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January 17, 2003

VIA HAND DELIVERY

Docket Clerk
Docket Office, Room 2001
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: *Rulemaking to implement the provisions of Public Utilities Code § 761.3 enacted by Chapter 19 of the 2001-02 Second Extraordinary Legislative Section – Docket No. R.02-11-039*

Dear Docket Clerk:

Enclosed for filing with the Commission are the original and six copies of the following document:

OPENING COMMENTS OF CALPINE CORPORATION ON PROPOSED MAINTENANCE STANDARDS

We request that one copy be stamped "Received" and given to the messenger delivering this package for return to our office, and that one copy be file-stamped and returned to us in the postage paid, self-addressed stamped envelope provided for your convenience.

Docket Clerk
January 17, 2003
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Please telephone me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

Davis Wright Tremaine LLP



Jeffrey P. Gray

JPG:pr

- cc: President Michael R. Peevey
Commissioner Geoffrey F. Brown
Commissioner Susan Kennedy
Commissioner Loretta M. Lynch
Commissioner Carl W. Wood
Administrative Law Judge Burton Mattson
Administrative Law Judge Timothy Sullivan

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Rulemaking to implement the provisions of Public)
Utilities Code § 761.3 enacted by Chapter 19 of the)
2001-02 Second Extraordinary Legislative Session)

)

R. 02-11-039
(Filed November 21, 2002)

**OPENING COMMENTS OF CALPINE CORPORATION
ON PROPOSED MAINTENANCE STANDARDS**

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January 17, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of Public Utilities Code § 761.3 enacted by Chapter 19 of the 2001-02 Second Extraordinary Legislative Session)
_____)

R. 02-11-039
(Filed November 21, 2002)

OPENING COMMENTS OF CALPINE CORPORATION ON PROPOSED MAINTENANCE STANDARDS

Pursuant to the procedural schedule adopted in Administrative Law Judge ("ALJ") Sullivan's January 14, 2003 Ruling Summarizing Results of the December 20, 2002 Meeting of the California Electricity Generation Facilities Standards Committee ("Committee"), Calpine Corporation ("Calpine") hereby submits its opening comments on the proposed electric generation facility maintenance standards issued on December 19, 2002 ("Draft Standards").

Calpine appreciates the effort the Committee has put into preparing the Draft Standards, and believes that they generally represent industry "best practices." However, Calpine requests that the Committee not adopt the Draft Standards as inflexible requirements, but rather as guidelines to be implemented by each owner in a manner which appropriately reflects the different operational and other characteristics of individual electric generation facilities: To effectuate that goal, the Committee should adopt a collaborative approach, rather than a command and control system.

I. SUMMARY OF PROCEEDING AND CALPINE INTEREST

On November 21, 2002, the California Public Utilities Commission ("Commission") issued an Order Instituting Rulemaking to implement the provisions of Public Utilities Code ("PUC") Section 761.3 enacted by Chapter 19 of the 2001-02 Second Extraordinary Legislative Session ("OIR"). PUC Section 761.3 requires the Committee, composed of one member on the

Commission, one from the California Independent System Operator Corporation ("ISO"), and a jointly selected third member, to "adopt . . . standards for the maintenance and operation of facilities for the generation of electric energy located in the state." PUC Section 761.3(b)(1).¹ The OIR is intended to develop rules for implementing and enforcing these standards.

On December 10, 2002, ALJ Sullivan issued an Administrative Law Judge's Ruling Providing Notice of Meetings of the California Electricity Generation Facilities Standards Committee ("ALJ Ruling"). The ALJ Ruling provides that opening comments on the Draft Standards (to be circulated on or before December 20, 2002) should be filed by January 10, 2003. ALJ Ruling at 4. On January 14, 2003, ALJ Sullivan extended that date to January 17.

The OIR made San Diego Gas & Electric Company, Pacific Gas and Electric Company, Southern California Edison Company and certain generators identified in Appendix B of the OIR respondents. Calpine, while not a respondent identified in Appendix B, owns and operates, through affiliates, electric generation facilities in California.

Calpine is a leading independent power producer and marketer in the United States and abroad. Calpine is committed to providing customers with clean, efficient, reliable electricity, through two cutting-edge technologies: combined-cycle natural gas-fired and geothermal power generation. Calpine currently has approximately 13,000 megawatts ("MW") of electric generating capacity in operation and 13,000 MW under construction in the United States. In California, Calpine currently operates approximately 3,200 MW of capacity and has an additional 3,000 MW under construction.

¹ Qualifying small power production and cogeneration facilities are exempt from the provisions of PUC Section 761.3, except as otherwise provided in Section 761.3(d)(2).

II. THE DRAFT STANDARDS SHOULD INCORPORATE SUFFICIENT FLEXIBILITY TO ACCOUNT FOR DIFFERENT GENERATOR SITUATIONS

As a result of the opening of wholesale electric markets, Calpine has undertaken significant investment in California by creating a fleet of new, environmentally friendly, highly efficient, state of the art energy centers. Calpine believes that market prices and conditions are the best and most efficient way of signaling to generators the maintenance programs needed to compete and recover an adequate return on investment. However, Calpine recognizes that PUC Section 761.3 mandates the creation of an administrative program to ensure proper operation and maintenance of the state's generation resources, and Calpine provides its comments in this light.

