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September 10, 2004

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

RE: August 23, 2004, Proposed Operations Standards and Guidelines for Generators

Dear Presiding Officer Wood:

Pursuant to your August 23, 2004 letter, Duke Energy North America (“DENA”) respectfully submits these comments on the proposed *Operations Standards and Guidelines for Generators* (“Operations Standards” or “OS”) that are to be the subject of workshops before they are presented to the California Electricity Generation Facilities Standards Committee (“Committee”).

DENA reiterates its shared interest with the Committee in providing California with efficient and reliable sources of power. The Committee’s development of Operations Standards should recognize the implementation and compliance efforts that will be required, as well as other regulatory structures already applicable to generators. As explained in the comments below, by streamlining these materials and avoiding potential conflict with other agencies, including the CAISO, the implementation efforts of the CPUC and the compliance work of the generators can be more efficient and focused.

## **I. Background.**

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 attempted to effectively participate before the Committee and the California Public Utilities Commission (“CPUC or “Commission”) notwithstanding its ongoing concerns

about the appropriate scope of the Commission's jurisdiction with respect to SB 39xx.<sup>1</sup> While DENA prefers to maintain and continue its cooperative work with the Committee and the Commission to ensure reliable service to its customers, the fact remains that the development and implementation of various standards imposes real regulatory costs on DENA's operations which are typically not recoverable from market revenues. DENA urges the Committee to fashion its standards in a way that minimizes duplicative regulation and avoids wasteful implementation and enforcement costs both for generators and the CPUC.

## **II. Comments on Operations Standards and Guidelines.**

Below DENA provides its comments on the Operations Standards based upon its initial review. The comments presume that the Operations Standards will be implemented and enforced by the CPUC through the already adopted CPUC General Order ("GO") 167, and that CPUC Staff will likely utilize the same type of "matrix" approach which requires that each Operations Standard Guideline be separately addressed. 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 the Operations Standards constitutes an unnecessary regulatory burden particularly in those areas that are already the subject of regulation by, for example, Cal-OSHA and various air districts. DENA appreciates the desire to have critical systems maintained and operated correctly. Yet the Committee must recognize that imposing a set of universal standards with detailed assessment guidelines that are to be applicable across technologies and plant vintages will create a substantial regulatory and implementation burden on generators and the CPUC with little anticipatory benefit for California consumers as a whole. Greater strides can be made in ensuring system reliability in the short-term by encouraging immediate bilateral contracting with resources needed to maintain sufficient generation capacity for the system along with the development of a wholesale capacity market structure.

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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.

***A. Remove Redundant Standards and Guidelines.***

In many cases, the proposed Operations Standards overlap with the existing Maintenance Standards already incorporated into GO 167. By their own description, at least the first 11 Operations Standards and associated Guidelines explicitly overlap with the existing Maintenance Standards (i.e., they clearly state that they are “similar” and reference various maintenance standards). Yet there is no indication as to whether or how the Operations Standards diverge from the existing Maintenance Standards. The draft Operations Standards do not articulate why it is necessary or beneficial to have two sets of standards addressing “similar” matters. Presumably this duplication is occurring because of a concern that “operations” personnel would not comply with the dictates of the Maintenance Standards even though GO 167’s definition of “Generating Asset Owner” (“GAO”) is so broad that it captures operators.<sup>2</sup> It is clear, however, that with this parallel regulatory design there will be duplicative implementation and enforcement work for both the CPUC and GAOs when the Operations Standards are ultimately incorporated into GO 167.<sup>3</sup> Accordingly, DENA recommends that those Operations Standards that substantively duplicate existing Maintenance or Logbook Standards be removed entirely from the Operations Standards. To the extent the Committee identifies necessary revisions to the Maintenance Standards, such revisions should be made explicitly rather than through a duplicate or parallel set of Operations Standards. Because OS 17 (Records of Operations) essentially duplicates the record keeping requirements of the Logbook Standard (See GO 167, §§ 5.0, 6.0 and associated appendices), its provisions should be similarly removed or the existing Logbook Standards revised.

