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October 1, 2004

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

RE: Post-Workshop Comments of Duke Energy North America Regarding The  
August 23, 2004, Proposed Operations Standards and Guidelines for Generators

Dear Presiding Officer Wood:

Duke Energy North America (“DENA”) respectfully submits these post-workshop comments following the September 20 and 21 workshops held by the staff of the California Electricity Generation Facilities Standards Committee (“Committee”) concerning the proposed *Operations Standards and Guidelines for Generators* (“Operations Standards” or “OS”). DENA previously submitted comments to the Committee on September 10, 2004 and incorporates here the concerns expressed in that document by this reference.

## **I. Post-Workshop Comments.**

DENA actively participated in the workshops, as it has throughout the Committee processes and participated with other Generating Asset Owners (“GAOs”)—including the utilities operating generation in California—in the development of the Joint GAO Revisions submitted separately to the Committee. We appreciate the dialogue that occurred during the workshops and take seriously Staff’s request for comments and suggestions regarding the draft standards. DENA supports the Joint GAO Revisions as the concerns DENA articulated on September 10 were also expressed by other GAOs and subsequently addressed in the redlined document. Nevertheless, the proposed Operations Standards could be made much clearer and more easily implemented if the following revisions are made in addition to the recommendations found in the Joint GAO Revisions:

- Delete as unnecessary draft Operations Standards 1-11 which expressly acknowledge that they duplicate various Maintenance Standards already adopted by the Committee and subject to CPUC implementation under GO 167. There is no need to have redundant regulatory

requirements with the associated costs when there will be absolutely no additional reliability benefit for consumers. This degree of duplication simply increases costs, particularly if it implemented in a manner similar to the Maintenance Standards and requires yet another expensive “gap analysis” compliance effort. If the Committee is convinced that the existing Maintenance Standards are deficient and therefore require revisions to capture “operations personnel” the Committee is free to revise the existing standards to make the correction. But there is no rationale for the Committee to promote duplicate standards under the 39xx GO mechanism already in place. Removing these repetitive provisions will show that the Committee is serious about meaningful efforts to promote reliable capacity in the State without resorting to empty acts.

- Clarify the critical distinction between the “standards” and their associated “guidelines.” DENA believes that this issue—the distinction between enforceable “standards” and advisory “guidelines”—received the most discussion during the workshops and that there was agreement among all parties that guidelines are not to be the basis for enforcement. Accordingly, DENA supports the clarifications made in the Joint GAO Revisions, and wishes to stress to the Committee its commitment to maintaining capacity when and where the economics are in place to support ongoing operations. Excessively detailed “guidelines” with language that suggests “minimum” requirements or other obligations drive excessive compliance costs and an implementation and enforcement quagmire simply because the GAOs will again feel compelled to show whether or not they comply with each and every element in the guidelines. This was the CPUC’s staff approach in the Maintenance Standards, and its repetition for implementation of the Operations Standards is unnecessary and ill-advised. Instead, using language that makes clear that the purpose of guidelines is to illustrate the concepts embraced by the associated Standard will provide a sufficient basis for compliance and enforcement.
- Clarify and consolidate Operations Standards 22-26 into a single Operation Standard. DENA supports the Joint GAO Revisions because it makes a single comprehensive standard that covers both “readiness” and what would be done for long-term shutdown or storage. The clarified language makes clear that a GAO with an asset that is committed to serve load through contract has incentives to maintain the readiness of the asset. Yet, where the marketplace (either in terms of utility procurement, CAISO RMR contracting, or the broader

regional wholesale market) fails to secure this existing capacity, the Committee should not create through its standards a new and ongoing obligation to maintain capacity that the wholesale market rejects. The GAO must then make decisions based on its expectations of market demand and the status of its asset that are consistent with its business plans. While the GAO may make a business decision to incur the significant ongoing costs of lay-up without a revenue stream because it anticipates changes in the future, it must not be obligated to maintain capacity that is rejected by the marketplace.

- Delete other unnecessary or repetitive standards such as Standards 10 (Regulatory Requirements) and 17 (Records of Operation). Standard 10 effectively requires the GAO to comply with existing laws and regulations—which is by definition redundant and unnecessary. Standard 10 makes no incremental improvement in reliability and essentially suggests that other agencies are not capable of handling their areas of primary jurisdiction. Standard 17 should be deleted because the intent of that section is already covered under the existing Logbook Standards, and hence its duplication here is unnecessary.
- Standard 14 (Clearances) should be revised simply to refer to Cal-OSHA clearance and tag-out requirements. GAOs should simply be required to comply with the Cal-OSHA or other similar license requirements, and hence the guidelines associated with this standard should be deleted.
- Streamline Operations Standard 28. Operations Standard 28 effectively repeats a large number of prior standards and is therefore unnecessary. If the Committee chooses to pursue this redundant language, it should move the 52 pages of associated “guidelines” to a separate appendix and thin the existing guidelines by removing the separate “detailed guidelines” found under the “general guidelines.” Here too DENA agrees with the general concepts articulated, but is very concerned with the needless waste that would accompany a gap analysis of 52 pages of guidelines.

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 these post-workshop comments, by streamlining these materials and avoiding potential conflict with other

agencies, the implementation efforts of the CPUC and the compliance work of the generators can be more efficient and focused.

**II. 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 Matrix” that attempts to document compliance with each and every guideline.<sup>1</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.

**III. Operations Standards 22-26 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

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<sup>1</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>

owner's property rights. DENA does not believe that SB 39xx empowered the Committee to create policies not articulated in the statute.

As currently drafted, these standards do not provide a coherent picture of the regulatory requirement or goal. Moreover, they appear to ignore the circumstances of non-public utility generation that is not provided the same degree of assured cost recovery for compliance expenditures. If non-utility assets are not wanted in the wholesale marketplace the GAO should not face an obligation to maintain the capacity. With the CPUC's implementation of AB 57, including the development of resource adequacy requirements and local reliability procurement directives, coupled with CAISO's own ability to secure RMR contracts when necessary, the marketplace has tools to maintain capacity that is needed to serve load. If existing generation is not procured there should be no "second guessing" through proposed Operations Standards 22-26.

Moreover, some of these provisions implicitly suggest—but fail to explicitly state—that the CPUC would seek to approve or deny a change of status. If the Committee's intent is to assert authority over the ability to change plant status, then this must be explicitly stated.<sup>2</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. As originally written, Operations Standard 24 would require an "affirmative declaration" from the CPUC that the change in plant 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.

Inclusion of a caveat to Operations Standard 24 that precludes its operation unless there is a "mechanism to compensate" the asset does nothing to correct its shortcomings. The distinction between the mere existence of a mechanism and receipt of actual compensation is paramount here. Again, in today's wholesale market structure, that compensation is either coming in the form of some bilateral arrangement through utility procurement, or a CAISO RMR contract. If the wholesale market rejects an asset then that asset by definition is not required to serve

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<sup>2</sup> OS 24 similarly implies some type of reservation of authority.

demand. The Committee should not attempt to create some additional regulatory requirement that effectively ignores this fact.

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.

#### **IV. The Committee Should Suggest A Straightforward Implementation Approach.**

A significant portion of the workshop discussions focused on the GAOs’ concerns that another “matrix” approach would be used for implementation and enforcement of the Operations Standards. GAOs uniformly expressed a view that a gap analysis of their existing operations and procedures compared to the standards and guidelines was extremely resource intensive and would not add to reliability. During those discussions GAOs suggested avoidance of a “checklist” approach in favor of narrative descriptions of how their current operations and procedures comply with the standards, including references to the relevant written materials. A narrative implementation approach would show compliance with the standards in a straightforward way and avoid the needless waste of resources on gap analysis that bring no discernable reliability benefits. While the job of implementation and enforcement is ultimately that of the CPUC, DENA believes it would be most helpful for the Committee to suggest an implementation approach that avoids the waste associated with the “matrix” approach.

**V. 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. DENA expressed these concerns both in its September 10 comments as well as during the September 20 and 21 workshops. 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.

October 1, 2004

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