BEFORE THE CALIFORNIA ELECTRICITY GENERATION FACILITIES STANDARDS COMMITTEE

Related Case: California Public Utilities Commission Rulemaking 02-11-039

COMMENTS OF EL SEGUNDO POWER LLC, LONG BEACH GENERATION LLC, CABRILLO POWER I LLC, AND CABRILLO POWER II LLC (COLLECTIVELY, WEST COAST POWER) ON THE PROPOSED GENERATION MAINTENANCE PROGRAM

January 17, 2003

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Pursuant to the Administrative Law Judge's Ruling Providing Notice of Meetings of the California Electricity Generation Facilities Committee ("Committee"), issued on December 10, 2002 in Rulemaking 02-11-039 of the California Public Utilities Commission ("CPUC"), as modified by the extension granted by the ALJ on January 7, 2003 and confirmed in the ALJ's ruling of January 14, 2003, El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC

(collectively, West Coast Power[1] ("WCP")) submit their comments on the Committee's proposed Generation Maintenance Program.[2] To avoid possible confusion between the program and the document that presents the proposed program and maintenance standards, WCP will refer to the document as the "Program Document." WCP's references are to the version of the Program Document that was attached to the December 10 ruling, rather than the slightly revised version that was handed out at the Committee's meeting of December 20.

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[1] West Coast Power, through its interests in four limited liability corporations, owns and operates the former Encina power plant, previously owned by San Diego Gas & Electric Company ("SDG&E") and now known as Cabrillo Power I, 13 combustion turbines in the San Diego area also previously owned by SDG&E (now named Cabrillo Power II), and the El Segundo and Long Beach power plants previously owned by Southern California Edison Company and now owned by El Segundo Power LLC and Long Beach Generating LLC, respectively. The entities owning and operating these plants have each been determined by the Federal Energy Regulatory Commission ("FERC") to be exempt wholesale generators ("EWGs") as defined under federal law and, pursuant to the provisions of federal law, are engaged "*exclusively* in the business of owning or operating, or both owning and operating, . . . eligible [electric generating] facilities and selling electric energy at *wholesale*." (15 U.S.C. § 79z-5a(a)(1) (emphasis added).)

[2] By voluntarily submitting these comments and further participating in this proceeding, West Coast Power is not in any way conceding that the Committee or the CPUC has jurisdiction over, or can lawfully compel a response to the Committee's process or CPUC's rulemaking by, WCP, the four named limited liability corporations, their affiliates, or the generating plants that they own and operate. WCP expressly reserves the right to challenge fully, in an appropriate forum, the relevant portions of Senate Bill ("SB") SB 39XX and any requirement the Committee or the CPUC may attempt to impose on WCP, the four named LLCs, their affiliates, or other wholesale generators. Nothing in these comments constitutes a waiver of such rights, including these entities' rights to seek relief in federal court for violations of federal law or the Unites States Constitution. WCP makes this express reservation pursuant to the provisions of *England v. Louisiana State Bd. of Medical Examiners,* 375 U.S. 411, 420 (1984); *see United Parcel Service v. California Public Utilities Comm'n,* 77 F.3d 1178, 1182 (9th Cir. 1996). Furthermore, WCP and the four LLCs do not consider themselves to be respondents in the CPUC's rulemaking, because they are not "public utilities" as defined in the Public Utilities Code.

On January 14, 2003, WCP also made a request, in an e-mail from Mr. Greg Blue of Dynegy Generation served on all parties, to conduct the Committee meeting scheduled for January 24 as a roundtable discussion of issues related to the proposed maintenance standards. WCP believes that a roundtable discussion would be the most efficient and productive way to develop a common understanding of the practical implications of the proposed maintenance standards and to discuss and possibly refine specific standards. Accordingly, WCP reiterates its request in these comments.

I. INTRODUCTION AND OVERVIEW

At the outset of the Committee's efforts to develop its Generation Maintenance Program, it cannot be stressed too strongly that the Committee and electric generators share a common goal: **to ensure that generation in California is available when needed to meet customers' demand for electricity**. For its part, WCP places a high priority on maintaining its plants in a way that maximizes their availability to meet electric demand, consistent with worker safety and environmental protection. WCP has accordingly developed comprehensive maintenance procedures designed to make sure that its generating units are available to meet market demands.

In keeping with the overall goal of ensuring availability, WCP urges the Committee to focus on (1) ensuring that generators have adequate maintenance plans and procedures in place and (2) making sure that generators are following those plans and modifying them appropriately in response to new information and circumstances. WCP also urges the Committee to judge generators' maintenance plans by the performance of

their plants, rather than by administrative enforcement of unneeded, onerous, costly, and overly detailed requirements.

The generators that are the focus of the Committee's proposed maintenance standards[3] already have extensive maintenance programs, as a matter of business necessity.[4] It is not necessary or appropriate to reinvent the wheel in formulating the final maintenance programs, or to start from scratch to prescribe detailed and comprehensive maintenance programs for these generators. In recognition of the generators' strong economic interest in maintaining the availability of their plants,[5] the Committee can perform its responsibilities by reviewing the existing plans (modified as appropriate in response to the maintenance standards) to ensure that they meet the standards adopted as part of the Program and thereafter using the plants' performance as a gauge of the adequacy of those plans.

WCP's example may underscore the point that extensive intervention by the Committee in the maintenance practices of generators is unnecessary. WCP has in place a comprehensive maintenance plan for each of its generating plants. The plan has

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[3] SB 39XX created exemptions from the maintenance standards for the majority of the state's generation resources.

[4] The Committee should also expressly recognize that some maintenance functions are performed by contractors, rather than directly by plant employees. Thus, the documentation submitted in support of the certification reports may include the contractor's maintenance plan and procedures in appropriate cases.

[5] In addition to the fact that plants earn revenues only when they are available and able to sell power into the market, many plants are subject to Reliability Must Run ("RMR") agreements with the ISO or contracts with the Department of Water Resources or other purchasers that require a specified level of reliability and prescribe penalties if the generators fail to meet the specified availability.

been highly successful, as measured by an internal index that compares a unit's unavailability to respond to market demands with the unit's total potential market availability. Achieving high market availability, as measured by this index, is a factor considered in determining the bonuses to plant operators; thus, WCP plant operators are highly motivated to maximize the availability of the plants. By this measure, WCP's units have achieved very high levels of availability to meet market demand. WCP has also compiled an excellent safety record, reflecting that ensuring worker safety is its highest priority and that its safety training exceeds the requirements of both the federal and state Occupational Safety and Health Administrations. WCP currently reports *daily* to both the California Independent System Operator ("ISO") *and* the CPUC on the status of its units, and reports again when any of its units experiences an outage, either planned or unplanned. WCP has fully cooperated with the CPUC inspectors that investigate outages at its plants. At no point have the inspectors concluded that an outage was unjustified. WCP also trains its employees and contractors to comply with federal, state, and local environmental requirements.

WCP's experience leads it to conclude that it and other generators can work cooperatively with the Committee, the ISO, and the CPUC to develop a Generation Maintenance Program that achieves the goal of ensuring the availability of generating plants without requiring extensive intervention, supervision, or micro-management by

these governmental entities.[6] In this spirit of cooperation, WCP offers the following comments.

II. COMMENTS ON THE MAINTENANCE STANDARDS

With the exception of certain provisions as noted below, WCP finds that the generation maintenance performance standards are generally acceptable and workable. WCP's existing maintenance programs and practices already comply with the intent of the standards, and WCP is willing to provide appropriate documentation to demonstrate this compliance as part of the Initial Certification Report proposed in the Program Document.

A. The Purpose of the Standards and Guidelines

The Committee could help this process progress tremendously if it clarified a few important points that are left somewhat ambiguous in the Program Document.

1. Maintenance Audits Should Focus on Compliance with the Intent of the Standards, and Not on the More Prescriptive and Restrictive Guidelines

One crucial threshold issue requires clarification. The introductory discussion of the performance standards and assessment guidelines appears to state (correctly, in WCP's view) that the primary goal of the program is to ensure that the 18 performance standards are being met. Each standard is accompanied by assessment

[6] WCP believes it is far preferable for all concerned to work cooperatively to develop maintenance standards that generators will voluntarily follow, rather than devoting extensive time and resources to determine the precise extent, if any, of the Committee's, the CPUC's, and the ISO's legal jurisdiction over the maintenance practices of wholesale generators.

guidelines "to facilitate evaluation of the performance of the organization with respect to each standard."[7] The assessment guidelines are "intended to provide a sense of the breadth and depth of the standard. These are a collection of 'Best Practices', and not an exclusive set of criteria to demonstrate that a standard is being met." The assessment guidelines "may not be all inclusive of activities associated with the performance standard. . . . Generating asset owners may use different approaches to meet a standard. *Given that the assessment guidelines represent only a means to an end, the certification process emphasizes achievement of the performance standards.*"[8] Similarly, Appendix A is offered to "provide additional insight as to how to meet a standard."

