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June 16, 2004

Mr. Carl Wood  
Presiding Officer  
California Electricity Generation Facilities Standards Committee  
505 Van Ness  
San Francisco, CA 94102

RE: Proposed Revisions To General Duty Standard No. 4

Dear Mr. Wood:

Pursuant to your June 7, 2004 letter, Duke Energy North America (DENA) respectfully submits these comments on the proposed revisions to General Duty Standard No. 4 (GDS 4) that are to be presented to the California Electricity Generation Facilities Standards Committee (Committee). DENA purchased and now owns and/or operates four power plants previously owned and operated, and then voluntarily divested, by California investor-owned utilities. Specifically, DENA owns and operates the Oakland, Moss Landing and Morro Bay Power Plants (acquired from Pacific Gas & Electric Company). In addition, DENA operates the South Bay Power Plant for the Port of San Diego (which acquired the facility from San Diego Gas & Electric Company).

DENA has been a consistent and, it believes, cooperative participant before the Committee (and upon reference by the Committee, the California Public Utilities Commission (Commission)) notwithstanding its equally consistent reservation of rights concerning the Commission's jurisdiction with respect to the matters that are the subject of these proceedings.<sup>1</sup> DENA prefers to maintain and continue its cooperative work with the Committee and the Commission to ensure reliable service to its customers. It has contributed commentary intended to be constructive throughout and has initiated consultations and site visits with designated staff directed at the development of creative, practicable mechanisms with regard to maintenance coordination and logbook standards.

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<sup>1</sup> The Order Instituting Rulemaking, at OP 2, identifies by reference to Appendix B of the Order Duke Oakland, LLC, Duke Energy Moss Landing, LLC, Duke Energy Morro Bay, LLC and Duke Energy South Bay, LLC as "Respondents" to this Rulemaking. None of these entities are public utilities within the meaning of P.U. Code Section 216 and therefore are not properly designated as Respondents to the Rulemaking. Without exercising or waiving any rights in this regard, each of these entities has a significant interest in, and may be affected by, the conduct and outcome of the Rulemaking. DENA is authorized to participate as an interested party on their behalf.

The proposed revisions to GDS 4, being so far beyond the pale of reasonableness, however, give DENA great pause as to the Committee's conduct of the proceeding.

The proposed GDS 4 imposes two new "duties" on generating facility operators. The first new duty precludes a facility from turning off unless both the California Independent System Operator (CAISO) and the California Public Utilities Commission "affirmatively declare that a generating facility is unneeded during a specified period of time." The second new duty requires generators to "not take or keep capacity out-of-service" during a forced outage during warnings, alerts or system emergencies. Reduced to its essential terms, the proposed GDS 4 suggests that generators shall pre-notify and then avoid a condition which by definition cannot be predicted or avoided within ordinary limitations of reliability, prudence and safety. Accordingly, DENA submits that the Committee should reject the revisions without further deliberation or expense by anyone.

While the proposed revised GDS 4 is advanced to "address concerns regarding the serious consequences of withholding ... without raising potential problems regarding behavior that might violate requirements imposed by [the Federal Energy Regulatory Commission or FERC]" the proposed revisions fail to achieve this result.<sup>2</sup> Instead, the revised language would impose on generators new rules that are impracticable and impossible to meet.

Industry accepted definitions of "forced outage" reflect conditions that are not anticipated. As defined by the North American Electric Reliability Council (NERC), "forced outage" means "the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure."<sup>3</sup> Similarly, the CAISO Tariff defines "forced outage" as "an Outage for which sufficient notice cannot be given to allow the Outage to be factored into the Day-Ahead Market or Hour-Ahead Market scheduling processes."<sup>4</sup> As these definitions make clear, a forced outage event concerns unexpected circumstances. Accordingly such events do not constitute "withholding"—the concern that revised GDS 4 purports to address.

