

**BEFORE THE  
CALIFORNIA ELECTRICITY GENERATION  
FACILITIES STANDARDS COMMITTEE**

California Electricity Generation Facilities Standards     )  
Committee – Proposed General Duty Standards            )  
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**COMMENTS OF AES ALAMITOS, LLC, AES HUNTINGTON BEACH, LLC,  
AND AES REDONDO BEACH, LLC ON  
THE PROPOSED GENERAL DUTY STANDARDS**

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April 23, 2003

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AES Alamitos, LLC; AES Huntington, LLC; and AES Redondo Beach, LLC (“AES Generators”) submit the following Comments on the proposed General Duty Standards in response to the invitation of Carl Wood, the Presiding Officer of California Electricity Generation Facilities Committee (“Committee”), presented in his letter of April 16, 2003, and as part of a continuing effort to work cooperatively with the Committee.<sup>1</sup>

As an initial matter, the broad principles articulated in the proposed General Duty Standards are principles that plant operators follow as a matter of course. The broad nature of the proposed Standards, however, offer little additional guidance to plant operators. The AES

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<sup>1</sup> These Comments are being submitted to the Committee pursuant to the provisions set forth at pages 42-43 of the transcript of the February 10, 2003 Prehearing Conference in R.02-11-039. In submitting these Comments and otherwise participating in this proceeding, each of the entities that comprise AES Generators expressly reserves all of their respective rights to challenge fully, in an appropriate forum, the legislation enacted in Chapter 19 of the 2001-2002 Second Extraordinary Legislative Session and the authority conferred on the California Public Utilities Commission therein, as well as any requirement that the CPUC may attempt to impose on any of the entities that comprise the AES Generators, pursuant to such authority or otherwise. The foregoing reservation includes, without limitation, a reservation of all rights to obtain relief from a federal court for violations of federal law or the U.S. Constitution. The submission of these Comments and any prior or subsequent participation in this proceeding by any of the entities that comprise the AES Generators, is purely voluntary and shall not operate as a waiver of any of the foregoing rights, or an admission that the Commission possesses authority to impose any requirement on AES Alamitos, LLC, AES Huntington Beach, LLC or AES Redondo Beach, LLC, or on their facilities or operations, including, without limitation, authority to require participation in this proceeding.

Generators believe that the proposed General Duty Standards are therefore unnecessary and simply duplicate existing operation protocols and Federal Energy Regulatory Commission (“FERC”) requirements.

Furthermore, as the AES Generators have repeatedly noted, the authority purportedly granted the Committee and the California Public Utilities Commission (“Commission”) under SB 39 2X appears to extend into matters subject to FERC’s exclusive jurisdiction. The Committee must recognize, and adhere to, these jurisdictional boundaries, or run the risk that its, and the Commission’s, attempts to comply with SB 39 2X will be preempted under federal law. The proposed General Duty Standards, however, rather than recognizing the limits of the Committee’s authority, rush headlong into matters left to FERC’s exclusive jurisdiction.

The proposed General Duty Standards purport to govern how generating facilities “owned by an electrical corporation or located within California” are “maintained and operated.” As the AES Generators noted in earlier comments, the Committee’s and the Commission’s attempts to regulate maintenance standards for exempt wholesale generators (“EWGs”) interferes with FERC’s exercise of jurisdiction in this area through protocols proposed by the California Independent System Operator (“CAISO”). *See* AES Generators’ March 3, 2003 Comments on Implementation and Enforcement of Maintenance Standards at 3-5.

For the first time, the Committee also now seeks to exercise control over how generating facilities in the State are operated. The operation of EWGs, however, is unquestionably left to FERC’s exclusive jurisdiction. The CAISO is a “public utility” under the Federal Power Act, and as such is subject to FERC’s jurisdiction. CAISO not only directs the operation of the transmission facilities under its control, it also regulates “facilities which affect the reliability of the transmission grid,” including certain generating facilities. *Pacific Gas and Electric Co.*, 77 FERC ¶ 61,204, ¶ 61,795 (1996). All of CAISO’s operating standards and procedures must be approved by FERC. *Id.* at ¶ 61,818. FERC thus oversees the operation of generating facilities that are interconnected with the ISO grid. FERC’s jurisdiction over the operation of these generating facilities precludes the State’s regulation of that area. *See Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354, 377 (1998) (“It is common ground that if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject.”) (Scalia, J., concurring). The proposed General Duty Standards would thus impermissibly intrude upon FERC’s exclusive jurisdiction.

For all the reasons set forth above, the AES Generators urge the Committee not to adopt the proposed General Duty Standards.

Dated: April 23, 2003

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Patricia A. Tester, certify that on April 23, 2003 I served a true copy of the original attached document entitled **COMMENTS OF AES ALAMITOS, LLC, AES HUNTINGTON BEACH, LLC, AND AES REDONDO BEACH, LLC ON THE PROPOSED GENERAL DUTY STANDARDS** by e-mail to the attached service list.

Dated: April 23, 2003, at Walnut Creek, California.

*Patricia A. Tester*

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