This focus on the performance standards is appropriate. These standards are comprehensive, yet general and flexible enough to permit compliance by generating plants with widely varying technologies, operations, circumstances, and ages. By contrast, the assessment guidelines and the maintenance guidelines of Appendix A are at the same time too narrow and specific to apply to all plants and too unclear and ambiguous to serve as a basis for even-handed enforcement. The guidelines are useful as illustrations of the principles underlying the standards, but the focus of the maintenance programs of both the Committee and the individual generators should remain on compliance with the performance standards.

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[7] This text appears on p. 4 of the first group of several separately paginated sections. References to specific pages of the document would be clearer if its pages were numbered consistently and consecutively.

[8] *Id.* (emphasis added).

Unfortunately, other passages in the Program Document cast some doubt about this logical and workable conclusion. WCP notes that the latest revision of the document has in several places removed a paragraph that helped clarify this point in the previous ISO version of the document. The previous language, which reflects its origin in the ISO maintenance document, reads as follows:

> 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 guideline.

WCP urges the Committee to clarify its intent by restoring this deletion, with appropriate modifications to reflect the agency responsibilities established in SB 39XX.

In addition, the example initial certification report,[9] which is presented to show "the level of detail envisioned for the Certification Report," contains the apparently unintended suggestion that compliance with each assessment guideline is required; several of the noted exceptions refer to a specific assessment guideline.

While the assessment guidelines are helpful in illustrating the intent of the associated performance standard, WCP believes the statements quoted previously more accurately reflect the intent of the Committee. Guidelines should be just that—guidelines, not strict requirements that an overzealous auditor might seek to enforce in an inappropriate way and that add nothing toward meeting the goal of securing reliable generation. Consistent with the views of WCP and the introduction to the Program

[9] This example report appears under heading VII of the document, pages 13-19.

Document, in these comments WCP will focus on the 18 performance standards, rather than on the more numerous and far more detailed assessment guidelines.

2. Compliance versus Enforcement

A similar, if perhaps more subtle, point concerns the ultimate use of the performance standards and assessment guidelines. Consistent with the apparent intent of the Program Document, WCP believes the primary use of the standards should be to provide a framework for the showing of compliance that the generators will present to the CPUC in their initial certification and periodic re-certifications. In this role, the standards will provide a useful structure for communications between generators and the CPUC in furtherance of the shared goal of ensuring that generating plants are available when needed. On the other hand, if the emphasis of the maintenance program is on a punitive type of enforcement that seeks to sanction generators for every perceived failure to comply with prescriptive yet vague assessment guidelines, the effect of the guidelines will be very different. An enforcement regime of this sort will effectively require extensive documentation of compliance with each of the many guidelines, especially since the Program Document requires an officer of the reporting company to certify[10] compliance with the standards and to specify the location of the documents supporting that certification.

[10] Because declarations under penalty of perjury are legally equivalent to certifications or affidavits sworn before a notary public (Code of Civil Proc. § 2015.5), the Committee should also accept declarations under penalty of perjury in support of the certification reports.

In short, the more detailed the Program's requirements are and the more the Program is oriented toward enforcement, rather than compliance, the more documents will be produced, filed, and retained to support the compliance reports. WCP respectfully submits that California will be better off if the generation companies are able to devote resources to actually maintaining their plants, rather than to preparing detailed and onerous regulatory filings on plant maintenance.

3. Maintenance versus Operations

The Committee's current efforts are directed to the development of maintenance standards. WCP believes that the Committee should restrict its focus at this stage to maintenance, rather than extend its *maintenance* standards into areas of operations. Maintenance and operations are conceptually separate activities, and the standards governing each area should also remain distinct. WCP will accordingly point out where the proposed maintenance standards have strayed into the area of operations.

B. Comments on Specific Standards

WCP has comments only on the following performance standards. As discussed above, WCP believes the proper focus of the Maintenance Program should be on the performance standards, and accordingly WCP will not offer specific comments on the assessment guidelines or on Appendix A.

1. Standard III.A.1—Balance of Maintenance Approach

WCP generally agrees with the wording of this standard, but the Capacity Unavailability Factor ("CUF") proposed as a performance metric contradicts the statements of this standard, as will be discussed in connection with the CUF.

In addition, the operation and maintenance of some of the non-generation facilities listed in this standard (*e.g.*, transmission lines, exhaust systems) may fall under the jurisdiction of other governmental entities. While generation plant owners may be able to demonstrate how maintenance of these facilities complies with this standard, the legal ability of other agencies to establish other maintenance requirements that may conflict with the assessment guidelines under this standard presents another reason to focus on compliance with the standards, rather than enforcement of the guidelines.

2. Standard V.B.1—Plant Status and Configuration

Both the wording of this standard and the detail provided in the associated assessment guidelines reveal that this is an operational standard, rather than a maintenance standard. For the reasons stated previously, this standard should be removed from the *Maintenance* Program Document.

3. Standard VI.A.1—Spare Parts, Material and Services

As presently worded, this standard could be read to require plant owners to maintain the equivalent of a duplicate plant, with duplicates of each part used in the operating plant, to ensure that spare parts would be available under any circumstances that might theoretically arise. That approach, of course, does not make sense. It would not make economic or operational sense to keep an extra turbine shaft on hand in case something happens to the one in the operating unit. A plant operator should, however, maintain a reasonable inventory of the parts that tend to wear out fast and require replacement more often.

A more commonplace example of an automotive repair shop may help illustrate this point. Repair shops typically maintain a reasonable inventory of the parts that require frequent replacement, like fan belts, oil filters, wiper blades, and tires. On the other hand, repair shops do not ordinarily maintain an inventory of replacement windshields for all makes and models of cars, because (1) these parts require replacement only infrequently, and (2) each model requires a different part, *i.e.*, the parts are nearly unique.

For similar reasons, prudent plant operators may not maintain each and every part that might be needed to respond to a plant outage. Because the operator has a strong economic incentive to minimize the time when the plant is not available to meet market demands, a prudent operator maintains a reasonable inventory of the parts that are most likely to (1) require frequent replacement or (2) be needed as part of scheduled maintenance.

However, it is impossible to anticipate precisely what parts will be needed to respond to an unplanned outage. Unplanned outages are, by definition, unanticipated, and not even the most prudent plant operator will be able to foresee what parts will be needed until the outage occurs. Again, a prudent plant operator will maintain an inventory of the parts that are most likely to fail, but perfect foresight on this point is impossible.

Maintaining parts inventories for older plants is particularly challenging. Many parts for older plants are no longer commercially available, and must be specially machined. Even when parts are commercially available, some parts must be ordered at

least a year before they are expected to be needed. Obviously, many events can occur over the course of a year or more that could result in a part not being available exactly when it is needed, even for scheduled maintenance.

In addition, the standard's reference to "shelf life" is misplaced. For the power plants that are the subject of this part of this proceeding, the replacement parts have useful lives that are long enough to make the concept of shelf life inapplicable. Substances that have relevant shelf lives are consumed as part of the ordinary operation of the plant, and to the extent that shelf life is a factor, it is an operational, not a maintenance, consideration.

With these thoughts as a background, WCP suggests that the standard should be revised to read as follows:

> Appropriate parts and materials, in good condition, are available for maintenance activities to support outages. Procurement of services and materials for outages are performed to ensure materials will be available with the least possible impact to the schedule. Storage of parts and materials support maintaining quality of parts and materials.

4. Standard VII.C.1—Chemistry Control

The wording of this standard is confusing and difficult to understand. More importantly, however, is that the standard fails to recognize that chemical conditions associated with power plant operation are strictly limited by environmental regulations. Because of the overriding legal need to comply with those environmental regulations, chemical conditions cannot always be optimized without consideration of environmental regulations, as the standard suggests.

5. Standard VII.D.1—Regulatory Requirements

In stating that compliance with regulatory requirements is "paramount," this standard conflicts with Standard I.A.1, which states, "protection of life and limb for the work force is paramount." By definition, only one goal can be paramount. For its part, WCP sets worker safety as its highest goal, environmental protection and regulatory compliance as its second highest goal, followed by achievement of the highest possible availability to serve the market. The Committee should clarify the priority its sets on the conflicting goals stated in the standards.

