential violation" in prior audits, this past practice does not prohibit CPSD from asserting that a condition is a violation in future audits. Nor is CPSD's terming an audit finding a "violation" meant to single Delta out or differentiate it from other audited plants. Quite simply, in CPSD's view, an audit finding that is inconsistent or contrary to an operation or maintenance standard is a violation of Operation and/or Maintenance Standards, and will be reported as such from hereon.

FINDINGS OF FACT

1. General Order 167, "Enforcement of Maintenance and Operation Standards for Electric Generating Facilities" (effective September 2, 2005) sets forth maintenance, operation, and logbook standards for electric generating facilities in California. Section 11.1 of General Order 167 notifies GAOs subject to the General Order that regular and systematic audits will be conducted in order to ensure compliance with General Order 167.

2. The Final Audit Report is the result of an iterative process between CPSD's staff and the Plant. The process included: the review of data responses; a five-day on-site visit; issuance of the Preliminary Audit Report; review and receipt of the plant's response and Corrective Action Plan; a meet-and-confer period; and the issuance of a semi-final report reflecting corrective actions (if any) taken.

3. As part of the audit process, the CPSD audit team visited Delta plant from March 26, 2007 through March 30, 2007, to determine compliance with Logbook, Operations and Maintenance Standards in General Order 167.

4. CPSD routinely requests Commission approval to issue a final public version of the Final Audit Reports at the conclusion of each of the Plant audits, detailing its findings and recommendations.

5. Section 15.4 of General Order 167 allows GAOs to request confidential treatment of information by indicating the specific law or statutory privilege prohibiting disclosure; Delta requested confidential treatment of certain information contained in the Final Audit Report.

6. It is CPSD's policy not to disclose detailed or sensitive Plant security information, or employee identifying information.

7. CPSD's General Order 167 audits provide a thorough evaluation of the Plant's efforts to comply with General Order 167 Logbook, Operations and Maintenance Standards.

8. The results of CPSD's audit indicate that the continued implementation of the proposed corrective actions will adequately address all of the findings in the Preliminary Audit Report. There is no need for formal enforcement action based on the audit findings at this time.

CONCLUSIONS OF LAW

1. Our approval of the Final Audit Report endorses the findings and recommendations in the Final Audit Report, and requires Delta to report on three outstanding issues as described in the Final Audit Report.

2. Important public interests may well be served by disclosure of General Order 167 audit reports, including the public's right to know that generating facilities are operated in conformance with regulatory requirements, and the incentives to GAOs to maintain their plants in top condition, which may lead to increased reliability.

3. The redacted Final Audit Report should be made available to the public.

ORDER

1. The redacted "Final Report on the Audit of the Delta Energy Center," dated May 29, 2009 should be made available to the public.
2. Delta shall resolve and report on the outstanding issues in Findings 2.13, 2.14 and 2.18 by November 1, 2009.
3. This Resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting held on September 10, 2009. The following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX A