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ATTORNEYS AT LAW

PLEASE RESPOND TO:

P.O. BOX 8130

WALNUT CREEK, CALIFORNIA 94596-8130

101 YGNACIO VALLEY ROAD, SUITE 450  
WALNUT CREEK, CALIFORNIA 94596-4094

TELEPHONE (925) 295-3300

TELEFACSIMILE (925) 946-9912

January 17, 2003

NEW YORK  
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Writer's Direct Contact  
(925) 295-3450  
PHanschen@mof.com

## *By E-Mail and U.S. Mail*

California Electricity Generation Facilities Standards Committee

Commissioner Carl Wood, Presiding Officer  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Mr. Michael Kahn, Committee Member  
275 Battery Street  
23rd Floor  
San Francisco, CA 94111

Mr. Glen Bjorkland, Committee Member  
7642 Sweet Pea Way  
Palm Desert, CA 92211

Re: Comments of AES Alamitos, LLC, AES Huntington Beach, LLC, and  
AES Redondo Beach, LLC on Draft Generation Maintenance Standards

Dear Members of the California Electricity Facilities Standards Committee:

In accordance with the schedule adopted at the December 20, 2002 meeting of the California Electricity Generation Facilities Standards Committee ("Committee"), as subsequently modified by the January 7, 2003 e-mail from Administrative Law Judge ("ALJ") Timothy E. Sullivan, AES Alamitos, LLC, AES Huntington Beach, LLC and AES Redondo Beach, LLC (hereinafter jointly referred to as "AES") provides its comments on the Draft Generation Maintenance Standards ("Draft GMS") that were attached to ALJ Sullivan's December 19, 2002 Ruling.<sup>1</sup> In submitting comments to the

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<sup>1</sup> As was pointed out by the Independent Energy Producers Association in its January 3, 2003 e-mail to ALJ Sullivan, there is some confusion regarding which draft of the GMS parties should comment on in that the draft distributed at the December 20, 2002 Committee meeting is not the same as the draft attached to the December 19, 2002 Ruling. In accordance with ALJ's January

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Committee and participating in the Committee's proceedings, AES does not consent to California Public Utilities Commission ("CPUC" or "Commission") jurisdiction over it or, in any way, waive its right to challenge the authority of the CPUC to name it as a respondent in CPUC proceeding R.02-11-039.<sup>2</sup>

AES' comments on the Draft GMS are of two types: First are comments that generally address the Draft GMS; second are comments that address specific Generation Maintenance Performance Standards ("Standards"). As a general proposition, AES will not address the specific Assessment Guidelines that are set forth under each of the eighteen (18) Standards and further expanded upon in Appendix A. Rather, AES's comments will focus on its interpretation of SBX2 39, the legislation underlying the Draft GMS, and its understanding of the general intent of the Standards.

## **I. General Comments**

### **A. The Draft Standards do not Comport with the Provisions of SBX2 39.**

AES has reviewed the Draft GMS to determine if it comports with the requirements of SBX2 39. While our review has not been exhaustive, the Draft GMS fails to comply with certain provisions of SBX2 39. For example, the Draft GMS fails to consider Public Utilities Code ("PU Code") Section 761.3, which was added by SBX2 39. That section requires that in developing maintenance standards, the Committee take into consideration generation facilities scheduled for retirement, valid warranties on generation facilities and the operational authority of the Independent System Operator ("ISO") as prescribed in the standard Participating Generator Agreement and applicable sections of the Federal Energy Regulatory Commission's ("FERC") approved ISO tariff. Our review has shown no specific consideration of these statutory requirements. The Draft GMS fails to explain how it legally interfaces with the ISO and the ISO's FERC approved tariff provisions in a manner that satisfies FERC preemption considerations. This matter must be addressed.<sup>3</sup> In addition, the Draft GMS must address and accommodate certain specific factors, i.e. retirement and valid warranties that impact generating assets differently.

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7, 2003 directive, AES' comments are based upon the draft of the GMS that were electronically attached to ALJ Sullivan's December 19, 2002 Ruling. AES reserves the right to comment on any subsequent revisions to the GMS proposed by the Committee.

<sup>2</sup> See Section 1 of Special Appearance of AES, which was filed with the CPUC on December 12, 2002 in R.02-11-039.

<sup>3</sup> This would not be an idle exercise. There are over-riding FERC preemption considerations that must be taken into account. Furthermore, AES is concerned that there may be specific conflicts between the GMS and ISO tariff or proposed tariff provisions, such as the ISO's enforcement protocols.

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Similarly, the Draft GMS fails to explain how it takes into account the provisions of PU Code Section 761.3 (f) with respect to modification, delay, or abrogation of any deadline, standard, rule or regulation adopted by a federal, state, or local agency for the purpose of protecting public health or the environment.

Furthermore, as discussed in more detail below, certain of the CPUC's audit and verification procedures may violate Section 761.3 (b)(1). Under the procedures set forth in Section 3 of the Draft GMS, Verification and Audit Process, the CPUC may devise certain standards and criteria that it will use based on the raw data and other information that it receives to determine if there has been a deterioration in maintenance standards.<sup>4</sup> This approach is contrary to the mandates of Section 761.3 (b)(1) which directs the Committee to draft the standards and criteria and relegates the enforcement of those standards to the CPUC. Section 3 of the Draft GMS suggests that the CPUC will have its own criteria and standards to determine if there has been a deterioration in maintenance standards.

**B. The Committee Should Clarify that the Standards are Broad Statements of Principle That Can be Met in Various Ways.**

The Draft GMS notes that the eighteen Generation Performance Standards generally are fundamental organizational and functional standards required to effectively maintain a generating asset. The Draft GMS recognizes that these broad statements of principle are applicable to most plants, but also recognizes that there may be situations where they are not applicable.<sup>5</sup> Generally, with certain specific modifications noted in Section II of these Comments, AES is in agreement with the intent of the Standards.

While AES generally agrees with the Standards as broad statements of principle, it has two concerns. First, the Committee must clarify that compliance with the intent of the Standards can be met in many various ways and that the Generating Asset Owner ("GAO") should be allowed to determine how it can best comply with the intent of the Standards. In this regard, the Committee should clarify that the Assessment Guidelines set forth in the Draft GMS are simply guidelines and not mandatory requirements.

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<sup>4</sup> Section 3 also states that the section describes the methods employed to provide the assurance that maintenance programs, which meet the performance standards approved by the CPUC, are being carried out by generation asset owners. (Verification and Audit Process, Section 3, p.3) It is AES understanding that the Committee will adopt the standards and that they do not have to be approved by the CPUC.

<sup>5</sup> Generation Maintenance Performance Standards & Assessment Guidelines, Section 1, p. 6.

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Second, the Committee should make explicit that the manner in which a GAO complies with the intent of the Standards will reflect and take into account the individual nature of the specific generating asset and its particular unique circumstances.

- 1. The GAO should be allowed to ascertain the manner in which it will comply with the Standards; the Assessment Guidelines are simply guidelines and not requirements.**

The Draft GMS overview indicates that the Assessment Guidelines are intended to provide a sense of the breadth and depth of the specific Standard, but that different approaches can be utilized to meet the Standard.<sup>6</sup> They are not intended to be an exclusive set of criteria to demonstrate that a Standard is being met.<sup>7</sup> Rather, "Generating asset owners may use different approaches to meet a standard."<sup>8</sup> AES agrees with this statement and believes that the Committee should make absolutely clear that the intent of the Standard can be met in numerous ways and the manner and methods that the GAO employs to comply with the Standards are matters left to the GAO. In this regard, the Committee should clarify that the Assessment Guidelines are simply guidelines and not mandatory requirements; each individual Assessment Guideline does not have to be satisfied. The Draft GAO should stress that the important part is the fact that the intent of the Standard was achieved and not the method by which it was achieved.

AES believes that such a clarification is needed because there are contradictory statements within the Draft GMS on how the Assessment Guidelines will be used. For example, while the overview indicates that the Assessment Guidelines will "facilitate" evaluation of the performance of the organization,<sup>9</sup> it also directs that they will serve as the "audit benchmark".<sup>10</sup> Furthermore, as discussed later, these concerns are heighten with the proposed intermediate audit and verification process.

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<sup>6</sup> Generation Maintenance Program Overview, p. 4.

<sup>7</sup> *Id.*, p. 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, p. 6.

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## **2. Implementation of the Standards must be considered in light of the specific nature of the generating facility and its commercial obligations.**

As noted above, SBX2 39 mandates that the Standards take into account certain considerations, i.e. scheduled retirements, warranties, ISO requirements, FERC requirements and local and state rules. Other factors, including both physical factors and commercial factors, also bear on the assessment of maintenance Standards. It is imperative these factors also be taken into account in determining appropriate actions for the implementation of the intent of the Standards. Thus, in determining the GAO's compliance with the Standards, it is necessary to take into account such factors as commercial arrangements, contractual and lender obligations, ISO RMR contracts and state and federal law which affect the manner in which the particular generating unit will operate and the GAO complies with the Standard. These must be taken into account and will vary significantly among GAO.<sup>11</sup>

## **3. The Committee should include an expanded "Intent" section in the GMS.**

AES recommends that the Committee incorporate a new "Intent" section within the GMS. This section would direct that the Standards are broad statements of principles, the intent of which are to be achieved; that these Standards must be considered in light of the specific circumstances surrounding each generating asset; that GAO can best determine the method of compliance with the intent of the Standard; and that the Assessment Guidelines are not requirements, but are, in fact only guidelines.

In this regard, AES is concerned that language that seemed to reinforce this concept has been eliminated from the current draft of the GMS. Previous drafts contained the following provision:

When conducting an audit, the ISO auditors shall focus on whether or not the generating asset owner is meeting the intent of the ISO Generation Maintenance Performance Standards, as certified, rather than satisfaction of each and every element of its associated assessment guidelines.

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<sup>11</sup> The draft GMS must provide for this type of diversity to satisfy legal requirements. The fact of the matter is that generating assets have considerable physical differences and operate in different commercial environments. Failure to recognize these differences by adopting an after-the-fact one size fits all approach to maintenance is arbitrary and capricious and could result in a taking of the GAO's property and interfere with its contractual commitments.

AES strongly suggests that this language be once again added to the GMS.

**C. The Draft Generating Maintenance Standards use Contradictory and Subjective Terms that can Lead to Confusion in Application and Enforcement.**

The draft GMS frequently uses contradictory descriptions of measures for implementation, or descriptions that do not have accepted or agreed upon definitions for attainment. For example, in defining the Standards and Assessment Guidelines, the Draft GMS uses such terms as "high", "proper" or "correct."<sup>12</sup> The Assessment Guidelines and Appendix A are based on "Best Practices"<sup>13</sup>, but that term is not defined, nor is it explained why it is applicable to the present situation. These terms are by their very nature subjective and subject to differing definitions and understandings. Such an approach can only lead to confusion and arbitrary enforcement.

AES recommends that rather than use subjective standards and qualifiers, such as those set forth above, the GMS use the term "appropriate." This standard will allow the GMS to take into account the specific circumstances of the particular generating asset and will acknowledge that different methods can be used to achieve the intent of the Standards.

Furthermore, rather than use a "Best Practices" approach, AES suggests that the Draft GMS adopt a reasonable operator standard. Again, this standard would better take into account the unique circumstances and nature of each individual generating asset. Under a reasonable operator standard, the application of the Standard and the practices, methods and acts engaged in would be considered in light of the particular circumstances of the plant and the facts known or which should have been known at the time of the decision. A reasonable operator standard incorporates good operating practices for the industry, but recognizes that a reasonable act is not limited to the optimum practice, method or act to the exclusion of all others, but rather encompasses a spectrum of possible practices, methods or acts.

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<sup>12</sup> Generation Maintenance Performance Standards & Assessment Guidelines, Section 1, pp. 6-7.

<sup>13</sup> Generation Maintenance Program Overview, p. 4.

**D. There is a Basic Tension Between the Performance Metrics Approach and the CPUC's Desire for Shorter Term Audit and Verification Procedures.**

The Draft GMS asserts that unit performance metrics are the truest indicator of the effectiveness of a maintenance program.<sup>14</sup> These metrics generally look at the performance of the plant over a period of time and compare it to its historical performance. While making this claim, the Draft GMS also states that the CPUC believes that a more timely verification process is needed to provide assurance that generation asset owners are employing effective maintenance programs.<sup>15</sup> Thus, the Draft GMS incorporates a process in which the CPUC will use "additional information or measures derived from the raw data" to provide early warnings that some element of a maintenance program may have deteriorated.<sup>16</sup> The GMS then goes on to state: "The Section 1 Generation Maintenance Program Standards and Assessment Guideline will serve as the audit benchmark against which each maintenance program will be evaluated ...by the CPUC when performing audits."<sup>17</sup>

There are a number of flaws with this approach. First, it is contrary to SBX2 39. SBX2 39 mandates that the Committee and not the CPUC will adopt the standards. Here, however, according to the Draft GMS, based on additional information or raw data, the CPUC can determine that there has been a deterioration in maintenance standards. There is no indication what information or data will be used or the standards that will be employed by the CPUC to make this determination. The criteria and standards to be used by the CPUC must be spelled out and adopted by the Committee.

