

**BEFORE THE
CALIFORNIA ELECTRICITY GENERATION
FACILITIES STANDARDS COMMITTEE**

California Electricity Generation Facilities Standards)
Committee – Proposed General Duty Standards)
_____)

**COMMENTS OF AES ALAMITOS, LLC, AES HUNTINGTON BEACH, LLC,
AND AES REDONDO BEACH, LLC ON
THE PROPOSED GENERAL DUTY STANDARDS**

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May 19, 2003

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AES Alamitos, LLC; AES Huntington, LLC; and AES Redondo Beach, LLC (“AES Generators”) submit the following Comments on the proposed General Duty Standards in response to the invitation of Carl Wood, the Presiding Officer of California Electricity Generation Facilities Committee (“Committee”), presented in his letter of May 9, 2003, and as part of a continuing effort to work cooperatively with the Committee.¹

As an initial matter, the AES Generators incorporate by reference their April 23, 2003 Comments on the Committee’s initial draft of the General Duty Standards. As explained in more detail in those Comments, the Committee’s General Duty Standards raise significant

¹ These Comments are being submitted to the Committee pursuant to the provisions set forth at pages 42-43 of the transcript of the February 10, 2003 Prehearing Conference in R.02-11-039. In submitting these Comments and otherwise participating in this proceeding, each of the entities that comprise AES Generators expressly reserves all of their respective rights to challenge fully, in an appropriate forum, the legislation enacted in Chapter 19 of the 2001-2002 Second Extraordinary Legislative Session and the authority conferred on the California Public Utilities Commission therein, as well as any requirement that the CPUC may attempt to impose on any of the entities that comprise the AES Generators, pursuant to such authority or otherwise. The foregoing reservation includes, without limitation, a reservation of all rights to obtain relief from a federal court for violations of federal law or the U.S. Constitution. The submission of these Comments and any prior or subsequent participation in this proceeding by any of the entities that comprise the AES Generators, is purely voluntary and shall not operate as a waiver of any of the foregoing rights, or an admission that the Commission possesses authority to impose any requirement on AES Alamitos, LLC, AES Huntington Beach, LLC or AES Redondo Beach, LLC, or on their facilities or operations, including, without limitation, authority to require participation in this proceeding.

jurisdictional concerns, and appear to venture into areas left to the Federal Energy Regulatory Commission's ("FERC") exclusive jurisdiction. The final three proposed General Duty Standards included in the April 29, 2003 draft continue the pattern of addressing areas left to FERC's exclusive jurisdiction, and perhaps even make it more clear that the Committee's work runs the risk of being preempted under Federal law.

For example, General Duty Standard No. 4 purports to mandate that "[n]o Facility shall be operated or maintained in a manner that its output is withheld... (c) for the purpose of influencing wholesale electricity generation prices." The Standard thus seeks to regulate operation and maintenance in a way that affects wholesale prices. Under the Federal Power Act, however, FERC has exclusive jurisdiction to regulate wholesale sales of electricity in interstate commerce, including "any rule, regulation, practice or contract" affecting wholesale rates. 16 U.S.C. §§ 824(b),(d) and 824(e); *Duke Energy Marketing & Trading, LLC v. Davis*, 267 F.3d 1042, 1056 (9th Cir. 2001).

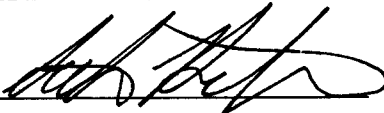
The Committee has also to date failed to articulate a clear purpose for the General Duty Standards, or why such Standards are necessary. The general principles articulated in the General Duty Standards are principles that the AES Generators follow as a matter of course. However, they offer little specific guidance concerning actual operation and maintenance. For example, proposed General Duty Standard No. 5 states that "[c]onsistent with prudent industry practice, each Facility shall maintain reasonable logs of operations and maintenance." That statement fails to provide generators with any indication of exactly what types of logs are required. Furthermore, the Committee has already adopted a much more detailed set of logbook requirements for thermal generators, and is in the process of doing the same for hydro plants. Proposed General Duty Standard No. 5 offers nothing beyond what is set forth in those standards.

The remaining General Duty Standards suffer from the same flaws. The Committee has already adopted specific maintenance standards, and plans to draft specific operation standards as well. In light of this work, the General Duty Standards appear unnecessary.

Dated: May 19, 2003

Respectfully submitted,

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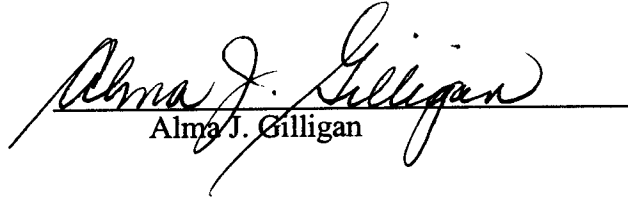
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CERTIFICATE OF SERVICE

I, Alma J. Gilligan, certify that on May 19, 2003, I served a true copy of the original attached document entitled **COMMENTS OF AES ALAMITOS, LLC; AES HUNTINGTON BEACH, LLC; AND AES REDONDO BEACH, LLC ON THE PROPOSED GENERAL DUTY STANDARDS** by e-mail to the attached service list.

Dated: May 19, 2003 at Walnut Creek, California


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