III. GENERATION UNIT PERFORMANCE METRICS

A. The Capacity Unavailability Factor Is Flawed

The CUF is unsuitable as a measure of a generating plant's availability.

First, the CUF creates the wrong incentives for plant maintenance. The CUF fails to recognize that generation is more valuable when it is needed, *i.e.*, during periods of peak demand. Planned maintenance should be encouraged to take place during off-peak periods, when the availability of a particular plant is of less consequence for the overall system. Any concern that creating an incentive for off-peak maintenance might leave the system with insufficient generation to meet off-peak demand is answered by the existence of the ISO's Outage Coordination Protocol, which ensures that sufficient generation remains available during off-peak (and other) periods to meet demand.

Second, the CUF treats planned outages the same as unplanned outages, even though planned outages and planned derates are essential components of any prudent maintenance plan. Using the CUF as a maintenance metric will unintentionally

encourage plant operators to extend the time between planned outages beyond what is prudent, and thus the CUF may inadvertently contribute to the problem it is intended to remedy.

Third, the CUF does not distinguish between outages related to maintenance and outages occurring for other reasons. Under the CUF, for example, a plant operator would receive a low CUF for complying with environmental restrictions that limit plant operation. Does the Committee actually intend to disadvantage operators who observe environmental restrictions? Environmental and other regulatory restrictions are major factors affecting plant operation and availability. The combustion turbines owned by Cabrillo Power II LLC, for example, may not operate more than 10% of the hours of each year under the terms of their air quality permits. The plant owned by Long Beach Generation LLC is subject to comparable limitations imposed by the California Coastal Commission. The CUF formula would give these plants low scores for availability, even though the plants have excellent maintenance programs designed to ensure that they are available to run to the maximum extent permitted under applicable environmental and regulatory restrictions. Similarly, the ISO has the authority to order a generator to cancel or postpone scheduled maintenance, and the Committee should recognize that compliance with such orders will affect both the plant's availability and its ability to comply with the ideal schedules set forth in the maintenance plans. In addition, regulatory and environmental restrictions can interact in unexpected ways. At the plant owned by Cabrillo Power I LLC (Encina), for example, the ISO ordered a cancellation at the last minute of a planned three-month outage during which Selective Catalytic

Reduction ("SCR") equipment was to be installed. Cabrillo Power I was then forced to obtain a variance from the San Diego Air Pollution Control District to allow the plant to run without SCR, which resulted in higher costs for the company and (depending on market conditions) higher electricity prices.

Fourth, the CUF fails to recognize that older plants experience higher rates of unplanned outages because, like older cars, they break down more often. As plants age, their owners may also decide to alter their operation so that they run less often or cycle more often, again decreasing the CUF.

If, despite these problems, the Committee persists in using the CUF or something like it, the existing formula could be improved somewhat by deleting the Planned Outage Hour and the Equivalent Planned Derate Hours from the numerator. This modification would at least limit the CUF's effect of creating a disincentive for planned maintenance. In addition, the unavailability should be calculated for each generating station (plant), rather than each unit, since maintenance plans cover each station, not each individual unit. With these adjustments, the revised CUF formula would be:

$$\text{CUF} = \frac{\text{Maintenance Outage Hours + Scheduled Outage Extension Hours + Unplanned (Forced) Outage Hours + Equivalent Unplanned Derate Hours}}{\text{Period Hours}} \times 100$$

Better performance measures are available, however. WCP, for example, has an internal performance measure called the In-Market Availability ("IMA") factor, which compares plant unavailability with total potential plant availability during periods of high demand. High system demand is a direct expression of consumers' collective

demand for electricity. Thus, the IMA factor ties plant availability directly to customers' demand for electricity and avoids creating the misguided incentives inherent in the CUF.

Another widely used factor in the industry is the Equivalent Forced Outage Rate ("EFOR"), which is defined by the following formula:

$$\text{EFOR} = \frac{\text{Outage Hours} + \text{(Forced) Derated Hours}}{\text{Unplanned (Forced) Outage Hours + Service Hours + Equiv. Unplanned (Forced) Derated Hours during Reserve Shutdowns (RS) Only}} \times 100$$

The EFOR factor measures performance in a way that is more closely related to maintenance practices than is the CUF. In addition, it is widely used in the industry, and plant operators are familiar with its components and calculations.