***B. The 52 Pages of “Guidelines” Associated With Operations Standard 28 Are Excessive and Will Impose A Significant Regulatory Burden.***

Based upon the prior implementation effort for Maintenance Standards at the CPUC, it is reasonable for generators to anticipate a similar labor-intensive effort to develop an “Operations

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<sup>2</sup> See, GO 167 §2.9. All DENA personnel working at its units—whether they primarily focus on “maintenance” or “operations” activities—share a common concern and understanding regarding the need to safely and efficiently run the units. DENA sees little value in creating parallel sets of standards when the subject matter is essentially identical simply because some group of employees may have “maintenance” as opposed to “operations” tasks.

<sup>3</sup> The incorporation was anticipated at the time GO 167 was created. See GO 167, §8. The duplication also raises questions as to whether the CPUC’s enforcement would therefore find two “similar violations” for a single action or inaction at a facility, namely one violation of a maintenance standard and one of a operations standard.

Matrix” that attempts to document compliance with each and every guideline.<sup>4</sup> The size of the guidelines associated with OS 28 alone indicate that this effort will be a tremendous challenge for both the generators as well as the CPUC staff that must then review this documentation. This effort, and its associated documentation burden and justification requirements, will divert the resources and attention of engineering and operations personnel from their primary jobs of reliable plant operation and maintenance. The GAO compliance work associated with documenting its current practices against the 52 pages of detailed guidelines represents a vast new regulatory burden with associated costs that—in the case of non-utility projects—do not have a guaranteed source of cost recovery. DENA believes that a GAO’s compliance with the intention of the Operations Standards can be reviewed against the traditional “good utility practice” standard, rather than a laborious documentation and justification of current practices against the 52 pages of rigid guidelines associated with OS 28.

***C. Operations Standards Create Apparent Conflicts With CAISO Tariff Provisions and/or FERC or Other Agencies’ Jurisdictions and Should Be Modified To Make Clear That They Do Not Seek To Override or Conflict With Other Regulations.***

There are a number of Operations Standards which appear to impose a Hobson’s Choice for generators. This problem can occur because current regulations are applicable to the generator’s operations by other entities with primary jurisdiction over specific issues, such as worker safety or air quality for example. It may also occur because the Operations Standards suggest that the CPUC may assert jurisdiction over issues that are traditionally within FERC’s domain. The Hobson’s Choice comes about because the generator will be inclined to follow the requirements of the entity with primary jurisdiction, and therefore could be found to have violated the Operations Standard. The best remedy is to have the standards clearly state that compliance with the requirements of the other entity will satisfy the Operations Standards.

**1. The Committee Should Avoid Injecting The CPUC Into The CAISO Tariff Processes Regarding Plant Availability.**

The Committee’s proposed Operations Standards appear to inject the CPUC into the CAISO’s existing processes related to plant availability without a corresponding modification to the CAISO Tariff. This structure is likely to be controversial, and places generators in the

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<sup>4</sup> See, detailed instructions and link to “maintenance matrix” posted at:  
<http://www.cpuc.ca.gov/static/aboutcpuc/divisions/consumer+protection/electric+generation+performance+branch/power+plant+standards/index.htm>

