

# ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON  
ANNE J. SCHNEIDER  
JEFFERY D. HARRIS  
DOUGLAS K. KERNER  
ROBERT E. DONLAN  
ANDREW B. BROWN

ATTORNEYS AT LAW  
2015 H STREET  
SACRAMENTO, CALIFORNIA 95814-3109  
TELEPHONE (916) 447-2166 FAX (916) 447-3512

LYNN M. HAUG  
PETER J. KIEL  
JAMES D. McNAIRY  
CHRISTOPHER M. SANDERS  
JONATHAN R. SCHUTZ  
GREGGORY L. WHEATLAND

June 16, 2004

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

RE: Proposed Revisions To General Duty Standard No. 4

Dear Mr. Wood:

Pursuant to your June 7, 2004 letter, the High Desert Power Project, LLC (“HDPP”) hereby presents its 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”). HDPP is the owner and operator of a new, state-of-the-art generating facility located in Victorville, California, has participated before the Committee and shares its desire to assure reliable service to its customer.

HDPP is perplexed by the proposed revisions to GDS 4. While the proposal purports 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>1</sup> Instead, the revised language would impose on generators new rules that are impractical and in some cases impossible to meet. Accordingly, we urge the Committee to reject the revisions, and instead rely upon the already existing General Duty Standards.

The proposed GDS 4 creates two new “duties”: the first precludes a facility from turning off unless both the California Independent System Operator (“CAISO”) and the California Public Utilities Commission (“CPUC”) “affirmatively declare that a generating facility is unneeded during a specified period of time”; and the second requires generators to “not take or keep capacity out-of-service” during a forced outage during warnings, alerts or system emergencies.

As an initial matter, the Committee should recognize that 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>2</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

<sup>1</sup> June 7, 2004 Presiding Officer Letter to Participants, page 5.

<sup>2</sup> See, NERC Glossary, available at <http://www.nerc.com/glossary/glossary-body.html>.

scheduling processes.”<sup>3</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 is said 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. First, these conditions conflict with good utility practice because the conditions would force continued plant operation until the unit completely fails or circumstances of imminent danger arise. Given the dynamic nature of plant operation, it can behoove system reliability to allow for units to take a forced outage to explore unusual operating conditions even when there is no imminent threat to public and personnel safety. It would not be prudent to allow the plant to continue to operate until there is catastrophic failure as the damage that can be done in the interim would clearly increase the total outage period for the plant and significantly increase the resources that must be expended to return the plant to service.

Moreover, ordinary commercial relationships between the asset owner or operator and other entities such as equipment manufacturers, maintenance services providers, project insurers, power purchasers (in HDPP’s case the California Department of Water Resources), or financing entities will require that the plant be operated consistent with good utility practices. If the revised GDS No. 4 is adopted, the Committee will effectively force the facility operator to violate the proposed standard or risk breaching equipment warranties, long-term service contracts, insurance requirements, power purchase agreements or financing arrangements. Clearly such a Hobson’s choice is inconsistent with the goals of SB 39xx.

Additionally, as to the second, economic-based condition, generators are not in the position to make an assessment of the public costs and benefits of running a plant to failure. Nor should they be put in such a position, particularly if continued operation may trigger violation of numerous commercial relationships as noted above. Accordingly, we request that the Committee reject this language.

As the Committee is aware, the CAISO Tariff includes provisions that require generators to notify the CAISO when circumstances indicate that a forced outage is to occur. See, CAISO Tariff, Outage Coordination Protocol (“OCP”), §6.<sup>4</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 they receive specified compensation. The CAISO has developed, pursuant to FERC directives, a series of rules and requirements to implement the MOO.<sup>5</sup> As part of that process generators that do not expect to be needed in the market can

---

<sup>3</sup> CAISO Tariff, Master Definition Supplement, Original Sheet 316, available at <http://www.caiso.com/docs/09003a6080/27/ff/09003a608027ff02.pdf>.

<sup>4</sup> CAISO OCP is available at <http://www.caiso.com/docs/09003a6080/27/ff/09003a608027ff1e.pdf>.

<sup>5</sup> CAISO recently filed certain modifications to the MOO in Amendment No. 60, FERC Docket ER04-835. The CPUC has intervened in that case.

request a “waiver” of the MOO, subject to approval by CAISO, based on expected system conditions. The revised GDS 4 would interfere with and hamper the operation of the MOO waiver process to the extent that the revised GDS requires an explicit and separate “affirmative declaration” by the CPUC. Accordingly, this language should be rejected by the Committee.

As the Committee is also aware, the FERC has imposed on entities holding market-based rate authority a series of conditions in response to concerns about potential market manipulation, including concerns about potential withholding. Violating those conditions can put the supplier at significant risk. Additionally, the CAISO has developed tariff provisions addressing certain “oversight and investigation” rules, among others, 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 clear that the revised GDS 4 can conflict with the existing CAISO Tariff provisions (such as the MOO waiver process or the Oversight and Investigation rules) and FERC’s oversight processes concerning market behavior. Accordingly, HDPP respectfully suggests that the scope and intent of revised GDS 4 is unnecessary and need not be taken up by the Committee.

HDPP shares the Committee’s interest in providing California with efficient and reliable sources of power. However, we believe that the revisions proposed in GDS 4 will frustrate this goal, particularly in light of the regulatory complexity it creates beyond existing rules and requirements that address withholding concerns. HDPP urges the Committee to encourage the use of viable bilateral commercial transactions as a means of providing reliable sources of power for California.

June 16, 2004

---

Andrew B. Brown  
Ellison, Schneider & Harris, LLP  
2015 H Street  
Sacramento, California 95814

Telephone: 916.447-2166  
Facsimile: 916.447-3512  
Email: [abb@eslawfirm.com](mailto:abb@eslawfirm.com)

Attorneys for the High Desert Power Project, LLC

CC: Presiding Member Wood (hard copy)  
ALJ Mattson (hard copy)  
CPUC Commissioners (electronic copy)  
All Parties in CPUC Rulemaking R.02-11-039 (electronic copy)