

California Electricity Generation Facilities Standards Committee
Draft General Duty Standards

**REPLY COMMENTS OF THE
CONSTELLATION GENERATION GROUP
CONCERNING COMMITTEE'S
DRAFT RESOLUTION AND GENERAL DUTY STANDARDS**

Pursuant to the schedule set forth in the April 16, 2003 document circulated by the California Electricity Generation Facilities Standards Committee ("Committee"), Constellation Generation Group, LLC ("CGG") respectfully submits these reply comments on the draft Resolution and General Duty Standards ("GDS").¹ CGG's reply comments are made in response to the April 21, 2003 comments submitted by Mirant and the April 23, 2003 comments submitted by AES, DENA, Elk Hills Power, PG&E, Reliant, SCE and West Coast Power ("Commenting Parties").

I. Comments.

On April 22, 2003, CGG brought into commercial operation the High Desert Power Plant ("HDPP") in Victorville, California, a 750 MW (nominal) gas-fired combined cycle facility, culminating approximately eight years of development, permitting and construction efforts. The output from HDPP will flow to California consumers through a long-term bilateral contract with the Department of Water Resources ("DWR"). The DWR contract includes extensive provisions related to the maintenance and availability of the project, including significant financial penalties for poor plant performance. Moreover, the HDPP is operated and maintained consistent with a host of permits secured from and regulations imposed by a number of state and federal agencies, as well as the California Independent System Operator ("CAISO") tariff.

¹ CGG reserves all rights to challenge actions by the Committee or the CPUC with respect to the applicability or scope of proposed regulations. By voluntarily submitting these reply comments to the Committee, CGG in no way waives any rights or arguments.

Based upon its review of the questions and concerns presented by the Commenting Parties, including the significant jurisdictional issues, CGG likewise has serious concerns about the Committee's draft resolution and accompanying draft General Duty Standards. The Committee has not made clear its underlying purpose behind the draft GDS. If, as pointed out by Commenting Parties, the Committee's intent is merely to restate existing regulatory requirements (and not exacerbate jurisdictional concerns), then the GDS may not be problematic, although the usefulness of the draft Resolution and GDS would be questionable at best.

If, however, the Committee's intent is more than a simple recitation of existing obligations, but rather an intent to create and impose some new set of broad obligations upon a narrow set of generators in California with associated jurisdictional conflicts, then CGG agrees with the Commenting Parties' conclusions that such an intent is tremendously problematic and therefore must be opposed. The Committee must not take actions that give rise to a new wave of jurisdictional complexities, regulatory uncertainty or risks for generators in California. For the reasons stated by the Commenting Parties, the very broad and generalized language found in the draft GDS could be interpreted to impose some absolute duty that is both physically impossible and commercially impracticable.² Moreover, the Committee's authority to establish the GDS is questionable and raises a series of serious jurisdictional and implementation problems that cannot be ignored if the Committee is sincerely interested in stabilizing California's energy markets.

CGG is committed to operating and maintaining its facilities consistent with the good industry practices and applicable regulatory requirements including the CAISO tariff, as CGG

² See comments of SCE (pages 2 – 3), PG&E (pages, 1 – 2), Elk Hills Power (pages 2 – 3), Mirant (page 1), West Coast Power (pages 2 – 3, 5 – 6), DENA (page 1), AES (pages 2 – 3), Reliant (pages 3 – 6) regarding the “absolute obligation” as well as jurisdictional problems suggested by the GDS.

has done for 16 years at its 5 California projects. Indeed, HDPP's existing commercial arrangement with the State imposes serious penalties if its facility does not meet certain availability requirements. The Committee should avoid creating a new cloud of regulatory uncertainty or potential "pancaked penalties" because such actions will impede needed investments in generation to the detriment of California. Rather than superimposing undefined obligations through a GDS, the Committee should allow buyers and sellers to establish commercially feasible obligations within long-term contracts.

II. Conclusion.

For the various reasons stated by the Commenting Parties, CGG cannot support the Committee's draft Resolution or General Duty Standards in the absence of clarifying statements that the draft GDS does nothing more than reiterate existing obligations.

Dated: April 28, 2003

Respectfully submitted,

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