

1 SAN FRANCISCO, CALIFORNIA, JULY 7, 2004 - 1:35 P.M.

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3 COMMISSIONER WOOD: We'll call to order the
4 meeting of the California Electricity Generation
5 Facilities Standards Committee meeting, and one of these
6 days maybe the name will be shortened a little bit so it
7 can be pronounced.

8 Do any of the committee members have any
9 opening remarks? I do not.

10 MR. BJORKLUND: No.

11 MR. KAHN: No, sir.

12 COMMISSIONER WOOD: Then we'll open the floor for
13 public comments, and we'll limit the comments to three
14 minutes per person. Are there any members of the public
15 who wish to speak?

16 Yes. Why don't you come up to the mike and
17 for the court reporter introduce yourself. I'll keep
18 time.

19 MR. KERNER: Thank you very much, Mr. Wood,
20 members of the committee. And thank you for being here.
21 My name is Douglas Kerner. I'm one of the attorneys for
22 Duke Energy North America.

23 COMMISSIONER WOOD: Can't hear you. Is your mike
24 on? Why don't you come up to the table here and maybe
25 that mike is on.

26 MR. KERNER: Is that working a little better?

27 COMMISSIONER WOOD: Yes.

28 MR. KERNER: Thank you. Good afternoon again, Mr.

1 Wood and members of the committee. Thank you very much
2 for being here. My name is Douglas Kerner. I'm one of
3 the attorneys for Duke Energy North America in these
4 proceedings. And at the outset I've been authorized and
5 encouraged by the management of Duke Energy to applaud
6 you on the receptivity and clear attention that was
7 spent on comments made on the prior draft of GDS 4 and
8 very constructive modifications made in connection with
9 the document that we're reviewing today. We very much
10 appreciate that. Stakehold processes do not always
11 involve that level of attention to the opinions of the
12 stakeholders themselves. So it's much appreciated.

13 I do have, with regard to the document in
14 front of us today, one rather specific comment which I
15 hope is narrowly crafted enough that the committee can
16 see its way clear to take one additional corrective
17 action, and that is with regard to Section (a), which
18 describes a condition under which a generating facility
19 may not be retired or put into storage. And the
20 condition requires an affirmation, I guess, of -- or the
21 lack of an affirmation by either the California ISO or
22 the Commission that the generating facility is unneeded,
23 and this is particularly interesting to me, during a
24 specified period of time.

25 The retirement of the power plant by
26 definition is a permanent event, and one which we think
27 must be within the control of the owner of that asset.
28 It is unclear to us, first of all, how this Commission

1 could make an affirmative determination with regard to
2 the continued operation of the facility without running
3 afoul of the Commission's remand of GDS 4, namely, that
4 this committee only undertake activities which are
5 squarely within the jurisdiction of the Commission to
6 do, we think you're on perilous ground there, but also
7 as a practical matter, not understanding the bases upon
8 which either the ISO or particularly the Commission
9 could determine that a power plant was not needed under
10 the test here for a specified period of time such that a
11 generator would be precluded from putting that plant
12 into retirement. Ordinarily of course a retirement is
13 associated with an improvement or modernization of some
14 kind, which should not affect or involve the reliability
15 interest which is paramount to this whole issue.

16 So our singular sole recommendation for today
17 would be to modify Section 2(a) simply to eliminate the
18 first phrase with regard to retirements and continue on,
19 however, with the balance of that section, which begins
20 with, every generating facility shall maintain the
21 ability through adequate staffing and so on to ensure
22 the reliability that the State is interested in. And
23 with the elimination of that clause, we think you've
24 done a fine job here. And again, thank you very much
25 for attending to our comments.

26 COMMISSIONER WOOD: Thank you. Are there any
27 other additional public comments? Yes. Please come
28 forward and state your name for the record.

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STATEMENT OF MR. PAUL

MR. PAUL: Sure. My name is Joe Paul. I'm representing West Coast Power. We own three facilities in Southern California. Mr. Kerner actually asked a clarification that I was going to ask, and I'll just move on to Section (b). Most of my comments are in terms of clarification and not in comments on for or against.

It's not clear to me from reading (b), or perhaps it is clear but can't understand, if the immediate need to maintain system reliability outweighs the potential of damage to a facility why one would need to run that facility when you know that it might break down even in an emergency alert or a warning.

The other clarification is in (c), and that is I assume that the relevant ratemaking authority for this standard to go into effect is FERC, but perhaps somebody on the committee can clarify that for us.

COMMISSIONER WOOD: Okay. Probably, to the extent those questions will be addressed, they should be addressed by staff who did the drafting of this. And why don't we wait till the end of public comments, and then when we get a report from staff, if they choose to, they can address those questions.

MR. PAUL: Okay. Thank you.

COMMISSIONER WOOD: Are there any further public comments?

Yes. Please step forward.

1 problematic. FERC, as we pointed out in earlier
2 comments, has exclusive jurisdiction under Part 1 of the
3 Federal Power Act, not only to license hydroelectric
4 facilities within its jurisdiction, but also to
5 decommission those facilities. And FERC has detailed
6 procedures under both the Federal Power Act and its own
7 regulations for decommissioning and surrendering
8 licenses that have been issued by FERC. So to the
9 extent that it is applied to FERC-licensed hydro, we
10 think that Subdivision (a) encroaches on FERC's
11 exclusive jurisdiction in that area.

12 Subdivision (b), which deals with an
13 obligation to consult with the ISO during system
14 warnings and alerts, appears to duplicate and
15 potentially provide some confusion and conflict with
16 existing rules under the ISO tariff. I think we've
17 pointed out in our earlier comments that the ISO already
18 has authority during these kinds of system emergencies
19 to order generators to provide energy. And the ISO
20 tariff actually spells out some specific circumstances
21 under which generators are not obliged to comply with
22 those orders.

23 And I note that the circumstances under the
24 ISO tariff are a little different than what is spelled
25 out under Subdivision (b), which is where I think it
26 raises some issues and potential for conflict and
27 confusion regarding when a generator is obligated to
28 comply with such an order or not. And the other issue,

1 I suppose, is what kind of consultation is required. Is
2 that something different than just responding to an ISO
3 order or a request? Right now the ISO tariff really
4 puts the obligation on the ISO to seek, to reach out and
5 communicate with a particular generator to get them to
6 come back on line if that's necessary during an
7 emergency. And so it's a little unclear whether this
8 imposes some sort of affirmative obligation on
9 generators to go out and contact the ISO on their own.

10 Finally, Subdivision (c) is really just more
11 of a question in terms of how this mechanism is going to
12 operate. I think as a concept this provision is very
13 helpful in that it says that this standard is not going
14 to apply unless there is, you know, some sort of
15 mechanism in place to compensate facility owners. And I
16 guess the question that it raises in my mind is one of
17 timing. If a generator has a noneconomic asset, is it
18 allowed, and there is no compensation mechanism in place
19 at that time, may it take that generating asset out of
20 service at that time? Does it have some sort of
21 affirmative obligation to seek compensation from the
22 appropriate regulatory authority, and if so, that raises
23 some problems in terms of presumably an obligation to
24 continue operating pending that application, and then
25 what happens when the application is denied.

26 So it raises a lot of interesting questions.
27 I would again request that there be an opportunity to
28 flesh this out a little bit more and provide a little

1 more than just a day and a half to take a look at this
2 and maybe put down some of these comments in writing.
3 And I think the committee would benefit from that as
4 well as the generators. Thank you.

5 COMMISSIONER WOOD: Thank you. Are there any
6 further public comments?

7 (No response)

8 COMMISSIONER WOOD: Okay. I don't see any hands.
9 So why don't we move then to hearing the committee staff
10 report on this, on the item that the public speakers
11 have spoken to.

12 MR. CLARK: Thank you, Commissioner Wood. I
13 believe that, given the comments, I believe that our
14 recommendation would be that these comments be put in
15 writing to us also so that we could give them further
16 consideration. There have been some questions raised
17 here that I think we should continue to take under
18 serious consideration and respond to those. It would be
19 helpful to have them in writing.

20 COMMISSIONER WOOD: Are you then recommending that
21 we not take action on General Duty Standard 4 at this
22 time?

23 MR. CLARK: Excuse me just one second.

24 COMMISSIONER WOOD: Sure. We'll be off the
25 record.

26 (Recess taken)

27 COMMISSIONER WOOD: Let's be back on record. We
28 just took a recess for a few minutes, and we're now back

1 in session. Mr. Clark.

2 MR. CLARK: Yes, Commissioner Wood. I think we
3 would recommend that the committee go ahead and consider
4 this item here today. And if there are questions in
5 your mind regarding the questions that have been raised
6 by the individuals, we can certainly have a discussion
7 about those particular issues. And one of the major
8 reasons why I say that is because the committee is now
9 going to be referring to standards which we've spent a
10 considerable amount of staff time on. You're simply
11 going to be adopting it and referring it to the
12 Commission for adoption and implementation and
13 enforcement. And I believe that there would be an
14 opportunity there during that process for the generating
15 community, the affected community, to raise any
16 concerns.

17 We have briefly talked over here the concerns
18 that have been raised by the parties, and we don't see
19 any real problems with the way that the standard is
20 written now.

21 COMMISSIONER WOOD: Yes, Mr. Kahn.

22 MR. KAHN: Rich, can you explain to me why it is
23 that we had this thing a month ago and then last Friday
24 somebody changed it?

25 MR. CLARK: There were sig -- it was directly in
26 response to the comments that came from the affected
27 parties in the community.

28 MR. KAHN: And who changed it? Who made the

1 decision to go from what we had a month ago to this?

2 MR. CLARK: Staff did.

3 MR. KAHN: Last Friday?

4 MR. CLARK: It was finalized last Friday, yes.

5 MR. KAHN: And sent out when?

6 MR. CLARK: It was sent out Friday also.

7 MR. KAHN: What time?

8 MR. CLARK: Do you know what time it was actually
9 sent out?

10 MS. KERSTEN: Approximately 4:00 o'clock.

11 MR. KAHN: I don't find that acceptable in any
12 way, shape or form, to send something out Friday
13 afternoon the day before a long holiday. I personally
14 haven't been back in my office since. My ISO folks who
15 are responsible for this have been unavailable during
16 this time period. And so it's, you know, nice words of
17 people saying that there's a stakeholder process, but
18 this process, which resulted in a wholesale change of
19 this thing, you know, it was completely changed. You
20 took out large parts. You added new parts. So if
21 forced to vote, I'll vote against this and then register
22 my protest that I don't think the ISO has had an
23 opportunity to give input.

24 I also point out, for whatever it's worth,
25 that I think the comment about the tariff is dead on, if
26 this conflicts with our tariff. And you know, I guess I
27 don't get why you think you can do that without at least
28 consulting with ISO and getting a sign-off on that.

1 I don't think (c) makes any sense at all. And
2 my view of (c) is that it puts -- to the extent it does
3 meet FERC, that I find a tariff on. I mean that's how
4 we got into this mess in the first place is by going to
5 FERC and asking them to help us out and having FERC not
6 help us out. I thought the reason that they passed this
7 law that engendered this committee was to try to address
8 those issues. I have a lot of trouble with (c).

9 As far as (a) goes, I think that the
10 suggestion of Duke would just about complete the total
11 evisceration of this. That would be the end of it. And
12 also it strikes me as utter nonsense to say that it's
13 going to be either the ISO or the PUC. What are we
14 supposed to do, have a race to this as far as who is the
15 generator who lobby the best? It's either got to be one
16 or the other or it's got to be both. But it shouldn't
17 be the opportunity for somebody to find the particular
18 board at a particular point in time they can lobby
19 better where, for example, the ISO has a different view
20 or ISO management has a different view. So let's have a
21 nonmoving target. Either it's both or it's one, and if
22 you want it to be one, that's fine.

23 Finally, Rich, the view of this is that this
24 committee really is kind of irrelevant because all we're
25 going to do is kick it upstairs to the PUC and then they
26 get to decide de novo. That's okay with me. I don't
27 care. But please go back to Senator Burton and tell him
28 that this committee has no role and that really this is

1 just a funnel to the PUC. And respectfully, please
2 don't waste any more of my time. You know, I have a lot
3 of other things to do. The ISO has a lot of other
4 things to do than sit around and pretend they're
5 deciding something when all we're really doing is
6 kicking it up to the PUC to go decide de novo.

7 If that's the case, if that's what this
8 legislation does, that's fine with us. Then let us out.
9 We'll just not vote on each of the things, and Carl and
10 Glenn can decide instead of the PUC and Carl can decide
11 again. That would be okay with me. But I think that
12 the net of all this is that procedurally I find it very
13 disturbing and I think inappropriate. And
14 substantively, I find the net effect of this is to
15 basically to eliminate the legislation. And I didn't
16 write this legislation, and it wasn't my idea, but there
17 were some legislators who had an idea, and I don't think
18 they envisioned that this particular committee would be
19 useless or that the whole process we were engaged in is
20 simply finding a way to defer and genuflect to already
21 existing regulations. I mean if that was the idea, they
22 didn't need to do that. The generators already have to
23 follow already existing regulations.

24 So you know, I'm going to suggest that we
25 start again. I'm also going to suggest that if you are
26 really just going to do something that says we don't do
27 anything and you're just going to kick it up to the PUC,
28 then I'll abstain. You can just move on without me.

1 But if you want real -- we don't want to do something.
2 We need to revisit what Senator Burton and the other
3 folks said. I remember when this legislation was
4 passed, there was a lot of concern. Senator Mignon and
5 a couple of others had significant concerns.

6 So that's where the ISO is on this and that's
7 where we are. And we would propose, Mr. Chairman, that
8 this whole thing be deferred to a date later and that we
9 don't select a date until the staff figures out whether
10 this is a meaningful process or if it's just a kicking
11 upstairs process. And if it's that, let's just do it by
12 consent to kick something upstairs so we don't have to
13 waste everybody's time.

14 COMMISSIONER WOOD: I concur with a lot of what
15 Mr. Kahn said. I would like to -- I don't think you
16 actually made a motion yet --

17 MR. KAHN: I didn't.

18 COMMISSIONER WOOD: -- to do anything with this.
19 And I would like to perhaps have a little more
20 discussion here among the committee members about this
21 and then proceed to take whatever action or inaction
22 that we decide to take. Do you have any comments?

23 MR. BJORKLUND: Well, I do. I think Michael was a
24 little surprised at the extent of the change from the
25 June 7th proposal to what we got over the weekend. And
26 although it's -- perhaps after studying it, it might be
27 shorter and clearer and more to the point, I've got to
28 say that as a -- with my utility background on the

1 absolute requirement that no generation facility shall
2 be retired or put into storage kind of jumps right out
3 at me. And if there's some reason for that, it's not
4 apparent here. And I would have a hard time agreeing
5 with this GDS No. 4 with that sentence the way it's
6 structured.

7 If there's a concern about taking a facility
8 and putting into mothballs or cold storage without
9 conversation or without the ISO's concurrence or without
10 consulting with them, that's one thing. But to say that
11 the ISO and the PUC declares that no -- or the PUC
12 declares that no facility can be retired or put into
13 storage hit me as a little dogmatic.

14 I had the same question that others had on the
15 paragraph (c). What does it mean? I was lost by it and
16 whether or not who is the authority that would make
17 this.

18 As far as (b) was concerned, it's probably a
19 little clearer than the wording in the June 7th
20 proposal, but I would say that based on the three parts,
21 (a), (b) and (c), I could not vote favorably on that
22 because of the reasons that I just gave you.

23 MR. CLARK: Well, obviously I was under the
24 impression that this had been vetted through all three
25 of you individuals. Apparently that has not occurred.
26 And let me just say, Mr. Kahn, in response to your
27 concerns about how staff viewed your role and that sort
28 of thing, either I misspoke or there was a

1 misunderstanding. My comments were primarily to getting
2 more input from the generator community in terms of
3 whether or not there was a conflict with the ISO
4 tariff.]

5 Having -- and I made that comment in terms
6 of -- with the understanding that I thought that you
7 folks had reviewed this. It would appear that perhaps
8 we've had this meeting a bit prematurely or that the
9 draft didn't go out in enough time for you to prepare
10 for this, and for that I apologize.

11 MR. KAHN: You don't have to apologize, Rich. You
12 have done a good job all throughout.

13 But in terms of venting, we got the June 7th
14 draft. I worked it in my shop. And we had some
15 problems with it, but we were prepared to figure out
16 what to do about that. And then the July 7th draft
17 hit -- and the July 2nd draft hit, and there wasn't an
18 opportunity to deal with this. And I literally haven't
19 been at my desk since last Thursday. I cut a vacation
20 short to come back to do this under the assumption that
21 we were doing the June 7th draft and there was some
22 feeling we wanted to get rolling. We are where we are,
23 which is, I think, we should start again.

24 I think Glenn has put his finger on an issue,
25 and I think that I would suggest you spend some time
26 with the ISO staff. We have looked into the issue of
27 whether there is authority of anyone to order a plant
28 not to retire, and that's a pretty dicey issue.

1 Regardless of what my personal view of how it should be,
2 there is a question of authority.

3 And, like I said, I would suggest you talk to
4 Phil Pettingill about this because we have looked it
5 through and, you know, I don't want to prejudge the
6 issue, but I do think the generators who say you can't
7 do this -- and Mr. Bjorklund's instinctual reaction that
8 that can't be done may have some basis in law. And I
9 think we do a very bad service to the State of
10 California if we enact something that we think is of
11 questionable validity. We're better off, and I would
12 suggest we should -- if this is an issue you think is
13 important, frankly, I think it is important -- we should
14 go back to the legislature and tell the legislature we
15 don't have the authority; we don't have it. If you
16 construct an argument that we do have the authority, you
17 know, that's fine, too.

18 I have had recent experience with the idea
19 that the entire generation community could be wrong
20 about FERC's jurisdiction and authority about things
21 like governance, so maybe they can be wrong on other
22 things.

23 But I think (a) we ought to go back -- I
24 suggest you sit down with Pettingill and Greenleaf and I
25 would like a legal opinion from you folks. If you think
26 you can do this, I'm willing to arm wrestle with Glenn.
27 If you don't think you can do it, it's questionable,
28 let's not pass it and let's go back to the legislature

1 and tell them why and maybe the whole California
2 legislature can deal with it, maybe FERC preempted it.
3 If it is, it is.

4 As to (a), I think we should do a really
5 significant legal shakedown.

6 As to (b), it is on sync with our tariff and
7 you have to sit down. The PG&E person was just
8 completely correct.

9 And as to (c), you know, I just am baffled as
10 to where it starts and where it goes. That doesn't mean
11 I'm right. It just means I don't get it, and I would
12 like you to spend some time with the ISO on that if you
13 want to continue it through.

14 MR. CLARK: Thank you.

15 COMMISSIONER WOOD: I very much agree that section
16 (a) we ought to consult with the ISO as to what legal
17 research they've done and what views and insights they
18 have as to where the legal authority is.

19 I also agree with the previous comments. I
20 think the either or is not sufficient. If we go forward
21 with this provision, then it should require a finding by
22 both agencies. Otherwise, there's going to be some
23 forum shopping in the event that somebody wants to shut
24 something down.

25 I think we also need to look into the question
26 that was raised by PG&E about the -- about whether FERC
27 has occupied the field on hydroplants, and I don't know
28 if that's an issue that has been looked into by staff

1 but certainly it ought to be.

2 The -- I think that some of what was implied
3 in Chairman Kahn's earlier comments is some of the staff
4 work was more responsive to pressures within the
5 Commission than coming from this committee. And since I
6 was involved in some of the discussions, I can confirm
7 that I think that was true. And I think as -- Mike, as
8 you have correctly observed, that was not the intent of
9 the legislature. And I argued this at the Commission
10 around -- it's questionable to me whether the Commission
11 even had the right to remand this to this committee, but
12 it did, and so here we are dealing with it.

13 But I think this committee does have an
14 independent function. The legislature assigned us the
15 responsibilities of establishing some standards and
16 rules, and the Commission's role in this is limited to
17 adopting the rules and then implement then and enforcing
18 them. And I think that line has to be maintained, and
19 it's appropriate to raise it very sharply, I believe.
20 And I say that as the one person who sits on both
21 decision making bodies, but I think it makes a farce of
22 this committee if we don't recognize that there's a
23 break line.

24 And, frankly, both the clear language and
25 logic of the legislation as well as the history makes it
26 very clear that this committee was intended to have a
27 role that was distinct from that of the Commission. And
28 there was actually a desire to keep the Commission from

1 having certain jurisdiction and authority and to put it
2 into this committee which included representation,
3 especially from the ISO, and it would be inappropriate
4 for us or for the Commission to ignore that directive
5 from the legislature.

6 I think that section (c) frankly was an
7 attempt to address a potential takings argument, and I'm
8 not at all convinced it is needed. But I think that's
9 why it's there. And maybe if it's not need, it
10 shouldn't be there.

11 But, here again, I think that's perhaps more
12 of a Commission concern than one that has been raised in
13 this committee. It's completely appropriate for the
14 committee to decide whether it wants to see it there or
15 not.

16 MR. KAHN: Don't we have a sunset?

17 COMMISSIONER WOOD: We do.

18 MR. KAHN: I, especially in light of the fact that
19 Commissioner Wood's term expires, I think Commissioner
20 Wood's point is really an important one about roles and
21 functions here. And I think we need some leadership
22 from staff that we can look at.

23 If what has happened in fact is that we were
24 recommending that things were being considered de novo
25 and the PUC has decided at a minimum we need to report
26 that to the legislature and tell them, that's the way
27 it's worked out. If that's the way they want to work
28 it, if that's the way they want to do us, I know my

1 folks in the legislature will question the need for us
2 to do this or at least for me via ISO to participate.
3 If that's not the way it is supposed to work and
4 legislation wants ISO to have a role here, that's fine.
5 But then I would like for you guys -- the legislature to
6 make that clear so we don't go through this again.

7 We don't have the mechanism to articulate
8 this, so I would appreciate, Mr. Chair, if it's okay
9 with you, if the staff can memorialize what's happened
10 historically and report back to the legislature so we
11 can have a clear record if there's a consideration in
12 reinstating this.

13 COMMISSIONER WOOD: Let me suggest that the staff
14 is in a particular situation because it answers to two
15 masters and only one of them pays their salaries, which
16 is the Commission, which might make it -- put the staff
17 in a somewhat difficult situation.

18 What I would suggest is the Commission staff,
19 your staff perhaps work together on this project.

20 MR. KAHN: That's fine with me.

21 Rich, you can work with Phil?

22 And if somebody is worrying about saying it
23 from the mouth of people who have two masters, we have
24 200 masters. We're really daunted.

25 So I just -- what I don't want to happen is
26 the ISO to create a history of this that is not
27 consistent with your recollection, Rich, because you've
28 been really at the center of all this, and I want to be

1 faithful to it, so whatever you and Phil agree has been
2 the history of this.

3 If a more appropriate mechanism of reporting
4 to the legislature is the ISO, we can -- we were
5 consulted very heavily in the original legislation, and
6 we were very passive about it, even suggesting it was
7 okay with us if we didn't have a role. But that feud
8 did not succeed, and now we have some experience, and I
9 want to be sure that's shared. And I also want to be
10 sure that the ISO doesn't participate in something that
11 really isn't beneficial.

12 MR. CLARK: Okay.

13 COMMISSIONER WOOD: So going forward if you can
14 work on that project, work on a redraft of this
15 provision. And I think it's very clear that we want you
16 to do it in close consultation with the ISO staff, and
17 also I think that it's important to keep Mr. Bjorklund
18 in the loop on this. He doesn't have a staff. But to
19 the extent he is willing to do it, then, you know, very
20 likely you could have some three-way conversations,
21 which are impossible for me and Mike Kahn to be involved
22 in directly.

23 MR. BJORKLUND: I would also like to get the legal
24 interpretation of the requirement that no generation
25 facility may retire to put into storage and then also
26 the reason for it. First of all, can we or can we not
27 legally require that? And then if we can, why do we
28 want to do that? I think those two things are important

1 just from the logic and from the legality.

2 MR. CLARK: I can certainly give you my thoughts
3 right now, if that's what you're asking for. Are you
4 asking for a separate conversation in terms of that or a
5 memo?

6 MR. BJORKLUND: Doesn't matter.

7 MR. CLARK: Essentially, it's grounded in 362(b)
8 of the Public Utilities Code which was added pursuant to
9 SB 39xx and gives us, the PUC, a clear role in
10 determining and maintaining the reliability of
11 generation facilities, divested generation facilities
12 primarily; that they're operated in a way that is
13 consistent with the reliability needs of the people of
14 the State of California. So that's where the thought
15 springs from for this particular rule.