The Draft Standards text is comprehensive, but fairly high level, while the Draft Standards Appendix incorporates specific assessment criteria. Calpine believes it already meets all the overarching standards. However, Calpine requests that the Draft Standards be modified to specifically recognize that the implementation of each standard and specific assessment criterion will differ, depending upon plant technology, configuration, age and other facts.

For example, Calpine's new, state of the art, low-emission facilities have substantially different maintenance requirements than older, near-retirement facilities. Further, even for new technology, specific operation and maintenance requirements necessarily differ. Facilities use different fuel sources (*i.e.*, natural gas-fired, geothermal); some facilities incorporate one gas turbine; others have two gas turbines and one steam turbine; still others have three gas turbines and one steam turbine. Some plants are air-cooled, while others are water-cooled. Some plants use recycled water, also requiring different maintenance. Some of Calpine's turbines were built by Westinghouse, while others were built by General Electric or other turbine vendors.

Technical issues such as the above, specific to each facility, will drive any practical effort to optimize maintenance requirements and specific O&M programs. In addition, each generation

facility must schedule maintenance based on numerous unique factors, including hours of operation and number of starts/stops. The goal with each plant is the same – to ensure the plant is as efficient as possible and available to meet all Calpine's contractual and other commercial arrangements underlying financing and construction of the facility. However, individual operating decisions are intensely plant-specific.

In addition, any prescriptive program not applying to out of state generators would give those generators an economic advantage over California facilities.

For these reasons, Calpine believes any standards adopted by the Committee should identify and *generally* outline those items and processes that constitute an excellent O&M program. Each individual generation owner must retain the responsibility for implementing specific programs for its own facilities. Calpine does not believe that PUC Section 761.3 envisions the adoption of standards so highly prescriptive that they mandate, for example, something as specific as the number of operators that must be on shift when a plant is operating. Such a requirement would amount to *de facto* utility-type regulation of merchant plants, a result clearly not intended by PUC Section 761.3.

III. THE DRAFT STANDARDS SHOULD STATE THAT THEY DO NOT INTERFERE WITH FINANCING AND OTHER COMMERCIAL ARRANGEMENTS

The Draft Standards should be revised to state that they do not interfere with the commercial arrangements underlying the construction, financing, operations, or power sales agreements associated with any electric facility. These types of commitments are common for newer plants, and have a significant impact on Calpine's operations.

For example, each of the turbine-generators associated with Calpine's new plants have warranties and performance guarantees from the manufacturer that are based on specific operation and maintenance guidelines. In some instances, Calpine is required to use replacement

parts manufactured by the original equipment vendor. Any requirement that forces Calpine to seek an alternative vendor, if the original manufacturer cannot replace the part in a timely manner, is unworkable and would be inconsistent with the provision of PUC Section 761.3(e), which requires the Committee to take into consideration valid warranties on generation facilities.

In addition, Calpine has detailed agreements with its financial institutions that lay out, among other items, specific operations and maintenance standards for financed facilities. Calpine works closely with the independent engineers working for its lenders to develop and implement such plans. Any requirements put forth in this proceeding must not interfere with these plans, or require items that are inconsistent with pre-existing arrangements.

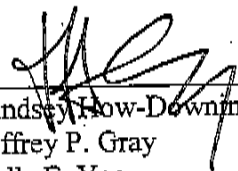
Finally, there are also specific requirements associated with Calpine's existing power purchase agreements that impact Calpine's operation and maintenance programs. Many of Calpine's current power purchase arrangements allow the buyer significant flexibility in how they obtain power from the contracted-for plant. The frequency and timing of maintenance will change depending on how the customer uses its flexibility. Further, some of Calpine's plants have a "5 hour lockout" each time the plant is shut down, as specified by the manufacturer. Each time the plant is shut down, for whatever reason, it cannot restart for 5 hours. This 5-hour period should not be counted negatively against the plant's availability, because the plant would have been available if the customer or market conditions had not indicated that the plant needed to be turned off. Often, constraints of these types will occur between major maintenance cycles. Resolution of these types of technical constraints are part of the decision when optimizing outage schedules.

IV. CONCLUSION

For the reasons discussed above, Calpine Corporation respectfully requests that the Committee modify the Draft Standards as requested herein.

Dated: January 17, 2003

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

I, JOYCE C. RAUCH, certify:


I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is One Embarcadero Center, Suite 600, San Francisco, California 94111.

On January 17, 2003, I caused the following

**OPENING COMMENTS OF CALPINE CORPORATION
ON PROPOSED MAINTENANCE STANDARDS**

to be served solely electronically, via email, to all those on the official service list for whom email addresses were provided and to be served, enclosed in a sealed envelope, solely by hand delivery or first-class United States mail with postage prepaid thereon, addressed to each of the parties shown on the attached official service list for whom no email addresses were provided.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date above at San Francisco, California.



JOYCE C. RAUCH