

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Rulemaking to implement the provisions of  
Public Utilities Code § 761.3 enacted by  
Chapter 19 of the 2001-02 Second  
Extraordinary Legislative Session.

Rulemaking 02-11-039  
(Filed November 21, 2002)

**COMMENTS OF THE  
INDICATED GENERATING ASSET OWNERS  
ON THE ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE RULING**

April 1, 2005

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On Behalf Of The Indicated GAOs

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Pursuant to the schedule<sup>1</sup> set in the March 17, 2005 *Assigned Commissioner and Administrative Law Judge Ruling (A) Regarding Remaining Issues and Technical Modifications to GO 167 and (B) Setting PHC (“ACR”),* Generating Asset Owners (“GAOs”) 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), GWF Energy LLC, and High Desert Power Project LLC (the “Indicated GAO”) hereby present their initial comments.<sup>2</sup>

The Indicated GAOs appreciate the direction suggested in the ACR, namely that there be an examination of whether there are ways to mitigate future conflicts in implementation and enforcement and to make incremental changes to increase benefits and reduce costs of compliance. Additionally, the potential application of mediation techniques could hold promise

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<sup>1</sup> The ACR set March 31, 2005 for initial comments, a State holiday. