

March 25, 2005

Mr. Mark Ziering
Consumer Protection and Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94611

Re: Joint Generator Asset Owners' Comments Concerning The March 11, 2005 Staff
Draft Operation Plan Summary.

Dear Mr. Ziering:

I am writing today on behalf of the Joint Generator Asset Owners ("Joint GAOs")¹ in response to the Consumer Protection and Safety Division ("CPSD" or "Staff") request for comments to the March 11, 2005 draft Operation Plan Summary Document. This draft document was posted on the California Public Utilities Commission ("CPUC" or "Commission") website and informal comments via email were requested by March 25, 2005.²

As you will recall, on January 18, 2005, the Joint GAOs submitted a standardized form for the Operation Plan Summary. The Joint GAOs' form required information regarding the assets' expected operating profile (similar to the "Unit Plan" in the Staff's draft) as well as areas for each of the 28 Operation Standards set forth in Appendix E of D.04-12-049 summarizing how their Operation Plan complied with the standard or how and when operation would be brought into compliance. The Joint GAOs continue to believe that this draft form satisfies GO 167, § 8.3's specific requirements as well as the spirit of flexibility provided in D.04-12-049.

¹ The GAOs participating in this joint effort include: Pacific Gas and Electric Company, Southern California Edison Company, AES Alamosa LLC, AES Huntington Beach LLC, AES Redondo Beach LLC, Calpine Corporation, Duke Energy North America (on behalf of Duke Oakland, LLC, Duke Energy Moss Landing, LLC, Duke Energy Morro Bay, LLC and Duke Energy South Bay, LLC), Elk Hills Power, LLC, FPL Energy, GWF Energy, LLC, High Desert Power Project, LLC, La Paloma Generating Facility, Mirant California, LLC, West Coast Power LLC (on behalf of El Segundo Power, LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC), Reliant Energy Coolwater, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc.

The listed entities have authorized the undersigned to represent their support for these Joint GAO comments. The non-jurisdictional GAOs, including all Exempt Wholesale Generators, reserve all rights to challenge actions by the CPUC with respect to the applicability or scope of proposed regulations and the statute, and hereby reiterate all their prior assertions of rights. By voluntarily participating before the CPUC, these non-jurisdictional GAOs in no way waive any rights or arguments, and hereby reiterate all their prior statements in this respect. The jurisdictional public utility electrical corporations express no opinion with respect to this reservation of rights.

² See, "Instructions" posted at:
<http://www.cpuc.ca.gov/static/aboutcpuc/divisions/consumer+protection/electric+generation+performance+branch/power+plant+standards/draftopplansummaryinstruc.htm>.

The Joint GAOs have reviewed the Staff's draft Operation Plan Summary document. We believe that rather than providing a straightforward summary of a GAO's Operating Plan developed pursuant to GO 167, the Staff's draft document will result in significant new and unnecessary work for GAOs. This is particularly true insofar as the draft document asks that new "content elements" be addressed in the Summary. The draft document states that "[t]hese content elements are generally drawn from one (and usually, more than one) of the guidelines associated with each standard." Staff Draft, page 3 of 15. Moreover, the draft instructions call for summaries of the "various policies, procedures, training programs, and routines ..." essentially requiring additional new work to summarize *all of the materials contained in the GAO's Operation Plan*. Requiring additional narratives and summaries of these extensive and often highly technical documents is extremely burdensome. Moreover, any such summaries cannot not be dispositive of compliance in and of themselves, because § 8.2 makes clear that the *Operation Plan* "shows how the Generating Asset Owner's operation practices and policies comply with each Operation Standard for each Generating Asset."

As you are aware, D.04-12-067 and GO 167 provided GAOs substantial discretion in the development of their Operating Plans provided that they show compliance with the Operations Standards.³ GAOs have undertaken extensive work to date analyzing their existing operating procedures and documentation and the need—if any—to revise those materials or develop additional or new materials. The GAOs have relied upon the discretion provided in the GO when undertaking this work to support their recently submitted Initial Certifications and to initiate development of their respective Operations Plans. To now present such a highly particularized structure for the Operation Plan Summary, including elements taken from the advisory guidelines, presents a tremendous new and unexpected regulatory burden. GAO personnel are currently working to complete the Operation Plans in the next 90 days based upon their earlier analyses.⁴ To now impose a particularized structure like that in the Staff's draft document at this time essentially changes the nature of the job the GAOs initially set out to do and, in many respects, calls on them to do that job twice.

³ See GO 167, § 8.2.1. See also, D.04-12-049, pages 10 ["GO includes what is enforceable—the Standards"], 13 [GAOs to show compliance with standards, not guidelines], 15 [adopting flexibility and individualized approach for the Operation Plan], and Finding of Fact 6 [adopted approach provides flexibility while retaining accountability].

⁴ See GO 167, § 8.2.3.2 providing additional time to reach compliance where certificate of noncompliance is submitted. Entities that filed initial certifications of compliance may not be undertaking further review of their materials.

The Joint GAOs do not believe there is a benefit to requiring such a specific form of contents for the Operation Plan Summary. Given the range of technologies used in California, their varying vintages, and the differences in Company management and business plans, each GAO's Operation Plan will necessarily differ. *Each GAOs' Operation Plan must stand on its own to show compliance with the Operation Standards.* Accordingly, there is no need to mandate such specificity for the Summary because there is no reason to compare one GAO's Operation Plan against another's. Rather, the GAO should be permitted to use the type of Operation Plan Summary form submitted on January 18 to indicate how the Operation Plan shows compliance with the various standards. If, upon review of a GAO's Operation Plan Summary, the CPSD has additional questions regarding the Operation Plan and compliance with the Operation Standards, GAOs will make those materials available for Staff's review.

Accordingly, we request that Staff embrace an Operation Plan Summary format similar to the Joint GAO's January 18, 2005 submission.

Please do not hesitate to contact me should you have any question regarding these comments. The Joint GAOs look forward to discussing these issues with staff at the upcoming workshop, tentatively scheduled for April 6, 2005.

Dated: March 25, 2005

Sincerely,

Andrew B. Brown

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On Behalf of the Joint GAOs