16 So that's essentially the legal underpinnings
17 for this conversation.

18 MR. BJORKLUND: Let me ask you a question: Are
19 you talking about the divested assets, or are you
20 talking about all generation assets in the state? If
21 ABC Company builds a cogeneration or a combined cycle
22 unit or whatever you want to call it someplace and then
23 decides at a later time that it's not economical, that
24 it's not meeting the objectives the shareholders had
25 when they put the money up to build this that they
26 cannot shutdown or retire their own asset and that they
27 are obliged to keep it running even though it's not
28 economical? So you've got the two things where you've

1 got the divested assets is one but what about the
2 entrepreneurial assets.

3 MR. CLARK: We're talking about the divested
4 assets because that's what 362(b) says.

5 MR. BJORKLUND: I'm sorry.

6 MR. CLARK: Because that's what 362(b) talks about
7 is the divested assets, divested generation facilities.

8 MR. BJORKLUND: Yes. But we're talking about this
9 committee's responsibility to be more than divested
10 assets, are we not?

11 MR. CLARK: That's correct. And I would say that
12 in terms of -- in response to the second half of your
13 question is that -- I think it covers this issue which
14 is why do we need this rule. And the reason we need
15 this rule is so that we maintain the reliability that
16 generation facilities are available to the people of the
17 State of California to meet the needs of the State of
18 California and maintain the reliability that SB 39xx
19 requires that we do.

20 And, as you know, direct evidence of the need
21 for this particular provision is the fact that there
22 have been facilities that have been mothballed without
23 any prior knowledge to the PUC or to the ISO, as far as
24 we can determine. And that's problematic and is an
25 issue that we have attempted to address in General Duty
26 Standard No. 4 here and is essentially the core of
27 General Duty Standard No. 4.

28 And I think Mr. Kahn nailed it earlier when he

1 said, with the first comments, if we took out the first
2 clause, the first sentence in paragraph (a) we've
3 eviscerated the entire general duty standard and the
4 need for the committee, quite frankly, if we can't
5 maintain generation facilities and operation to meet the
6 reliability needs.

7 MR. KAHN: Rich, from -- maybe I should address
8 this to Glenn.

9 There are two ways on to look at this. One
10 way to look at it is from a private property standpoint.
11 From a private property standpoint it's horrifying that
12 somebody would own five plants and would decide that
13 they want to shut them down and the government would say
14 you can't do that. So that's one perspective.

15 That does not seem to be the view of
16 legislature, and it wasn't the view of the last
17 governor. I don't know this governor's view. Because
18 we could have a situation where there were five plants
19 and they're working fine and dandy and people had a
20 \$100 million investment in them and they were getting a
21 return on equity of 10 percent a year, but the people
22 who owned the plants decided, well, if we sell the
23 plants to somebody else or sell the land for another
24 use, if we decide to sell the land for another use we
25 could make more money, put hotels on all that land.
26 It's our private property, why can't we shutdown the
27 five plants and build hotels. The legislature's view of
28 that, I think, is the portfolio of generating assets in

1 the state is a state asset, and they are very concerned
2 about that.

3 So I think we don't make the policy. We're
4 supposed to be implementing it. And I think the policy
5 of preventing somebody from without restriction making
6 whatever use they want of their private property that
7 should sale. The presumption of this committee was that
8 we are going to interfere, and we are going to make
9 rules and regulations.

10 I also think that the -- we are at a cusp of
11 an issue here. What is the extent of the authority of
12 the state. Because that's all we are is an artifact of
13 that state. What is the extent and authority of the
14 state to tell generators they have to keep their plants
15 running under any condition.

16 There is a due process issue, deprivation of
17 property without due process, but that has a relatively
18 low constitutional threshold, and nobody is arguing they
19 want to bankrupt the generators. We tried it with the
20 utilities and it didn't seem to be very success. That
21 issue is a nonissue really of whether or not there is
22 some compensation for that.

23 But the issue of what the terms and conditions
24 are -- and for these folks who they have to negotiate
25 with. They want to close the plant down. Is it just
26 FERC, or is it like in the hydro example that PG&E
27 raises? Is it just FERC and pursuant to FERC process or
28 does the state get to play or not.

1 What I'm interested -- Rich has suggested what
2 he thinks is the authority, and I would like to drill
3 down as hard as we can on that so we can get a view and
4 parse the part of the hydro and deal with the ISO. The
5 ISO is very concerned about this issue from the
6 perspective of -- that you articulated. And once we
7 figure out -- if these folks say that it's legal, we can
8 do this, I don't think we have a choice. I don't think
9 it's a matter of deciding, the three of us deciding not
10 to do this. We are on a committee that's supposed to
11 implement the legislative policy. The legislative
12 policy is to limit the amount of closures and activity
13 with the generation facilities. The question is whether
14 any of that is legal. There's difficult issues.