position of having to choose which process to follow with the knowledge that they cannot follow both simultaneously. For example, Operations Standard 22 (Readiness) indicates that the CPUC will, pursuant to Operations Standard 24, determine whether a generator can make a “change in status.” Operations Standard 24 (Changes in Plant Status) in turn states that a change in status is up to CPUC determination “in consultation with CAISO” to affirmatively declare that a unit is not required “during a specified period of time.” First, the Operations Standards fail to state the statutory basis for this assertion of authority. Second, taken together, they suggest a regulatory change unapproved by FERC which would have the CPUC in an override role on significant CAISO tariff provisions, not the least of which is the Outage Coordination Protocol (“OCP”). Similarly it suggests that the CPUC would take some position relative to the operation of the Participating Generator Agreements (“PGAs”) between CAISO and generators; agreements that are within the exclusive purview of FERC. Clearly, if the Committee wishes to create such a structure where the CPUC would have to consent to a change in plant status, revisions will be required to the CAISO Tariff and agreement will need to be secured from FERC. Otherwise it appears that the provisions seek to override the existing regulatory structure. In the meantime, no generator should be considered out of compliance if it has complied with the existing CAISO requirements.

## **2. The Operations Standards Should Reflect Existing And Anticipated Changes In Related CAISO Mechanisms And Avoid Imprecise Language.**

Similarly, OS 22 suggests that units currently available are to be “able to operate at full power” with a corollary standard that requires the GAO to “prepare[] facilities for credible, severe operating conditions.” It is not clear what capacity level “full power” represents or whether this level includes whatever derates occur throughout a maintenance cycle or pursuant to the generators submission to CAISO through the SLIC interface.<sup>5</sup> Further, it suggests a new obligation to maintain and prepare facilities for “severe operating conditions”—a standard of care dissimilar to the traditional “good utility practice.”<sup>6</sup>

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<sup>5</sup> Schedule Logging for the ISO of California (“SLIC”). The CAISO’s SLIC provides a web-enabled interface for transmission and generation owners to schedule their outages. See <http://www.caiso.com/docs/2001/03/29/2001032906410829431.html>.

<sup>6</sup> See, CAISO Tariff, Appendix A, Master Definitions Supplement, First Replacement Vol. 1, Second Revised Sheet No. 318, available at <http://www.caiso.com/docs/2004/08/24/2004082408462312185.pdf>. The term “good utility practice” is used throughout the CAISO Tariff. See, e.g., CAISO Tariff § 2.3.2.2 (Emergency Procedures) and §2.3.6.6 (Maintenance Outage Requests by ISO).

Setting aside for a moment the panoply of existing CAISO and FERC requirements that guard against withholding (and ignoring the various elements pending before FERC), OS 22 is not clear as to what is required of the generator. Is the generator committing a violation if CAISO requests power in excess of its current Pmax rating? Is it a violation if the generator fails to achieve its expected ramp-rate over the course of an hour? What specifically are “credible, severe operating conditions” and how (and when) is the generator to know of these conditions? How is a generator to comply with OS 22 Guidelines C & D if there are natural gas curtailments pursuant to CPUC-approved public utility tariffs? Are peaker facilities that are rarely operated required to have contingency plans in place to provide that “adequate fuel and necessary commodities can be delivered to the generating facility to ensure full load for an indefinite time”?

Operations Standard 19 (Energy Grid Operations) would require the GAO to “prepare for and operate” during emergencies. OS 19 should be clear that any operations would be pursuant to CAISO directives as described by those CAISO Tariff provisions addressing System Emergencies. Is it not the role of CAISO to direct plant operations during the types of disturbances listed in OS 19, Guideline G? OS 19, Item B and Guideline F are too vague as to the obligation they impose “when emergencies appear imminent.” What does the call for “clarifying” regulatory requirements or “obtain[] regulatory relief” mean in this context? Insofar as CAISO directly secures and directs blackstart services, what is a GAO’s obligation under OS 19, Item C and Guideline J? Insofar as the CAISO Tariff expressly contains the OCP, what incremental obligation is imposed by OS 19, Item D or Guidelines E and K? Similarly, given the CAISO Tariff and Protocols, and the revision to market rules intended to discourage uninstructed plant operations, what is the intent of OS 19, Guidelines L (d) and (e)?

Operations Standard 12 appears to impose an obligation to “optimize power production,” yet CAISO’s role as control area operator, and its Tariff provisions, lead to the optimization of grid operations and not necessarily power production at various facilities. The scheduling profile created by CAISO dispatch instructions often does not optimize power production, but instead can lead to inefficient production when viewed over a multi-hour time frame. Does OS 12 imply some obligation inconsistent with the dispatch instructions of CAISO?

DENA encourages the Committee to recast any standards such that GAOs are not put into a position of violating or second-guessing their obligations under the CAISO Tariff.

Accordingly, it is important to analyze the proposed Operations Standards with respect to the CAISO Tariff as it now stands, as well as anticipated revision called for in CAISO's MD02 (now called Market Redesign and Technology Upgrade—MTRU) process.

**3. Operations Standards Related To Change In Plant Status Constitute New Policy Without Clear Connection To The Statute, And Which, If Permissible, Should Be Consistent With The CAISO Mechanisms And Avoid Conflict With The Existing Relationships.**

Taken together, OS 22-26 constitute new policy regarding the availability of generation and the ability of asset owners to dispose of or retire assets. In cases where the asset is not otherwise required to operate due to contractual arrangements or CAISO requirements, the owner should have the right to sell, mothball or retire assets. While SB 39xx provided for the development of standards for maintenance and operation of facilities, the OSs fail to state the authorities upon which they rely. These omissions are significant and appear to conflict with the owner's property rights. DENA does not believe that SB 39xx empowered the Committee to create policies not articulated in the statute.

The authority for OS 23 (Notification of Change in Plant Status) is not stated. While the 90-day prior notice requirement includes a caveat reference to forced outages and the CAISO procedures for planned outages, it appears inconsistent with other applicable parts of the CAISO Tariff, including for example the Must Offer Waiver ("MOW") mechanism<sup>7</sup> as well as the proposed dynamic revisions through SLIC.<sup>8</sup> This occurs because a "change in status" includes, among other things, the "shutdown" of the plant. (OS 23, Guideline B.) The 90-day notice requirement is unworkable if it applies to shutdowns because a number of plants are regularly cycled offline consistent with the CAISO's MOW procedures. This occurs irrespective of project size or technology, meaning that even large central station facilities may request and be given permission by CAISO to periodically shutdown because the capacity is not needed. Put simply, the 90-day notice requirement is unrealistic in the current regulatory environment.

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<sup>7</sup> See, CAISO Must Offer Waivers Operating Procedure M-432, Ver 1.5 (September 3, 2004), available at <http://www.caiso.com/docs/2004/09/03/2004090313342914798.pdf>.

<sup>8</sup> See, CAISO information regarding MRTU Phase 1b changes. Change manual available at <http://www.caiso.com/docs/2004/06/22/2004062216385624113.pdf>. This details changes to the web interface for outage requests, derates, Pmin rerates and changes to ramp rates. It is unclear from the OS whether a partial derate of a unit constitutes a "change in status", although OS 22 appears to suggest that such derates are impermissible.

Moreover, the provision implicitly suggests—but fails to explicitly state—that the CPUC would approve or deny a change of status based on that 90-day notice. If the Committee’s intent is to assert authority over the ability to change plant status, then this must be explicitly stated.<sup>9</sup> Moreover, it should be made clear in the standards whether a failure to provide this much advanced notice is a single violation, or multiple events.

The authority for OS 24 (Changes in Plant Status) is not stated. The Guidelines provided for OS 24 speak to “Removal from Service” while the OS itself speaks of “Change in Plant Status.” The OS would require an “affirmative declaration” from the CPUC that the change in status could occur, “after consultation with CAISO.” This OS also suggests that the CPUC would provide some limits on the duration of the change in status. Guideline B to OS 24 requires “no decrease in the unit’s worthiness for operation” until the plant status changes, further suggesting that this decision rests solely with the CPUC. Again, it is not clear whether or how this is coordinated with relevant CAISO provisions, including potential termination of the PGA.

Although OS 24 includes a caveat that states “[t]his standard is applicable only to the extent that the regulatory body with relevant ratemaking authority has approved a mechanism to compensate the GAO for the readiness services provided” it is unclear whether actual compensation is required, or merely the presence of some mechanism. For example, should the possibility that a public utility could contract with a generator constitute a “mechanism” notwithstanding that no public utility has actually entered into a contract for the mothballing of a facility? Moreover, OS 24 speaks of the provision of “readiness services” in this caveat on compensation, but OS 22, which explicitly addresses “readiness” (thereby defining “readiness services”), fails to include the same type of caveat. This is particularly troubling given the new obligations it creates concerning certain “contingency plans.”<sup>10</sup> DENA does not believe the Committee should create an OS that would preclude a change in status absent assurances of sufficient compensation to maintain the asset in a particular state over a period of time. Similarly OS 22 should not impose new costly “contingency plans” if there is no assurance of compensation for the “readiness services”, and accordingly the same caveat provided in OS 24 should be included in OS 22.

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<sup>9</sup> OS 24 similarly implies some type of reservation of authority.

<sup>10</sup> See, OS 22, Guidelines A, C and D.



DENA supports the development of the Resource Adequacy Requirement (“RAR”) and a capacity market structure that will support utility procurement of required capacity. While some progress has been made in these areas the current structure does not support continued availability of resources not currently under contract with the utilities or the CAISO. That said, if the utilities (or CAISO) fail to contract for capacity and the wholesale market will not support the continued availability of the asset (either in an operable state or as mothballed capacity), then the marketplace has made a very clear signal that the capacity is not needed. In that case there should be no impediments to the owner recovering whatever residual value the asset may have either from a sale of the asset, a lay-up or mothballing, or retirement and decommissioning—perhaps with an intent to make subsequent investments in a repowered facility. These OSs, however, suggest something entirely different and therefore constitute inappropriate policymaking over assets that are not jurisdictional to the CPUC in a manner not contemplated by the statute.

#### **4. Operations Standard 25 Must Recognize FERC’s Role In The Disposition Of FERC Jurisdictional Assets.**

Operations Standard 25 (Transfer of Ownership) requires at least 90 days prior notice to any change in ownership, and requires the existing GAO to secure an agreement from the future GAO that it will maintain, among other things, the “operation, maintenance and logbook plans, policies and practices” until revised by the new owner. First, the OS fails to make clear whether or not it contemplates the CPUC (or CAISO) having some authority over the disposition of an asset. Currently that jurisdiction rests with FERC. Second, it is unclear if the OS seeks to limit the new owners’ operation of facility in terms of future operations. In any case, it should only be the responsibility of the current owner to comply with these requirements.

#### **5. Operations Standard 26 May Impose Unnecessary Requirements.**

Operations Standard 26 (Planning for Unit Storage) requires a 30-day prior notice to the CPUC and CAISO before a “change in the availability status” of a generator. It is not clear whether a “change in the availability status” is the same as a “change in plant status” mentioned in OSs 23 and 24.<sup>11</sup> As noted before, if this includes a “shutdown” of a facility (as stated in OS 26 Guideline A)—but not a retirement or decommissioning—then besides the 90-day notice

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<sup>11</sup> The reference in OS 26, Guideline C to OS 7 on Operations Procedures is redundant and unnecessary and duplicates existing Maintenance Standard IV A as noted in OS 7.

requirement of OS 23 the GAO is to also submit, 30 days prior to the OS 23 90-day notice, plans and procedures for storage of the unit. Again, in the context of plant cycling under the MOW this 120-day advanced submission does not make sense. Moreover, if the project is to be shutdown for any period of time, this must be done in accordance with the CAISO's OCP. There appears to be no attempt at coordinating the intent behind OS 26 with the CAISO OCP, thus imposing additional and unnecessary regulatory and reporting requirements with no clear regulatory benefit.