In addition, under the ISO's Outage Coordination Protocol, a generator must request and receive the ISO's approval before beginning a planned or unplanned outage. Because the ISO has the responsibility to make sure that the supply and demand for electricity are balanced, the ISO will grant such approvals only when it is satisfied that sufficient other generation is available to meet market demands. The Committee should consider excluding from the calculation of the CUF (or other measure of availability) any time when the plant has received the ISO's approval to undertake a maintenance outage.

WCP urges the Committee to develop another measure of plant availability that is more closely linked to the demand for power. Excluding the time when maintenance is performed pursuant to the ISO's approval, resulting in a measure similar to the equivalent availability factor of the EFOR used in the industry, would produce a

more responsive measure. At a minimum, the CUF formula should be modified to avoid penalizing generators for planned maintenance.

B. The Baseline Measure Is Flawed

Like the CUF on which it is based, the baseline calculation proposed in the Program Document creates inappropriate incentives.

For example, the baseline calculation will penalize plants with good maintenance histories. A plant that has established an excellent historical record of maintenance will receive a high Centerline, while a plant with a poor maintenance record will have a low Centerline. When these two plants experience an unplanned outage of exactly the same duration, the outage at the plant with the good record may trigger an audit, while the plant with a poor maintenance history may escape an audit *solely due* to way the Centerline and the Upper Warning and Upper Control Limits are calculated. Did the Committee actually intend to adopt a benchmark approach that penalizes plants for having good maintenance records?

The baseline calculation has other unintended effects. If a plant has an excellent history and a high CUF, a single major overhaul will skew the baseline measure for a long period thereafter. For example, if a plant has historically maintained a relatively low 4% CUF, a one-month outage for a major overhaul, producing a 100% CUF for that month, means that it will take 24 months for the plant to return to its normal CUF. Any outage during that 24-month period could trigger an audit, even though the plant has an excellent availability history and even though good maintenance practices require major overhauls every few years.

In addition, as plants age, operators may find that it makes sense to shift the plant's mode of operation from baseload to peaking. This change in operations will have an effect on the CUF calculation that will not be reflected in the historical data used to calculate the baseline, and will trigger unnecessary and pointless audits.

As mentioned above, benchmarking should be performed for each generating station, not each individual unit, because maintenance plans cover each station, not the individual generating units within the station.

An additional problem with the benchmarking proposal is the suggestion that data that does not fit a normal distribution would be handled through "bootstrap resampling." The Committee should provide additional information about this statistical technique. Any valid statistical approach should be able to be verified objectively and replicated, and the Committee should provide the parties with details of exactly how it intends to treat irregular data. WCP urges the Committee to test the bootstrap resampling approach using real-world data, to demonstrate the validity of the technique.

IV. VERIFICATION AND AUDIT

A. Preparation of the Initial Certification

The Initial Certification will require generators to review their existing maintenance plans and procedures in light of the adopted standards and to assemble the documentation to support the certification. That process will take considerable time and resources. The Committee's proposal to require submission of the Initial Certification within 90 days of the announcement of the implementation of the Generation Maintenance Program cannot be met without considerable disruption to the on-going

maintenance and operation of the generating plants. WCP urges the Committee to allow generators up to 180 days to submit the Initial Certification. A 180-day deadline allows generators a realistic time to assemble the data and documents to present a thorough certification to the CPUC.

As mentioned previously, some of the maintenance functions may be performed by contractors, rather than by plant employees. In appropriate cases, the documentation supporting the certification may consist of the contractor's maintenance plan and procedures.

B. The Purpose of the Audit Should be Clarified

WCP agrees with the thrust of the Program Document that the purpose of the audit is to ensure that the statements in the certifications are accurate and that the generator's maintenance program meets the intent of the performance standards. However, unless the auditors are trained well to perform audits in a manner consistent with this purpose, the possibility exists that some auditors could misuse their power. For this reason, it is crucial to train auditors to understand the purpose of the audit. Audits should not become prosecutorial or excessively punitive.