15 MR. BJORKLUND: But it was the legislative policy
16 just for the divested assets or for all assets in the
17 state?

18 MR. CLARK: That is the cusp of the issue, sir.

19 MR. BJORKLUND: I'm sorry.

20 MR. CLARK: That is the issue. The statute
21 clearly says, with regard to divested facilities
22 disposed of pursuant to Section 851, divested
23 facilities, but the statute itself in other ways and in
24 its general concept seems to extend the desire of the
25 legislature and governor at the time that we assert that
26 same sort of authority over nondivested utilities also.
27 That's the issue, very difficult issue.

28 MR. KAHN: And asset by asset there may be

1 external limitations. There's a preemption, like the
2 hydro issue or other issues. There may be nuclear
3 preemption for all I know. So we've got to figure out
4 the legals of it. And once we do, we have to figure out
5 how we're going to assert authority. It's not for us to
6 decide whether it's a good idea or not.

7 In the wake of the electricity crisis, the
8 legislature decided that this was an important thing to
9 do, and, you know, there were -- I think this staff here
10 and the committee has been very solicitous of the
11 generators, and I think it's a good thing.

12 I personally am most concerned about the
13 generators understanding what the regulatory framework
14 they have to live with is. I don't think it's fair or
15 appropriate for them to have to guess or, you know,
16 negotiate whether it's the PUC or the ISO or FERC or
17 somebody else. I really think that's very important.
18 That kind -- at that point my sympathy switched to the
19 other side. I tend to be more on the side of whoever is
20 the regulator because we had some bad experiences, and
21 now I think no one in the State of California, I think,
22 is really enthusiastic for signing up for the Trust Me
23 Plan. We did that last time, and that turned out, I
24 believe, to make some people feel foolish. Let's figure
25 it out with the regulators. And if that's us, let's
26 start regulating; if not, let's tell the legislature we
27 can't do it.

28 COMMISSIONER WOOD: Seeing no further comment, is

1 there agreement that we're going to remand this item to
2 staff for further work?

3 I don't see any objection, so that's order.

4 MR. KAHN: I know you'll work with myself, and I
5 know you work for the PUC. I think that Commissioner
6 Wood -- I just want to -- you need to -- Mr. Bjorklund
7 does not have hundreds of people that can help him, and
8 you need to spend some time with him and help him. It's
9 not fair that we have resources and he doesn't.

10 MR. CLARK: Okay.

11 COMMISSIONER WOOD: Do you want to update us on
12 other activities?

13 MR. CLARK: Yes, please.

14 I would like to take a few moments and update
15 you on the status of the log book standards for thermal
16 and hydroelectric facilities, the maintenance standards,
17 operating standards, and a couple items on training that
18 we're doing for staff.

19 But first, I would like to take the
20 opportunity to introduce you to the newest member of our
21 staff, Chloe Lukins, hear on my far left who is now the
22 program and project supervisor for the unit, the
23 electric generation unit, and she then is second in
24 charge right behind Mark Ziering. Mark is in Australia
25 by the way, and I may never forgive him for that.

26 COMMISSIONER WOOD: He's setting the electrical
27 system there, right?

28 MR. CLARK: Sure. That's exactly what he's doing.

1 Solar energy primarily, I believe.

2 In terms of the log book standards for the
3 thermal and hydroelectric energy facilities, we have
4 received the certifications from approximately
5 80 percent of the applicable generating -- the thermal
6 energy facilities and from 95 percent of the applicable
7 hydroelectric facilities. We're sorting through those
8 trying to find out whether there are incomplete
9 responses and the extent to which they may be incomplete
10 and are working with trying to get the certifications
11 from the balance of the generating facilities.

12 With regard to the maintenance standards, we
13 have been receiving the certifications from the
14 generating facilities for the maintenance standards and
15 we're going through them. It's a fairly time consuming
16 process since it's a much more detailed certification
17 response than the log book standards or certification
18 process.

19 On the operating standards, we're running
20 behind where we thought we would be when we were here
21 and talked with you in April, primarily having to do
22 with the -- getting the work product back from our
23 contractor in a timely manner. We got it back after our
24 last meeting here in April. We've had to do a fair
25 amount of work with regard to -- not the standards
26 themselves, because the technical standards themselves
27 appear to be quite good, but in terms of eliminating
28 redundancies between maintenance standards and operating

1 standards and putting them in the same sort of format --
2 a lot of formatting and rewriting work to make things
3 clearer and to achieve the goal that Mr. Kahn talked
4 about a bit ago, which we thoroughly embrace, which is
5 clarifying the expectations for the generating community
6 so that they can know what the rules are, we can know
7 what -- our staff can know what we expect of the
8 generators, and we can get on with generating facilities
9 or generating electricity.