The new conditions suggested in revised GDS 4, namely that a forced outage during system emergencies, warnings or alerts can only be taken if (a) there is danger to the safety of plant personnel or the public or if (b) the reasonably expected cost of continuing application exceeds the public benefit, considering the facility's contribution toward maintaining reliable electric supply under current conditions, are not consistent with good utility practice. The proposed GDS 4 conflicts with good utility practice

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<sup>2</sup> June 7, 2004 Presiding Officer Letter to Participants, page 5.

<sup>3</sup> See, NERC Glossary, available at <http://www.nerc.com/glossary/glossary-body.html>. Emphasis added.

<sup>4</sup> CAISO Tariff, Master Definition Supplement, Original Sheet 316, available at <http://www.caiso.com/docs/09003a6080/27/ff/09003a608027ff02.pdf>. Emphasis added.

because the conditions would force continued plant operation until the unit completely fails or circumstances of imminent danger arise. It should be obvious that system reliability must sometimes recognize the need for units to take a forced outage to explore unusual operating conditions in order to prudently minimize the chance of threat to public and personnel safety, whether or not such threat is perfectly apparent or even dispositively imminent. It is simply not prudent to force a unit to continue to operate unless and until a potentially catastrophic failure is experienced. The destructive results of such a practice would almost certainly increase the chance of an extended outage period for the unit and significantly increase the resources required to be expended to return the unit to service. An operator cannot be expected to choose between two actions, either of which would be in violation of an operative protocol.

The second prong of the proposed GDS 4 is at least as overreaching as it purports to require generators to make an assessment of the “public costs and benefits” of running a unit to failure rather than implementing prudent and safe practices to ensure reliability. Even supposing that such a calculus were rational, which it is not, it is not one that a generator is in a position to make. Further to this point as well, the proposed standard fails to recognize other potential constraints on generators such as emissions limitations, requirements under vendor warranties or obligations under long-term or other contractual arrangements.

As the Committee is certainly aware, the CAISO Tariff already includes provisions that require generators to notify the CAISO when circumstances indicate that the potential for a forced outage is elevated. See, CAISO Tariff, Outage Coordination Protocol (OCP), §6.<sup>5</sup> The OCP addresses requirements associated with both planned and unplanned (forced) outages. Moreover, under the current “Must-Offer Obligation” (MOO), generation that is available but not already scheduled is obligated to offer the capacity to CAISO in real-time, for which the generator receives specified compensation. The CAISO has also developed, pursuant to FERC directives, a series of rules and requirements to implement the MOO.<sup>6</sup> As part of that process generators that do not expect to be needed in the market can request a “waiver” of the MOO, subject to approval by CAISO, based on expected system conditions. The revised GDS 4 would interfere with, hamper and create a clash of operating practices between the Commission and appropriate CAISO tariff protocols; specifically with respect to the operation of the MOO waiver process to the extent that the revised GDS 4 requires an explicit, separate permissive “affirmative declaration” by the CPUC.

As the Committee is also certainly aware, the FERC has imposed on entities holding market-based rate authority a series of conditions in response to concerns about

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<sup>5</sup> CAISO OCP is available at <http://www.aiso.com/docs/09003a6080/27/ff/09003a608027ff1e.pdf>.

<sup>6</sup> CAISO recently filed certain modifications to the MOO in Amendment No. 60, FERC Docket ER04-835. The CPUC has intervened in that case.

potential market manipulation, including concerns about potential withholding. Violation of those conditions subjects the supplier to significant peril and economic risk. Additionally, the CAISO has developed tariff provisions addressing certain “oversight and investigation” rules that also address concerns about potential withholding or other forms of market manipulation. Given these rules and requirements, many of which have been imposed since the Committee’s work began, it is impossible for the proposed GDS 4 not to conflict with existing CAISO Tariff provisions (such as the MOO waiver process or the Oversight and Investigation rules) or FERC’s oversight processes concerning market behavior.

DENA reiterates its shared interest with the Committee in providing California with efficient and reliable sources of power. However, DENA believes the scope and intent of revised GDS 4 is unnecessary and unwise; it should not be taken up by the Committee. Indeed the proposed GDS 4 conflicts with the Committee’s objective and should be dropped from consideration.

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