The audit should be consistent with the basic approach of the Generation Maintenance Program. The Committee has correctly elected to rely on self-assessments to determine the adequacy of generators' maintenance programs. The Committee should not contradict this basic approach by empowering the auditors to second-guess the maintenance practices of the reporting companies. The purpose of the audit is to verify

the accuracy of the statements made in the self-assessments, not to prescribe a new maintenance program for the reporting generator.

The need to maintain a focus on the purpose of the audit is another reason for the Committee to affirm that it is the performance standards, rather than the assessment guidelines, that are the focus of the certifications and thus the audits. This focus becomes blurred in section B (Requirement) under I (Initial Certification) in this portion of the document. The middle of that paragraph seems to give the performance standards and the assessment guidelines equal status. The reference to the assessment guidelines in that sentence should be deleted. The relation between the performance standards and the assessment guidelines should be further clarified by modifying the final sentence of that paragraph to read, "The self-assessment shall be against the generation maintenance performance standards and shall use the associated assessment guidelines to understand that intent of a particular standard, rather than as a separate element of the self-assessment."

The Program Document is also unclear about the process that follows a triggered audit. If a performance "anomaly" is adequately explained by a planned outage that requires substantial down time, it would serve no purpose to pursue an audit of maintenance practices, since planned outages are a crucial and necessary element of a prudent maintenance program. Unplanned outages may also occur for reasons that have nothing to do with maintenance, and in these circumstances an adequate explanation of the reason for the outage should again not produce an audit of maintenance practices that were not the cause of the outage.

C. Confidentiality

The Program Document correctly notes the need to maintain the confidentiality of the information submitted by the generators. Much of the information contained in the materials submitted to the CPUC is commercially and competitively sensitive.[11] In addition, to the extent that the CPUC believes that has jurisdiction over the reporting entities because they are "public utilities" as defined in the Public Utilities Code, it should, as a matter of consistency, also observe the provisions of section 583 of the code, which ensures the confidentiality of materials submitted to the CPUC and provides that improper public disclosure of these materials is a misdemeanor.

V. PENALTIES

The Program Document does not prescribe any specific penalties for violations of the provisions of the Generation Maintenance Program, and no penalties are needed. For merchant generators, any outage is punishment in itself, since a plant cannot earn any revenues if it is not operating, and the generator may be contractually required to buy replacement power. For utilities, the operation of their Performance-Based Ratemaking mechanisms mimics the penalties of the market. Both merchant generators and utilities already have high incentives to maximize the availability of their units.

Many generators operate under Reliability Must Run agreements with the ISO or contracts with the Department of Water Resources or other purchasers that require the generator to meet a specified level of availability or performance. The generator is

[11] Confidentiality protections should also extend to any materials of maintenance contractors that are submitted as part of a certification report.

subject to penalties under these contracts if it fails to meet the specified level of availability or performance. For at least these generators, additional penalties would be redundant.

In addition, there is considerable doubt about the legal authority of either the CPUC or the ISO to impose penalties on nonutility generators. Any penalties proposed by the ISO would have to be incorporated into the ISO tariff and approved by FERC.

If the Committee is convinced that penalties are needed as an incentive to promote good maintenance practices, then it should also consider giving rewards to those generators who achieve high levels of availability and good maintenance practices.

VI. CONCLUSION

WCP has noted some ways in which the proposed maintenance standards could be improved. In general, WCP finds that the proposed Generator Maintenance Program is a workable approach to achieving the shared goal of ensuring that generation plants are available when they are needed to meet electric demand. To help achieve that shared goal, WCP respectfully urges the Committee to conduct its meeting on January 24 as a roundtable discussion of the proposed standards, with a goal of coming to a common understanding of the practical implications of the proposed maintenance standards and to discuss and possibly refine specific standards.

WCP appreciates the opportunity to present its reaction to the proposed standards and program, and WCP looks forward to working cooperatively with the

Committee, the CPUC, and the ISO to develop maintenance programs and standards that meet the needs of all affected parties.

Respectfully submitted this January 17, 2003 at San Francisco, California.

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2729/015/X40498-1

CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the **COMMENTS OF EL SEGUNDO POWER LLC, LONG BEACH GENERATION LLC, CABRILLO POWER I LLC, AND CABRILLO POWER II LLC (COLLECTIVELY, WEST COAST POWER) ON THE PROPOSED GENERATION MAINTENANCE PROGRAM; R.02-11-039** on all parties via e-mail only.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of January 2003 at San Francisco, California.

Melinda LaJaunie