10 With regard to -- let me just say that next
11 week on the operating standards we have a meeting set up
12 with Rod --

13 MS. KERSTEN: Wheeler.

14 MR. CLARK: -- Wheeler of your staff, Mr. Kahn, to
15 have him begin the technical review with the ISO. I
16 expect my staff will have to me by the end of this
17 month, by July 31st, a very, very complete first draft
18 or more than just a first draft of these operating
19 standards that has been -- that's gone through
20 Mr. Wheeler's scrutiny and will be ready for -- to be
21 put out on the street -- well, we need to hold some
22 workshops with the generators and get some of their
23 initial feedback from that, and then we'll be ready to
24 present it to the committee and put it out for formal
25 comments and that sort of thing probably in the mid to
26 late August time frame.

27 We're extremely cognizant of the fact that
28 this committee sunsets January 1 of 2005. We have a lot

1 of work to do between now and then, but I think that we
2 can get it done -- well, I know that we can get it done
3 before January 1, 2005.

4 With regard to training, we will be -- on July
5 13th the ISO will be training us on their database and
6 utilization of that. We finally, finally, finally, got
7 the confidentiality issues ironed out there. And we'll
8 also -- or we just did complete, all of our engineers
9 and supervisors went through several days of training
10 with regard to how to accomplish the audits and
11 inspections and the investigations, and we expect that
12 the official audits on the maintenance standards will
13 begin sometime around the first part of August. That
14 will be the planning and preparation phase, which is the
15 incredibly important part of doing these audits. They
16 have to be thoroughly planned so we can go out, get what
17 we need and come back.

18 We're looking at probably beginning those in
19 mid August, the actual visits in mid August. There may
20 be some slippage in that, of course, due to the fact
21 that we're working so hard on getting the operations
22 standards out, so that may delay our actual on site
23 audits a bit, but we hope not. That's in my report.

24 If you have any questions, I'll be happy to
25 answer.

26 MR. BJORKLUND: Rich, you mentioned the compliance
27 of the log book standards, which sounds like it's pretty
28 good. What numbers do you have for the thermal and

1 hydro for maintenance? Are you getting --

2 MR. CLARK: We're getting those in, so we're just
3 tallying those at this point.

4 MR. BJORKLUND: Is there a response --

5 MR. CLARK: Do you know what those numbers are?

6 MS. KERSTEN: For -- we don't have them for
7 maintenance, but for hydro and thermal they're listed
8 there.

9 MR. CLARK: I gave you those stats in terms of --

10 MS. KERSTEN: The gross numbers are there at the
11 top.

12 MR. CLARK: Did you have questions about the
13 log -- but your question --]

14 MR. BJORKLUND: I understand the log. I'm just
15 saying, what kind of response are you getting on the
16 compliance with the maintenance standards?

17 MS. KERSTEN: We don't have it tallied yet. We
18 just got them. The reply period was 45 days after the
19 effective date of the GO. So we just got them a short
20 while ago, and they're still in the process of being
21 tallied.

22 COMMISSIONER WOOD: Can you, as you soon as you
23 get a tally, can you provide Glenn with that
24 information?

25 MS. KERSTEN: Yes.

26 COMMISSIONER WOOD: Any other questions or
27 comments?

28 MR. BJORKLUND: The compliance is what we're all

1 about, and in all the work that's been done, I'd be just
2 interested to know whether or not we're getting shined
3 or whether we're trying to meet a commitment.

4 MR. CLARK: Well, if the filing and certification
5 on the logbooks is any indication, I think people are
6 trying to comply. Again, the compliance with
7 certification on maintenance is more detailed than for
8 logbooks. So it's taking longer.

9 COMMISSIONER WOOD: Okay. The next item is
10 setting the next committee meeting date. I would
11 suggest that rather than try to do that here that we do
12 it by staff contacting the members of the committee and
13 developing some sense of when the new iteration of the
14 proposed standard is going to be ready and also if
15 there's any other business that's going to need to come
16 up for the next meeting.

17 MR. BJORKLUND: I can give Colette the dates that
18 I'm not going to be available.

19 MS. KERSTEN: Give me your schedules, and I'll be
20 happy.

21 MR. KAHN: That's fine. And you don't want to see
22 my schedule. I am not comfortable with the process in
23 which I'm sent something and my staff deals with it and
24 it's changed. I don't care how long you take. Take
25 whatever time you need, do whatever you need to do.
26 That's fine. But when you send it and you want us to
27 consider it and that's what we're going to consider,
28 absent some really exigent circumstances, I don't want

1 it changed, and then if it's changed, I want to be sure
2 that all three commissioners have vetted it and the
3 stakeholders won't be able to come here and say, "This
4 isn't fair. I haven't had a chance." So whenever you
5 do it, that's fine, but please, in some fashion honor
6 those rules or, at least for me, I won't be able to cope
7 with it.

8 MR. CLARK: I hear you loud and clear.

9 COMMISSIONER WOOD: Okay. Any further business?

10 (No response)

11 COMMISSIONER WOOD: Seeing none, I'll take a
12 motion to adjourn.

13 MR. KAHN: So moved.

14 MR. BJORKLUND: Second.

15 COMMISSIONER WOOD: All in favor. We're
16 adjourned. Thank you.

17 (Whereupon, at the hour of 2:38 p.m.,
18 this meeting was adjourned.)

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