Furthermore, this approach to shorter term audits and verification procedures is not only contrary to the overall approach which relies on metrics and overall operating performance, but contradicts the Draft GMS statement that different approaches can be used to satisfy the Standards. Here, the CPUC proposes to use the Assessment Guidelines as the "audit benchmark." As noted above, the method by which the GAO complies with the intent of the Standard should be determined by the GAO.

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<sup>14</sup> Verification and Audit Process, Section 3, p. 3.

<sup>15</sup> Generation Maintenance Program Overview, pp. 5-6.

<sup>16</sup> *Id.*, p.5.

<sup>17</sup> *Id.*, p. 6

**E. The Standards Should Use Existing Reporting Requirements to the Maximum Extent Possible.**

Section 2 of the Draft GMS provides for a complex series of new reporting requirements. AES recommends that this process be simplified to rely on existing reports where possible. This will have the effect of making such reports more efficient and timely by eliminating conflicting requirements. For example, Section 2 of the Draft GMS requires certain real-time reporting of events causing changes in availability. Yet, these same types of reports also must be provided to the ISO and FERC. AES recommends that the Draft GMS reporting requirements be modified so that existing information required by the ISO Tariff or GADS reporting be utilized whenever possible.

**F. Confidentiality Agreements and Requirements Should be Worked Out as Part of the GMS.**

The Draft GMS states that the CPUC recognizes the competitive environment in which GAOs operate and that it has a responsibility to hold certain data and information in confidence. AES agrees with this conclusion, but believes that it would be prudent to draft and attached non-disclosure guidelines and model agreements as part of the Draft GMS. The provisions of PU Code Section 583 are not applicable to non-utilities and thus, specific guidelines and non-disclosure agreements are needed.

**II. Comments on Specific Standards**

**A. Standard III A. - Balance of Maintenance Approach**

As discussed above, the Assessment Guidelines should reflect the particular individual circumstances of the generating asset. AES wishes to clarify that in referencing "consideration of economics" in this Standard, the Committee is not referencing any one particular economic paradigm. The economics of each generating facility are different and must be taken into account. In particular, the cost of service economic parameters of a utility owned generating plant may be considerably different than the economics of an EWG.

In addition, Standard III A. is applicable to component facilities owned by the GAO that are an integral part of delivering power to the grid, including fuel supply systems, electrical switchyards, transmission lines, penstocks, flumes, exhaust systems, etc. AES is concerned that this provision may be interpreted to expand the scope of assets that are subject to the Standards and to require maintenance on facilities that are no longer under the control of the GAO. Even if such facilities are owned by the particular generator, it is not unusual for generators to enter into special facilities



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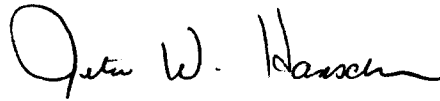
agreements with utilities for the maintenance of such types of facilities. These particular circumstances should be taken into account

**B. Standard IV A. - Maintenance Procedures and Documentation**

AES is concerned that this Standard could be interpreted to require massive amounts of new written procedures, manuals and reports. Again, it is important to stress that the types of maintenance procedures and documentation that are expected under this Standard should be those that one would find employed by a reasonable operator. Having a written procedure for every maintenance task that could possibly affect reliability should not be, and in our opinion is not, a prerequisite to an effective maintenance program. Nor, would a reasonable operator find it to be a requirement.

AES thanks the Committee for the opportunity to comment on the Draft GMS.

Respectfully yours,



Peter W. Hanschen

Counsel for

AES Alamitos, LLC  
AES Huntington Beach, LLC  
AES Redondo Beach, LLC

cc. ALJ Timothy Sullivan (by U.S. Mail and e-mail)  
All Appearances from Initial Service List (via e-mail only)