

**COMMENTS OF
DUKE ENERGY NORTH AMERICA
ON PROPOSED GENERAL DUTY STANDARDS 4-6**

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May 19, 2003

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At the invitation of the California Electricity Generation Facilities Standards Committee (the Committee)¹ and further to the prior Assigned Commissioner's Ruling on Phase 4 issues (the Phase 4 ACR),² Duke Energy North America (DENA) respectfully submits these Comments on proposed General Duty Standards (GDS) 4-6. GDS 4-6 were discussed but deferred for further consideration pending comments at the Committee's May 2, 2003 meeting.^{3 4}

I. INTRODUCTION

The Phase 4 ACR provides the Committee's Resolution on General Duty Standards (GDS) in Attachment 1, and a series of questions concerning the California Public Utilities Commission's (CPUC or Commission) implementation and enforcement

¹ Notice to Participants from Committee Chair Carl Wood (May 9, 2003).

² May 2, 2003, *Assigned Commissioner's Ruling Amending Scoping Memo To Add Phase 4 And Set Dates For Consideration Of General Duty Standards* (Phase 4 ACR).

³ Administrative Law Judge's Ruling: Report of Activities and Decisions Made at May 2, 2003 Meeting of California Electricity Generation Facilities Standards Committee, Rulemaking 02-11-039 (at 2).

⁴ 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.

role in Attachment D. DENA's prior comments on GDS 1-3⁵ observed that the GDS establishes standards of appropriate generality that are also consistent with DENA's long-standing operation and maintenance practices. Moreover, the GDS makes clear that it is not intended to override any existing rules, permits or other regulations pertaining to generation facilities:

Pursuant to the provisions of California Public Utilities Code § 761.3(f), nothing in these General Duty Standards for Operation and Maintenance shall modify, delay, or abrogate any deadline, standard, rule or regulation that is adopted by a federal, state, or local agency for the purposes of protecting public health or the environment, including, but not limited to, any requirements imposed by the California State Air Resources Board, an air pollution control district, or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the California Health and Safety Code.

GDS Resolution, Attachment A, pages 1- 2.

The GDS also makes clear that to the extent the Committee (and subsequently the Commission) implements any specific standards, conformance with the specific standards necessarily achieves compliance with the GDS. DENA's facilities are operated and maintained pursuant to and consistent with existing regulations and permits and therefore the GDS. Among other standards, where applicable DENA operates and maintains its facilities pursuant to its Participating Generator Agreement (PGA) and the California Independent System Operator (CAISO) tariff, as well as certain other regulatory and commercial obligations.

⁵ Comments of Duke Energy North America Regarding Draft General Duty Standards Resolution, filed April 23, 2003 before this Committee.

It was on these bases that DENA did not oppose the adoption of GDS 1-3 and recommended on the same bases that no specific implementation or enforcement measures were called for. GDS 4 and 6, on the other hand, exceed the appropriate level of generality of GDS 1-3 and should not be approved at all.

II. PROPOSED GDS STANDARDS 4 AND 6 SHOULD NOT BE APPROVED.

GDS 4 and 6 exceed the appropriate level of generality of GDS 1-3, would involve the Commission in implementation and enforcement activities better captured and in probable conflict with the requirements of other authorities or contracts and should not be approved.

GDS 4 provides that:

No Facility shall be operated and maintained in a manner such that its output is scheduled, delivered, adjusted or withheld: (a) for the purpose of unfairly, unjustly or unreasonably influencing wholesale electricity generation prices established by the Federal Energy Regulatory Commission, (b) by falsely declaring that a Facility has been forced out of service or otherwise become unavailable, or (c) by failing to comply with the must-offer conditions of a participating generator agreement.

DENA does not object to the principle contained within this proposed standard. If approved, however, the proposed standard would place the Commission in the role of 1) intruding at wasteful expense upon activities which are considered and acted upon by other agencies and 2) enforcing contractual provisions, specifically the CAISO Tariff-related temporary regulatory must-offer requirement applicable through the provisions of the PGA, both of which by the Committee's prior resolution and statute reside properly

within the authority of the CAISO or other agency. The proposed standard should be rejected.

Similarly, proposed GDS 6 provides that:

Each Facility shall be operated and maintained in a reasonable and prudent manner consistent with industry standards while satisfying the legislative finding that each facility is an essential facility providing a critical and essential good to the California public.

This proposed standard is almost perfectly redundant with respect to the GDS 1 and 2 which, if approved by the Commission, provide for the obvious requirement for electricity generators to operate consistent with prudent electricity generating practice. Since any facility operating within California is doing so pursuant to either a bilateral contract or under a CAISO PGA, in this instance as well as with GDS 1-3, the enforcement role of the Commission is already better handled through those mechanisms.

Because of the appropriate level of generalization contained in the GDS 1-3, and its recital of the explicit caveat (required by statute) that the GDS does not purport to and cannot override or conflict with any other rule or regulation, DENA previously saw nothing explicitly stated in GDS 1-3 that is ripe for Commission implementation in Phase 4 and does not see any other appropriate change to that view with respect to GDS 4 and 6. The three general standards, (1) operation and maintenance consistent with reasonable protection of health and safety, (2) operation and maintenance consistent with prudent industry practice, and (3) compliance with CAISO outage coordination requirements, are well captured within GDS 1-3 and are standards that already are more explicitly captured by the ongoing practices, detailed regulations of, and permits issued by, other agencies,

or by the CAISO Tariff (not the least of which is CAISO's Outage Coordination Protocol). Hence, the broad statement found in the GDS does not lend itself to any further direct implementation action by the CPUC. The proposed, late, addition of GDS 4 and 6 do nothing to either enhance the significance, or counsel in favor, of further specific implementation or enforcement beyond the controls which already exist at the responsible agency or contractual level.

III. CONCLUSION

DENA is pleased to present the Committee with its thoughts regarding the GDS. Given the continuing short periods being offered for development and presentation of thoughts and comments, and the possibility that there will be other proposals coming forward from other parties, DENA respectfully requests in that latter event that the Committee allow a subsequent opportunity to comment. DENA stands ready to work with the Committee and other parties toward the timely and efficient resolution of all issues pending before it.

Dated: May 19, 2003

Respectfully submitted,

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