The Guidelines associated with OS 26 dictate that very detailed steps associated with lay-up or mothballing be prepared and submitted before the lay-up or mothballing occurs. The Commission should not require this degree of specificity, but instead should allow GAOs sufficient flexibility with respect to their lay-up/mothballing approach against a better articulated standard regarding the purpose of such actions. As long as the GAO can document that it has undertaken actions consistent with good utility practice for laying-up or mothballing, the intent of OS 26 should be satisfied. As currently structured, the GAO must create and submit procedures that include step-by-step instructions as to the lay-up process for each type of system and component. GAOs contemplate facility lay-up or mothballing when the market fails to currently support the unit's ongoing availability but where the GAO forecasts some potential for future demand of that capacity. Yet lay-up or mothballing requires GAOs to incur ongoing costs to maintain those assets in that mode, costs that presumably are not recovered in the market. By definition, the imposition of the additional regulatory costs and burdens associated OS 26's detailed Guidelines may in fact drive GAOs to favor retirement over lay-up or mothballing to the extent that these additional regulatory costs tip the GAO's calculation of unrecovered mothballing expenses against its forecast of future potential market revenues.

#### **6. Operations Standard 14 Should Simply Rely on Cal OSHA Requirements.**

As noted in OS 14 (Clearances), Cal-OSHA enforces clearance and tag-out requirements. In some cases the CEC imposed license may include other requirements for confined spaces. Accordingly, generators should simply be required to comply with the Cal-OSHA or other similar license requirements. The Guidelines associated with OS 14 should be deleted.

**7. Operations Standard 21 Should Rely on License Requirements Where Applicable.**

Operations Standard 21 (Plant Security) should utilize any CEC-imposed licensing requirements for security programs when applicable. Plant-specific construction security plans and operations security plans may already be required as part of the licensing requirements. To the extent these apply, OS 21 should simply refer to those requirements. OS 21, Guideline C requires clarification as to how the generator knows how to identify “local conditions” that would warrant a change of alert status. Absent affirmative information or direction by local law enforcement authorities, generators should not be held to such a vague standard.

***D. Potential Revision Approach That Would Remove Unnecessary Duplication And Streamline Compliance and Implementation Issues.***

In light of the duplication or overlap with the existing Maintenance and Logbook Standards, DENA suggests that there would be extensive benefits to the incorporation of the proposed Operations Standards into those existing standards. There should be no question that the proposed Operations Standards substantively overlap with those existing materials. Both the Commission, as the implementation and enforcement entity, as well as generators, upon which the bulk of the compliance burden falls, would benefit extensively from streamlining. Only where the substance of a standard is so clearly “operational” in nature—with no logbook or maintenance implications—should they be retained within a stand-alone Operations Standard. Moreover, as highlighted throughout the comments above, efforts should be taken to avoid the potential for conflict with existing regulations or requirements that are the primary responsibility of other agencies or entities, including those specified in project-specific licenses. Failing to streamline and avoid potential conflicts will create unnecessary and inefficient regulatory layers with little discernable benefit to regulators at significant cost to ratepayers.

DENA believes a streamlining effort would be best pursued in the context of the upcoming workshops. A first step in this process would include the authors explaining how they have differentiated between issues included in the Maintenance and Logbook Standards with those in the proposed Operations Standards. Where overlaps are identified, it may be more productive to discuss whether incremental changes to the existing standards would achieve the desired result.

**III. Conclusion.**

DENA reiterates its shared interest with the Committee in providing California with efficient and reliable sources of power. The Committee's development of Operations Standards should recognize the implementation and compliance efforts that will be required, as well as other regulatory structures already applicable to generators. By streamlining the materials and avoiding potential conflict with other agencies, including the CAISO, the implementation efforts of the CPUC and the compliance work of the generators can be more efficient and focused.

DENA looks forward to working with the Committee, its staff, and other interested parties in addressing these issues identified during our initial review of the proposed Operations Standards, as well as other concerns that may arise during our continuing participation.

September 10, 2004

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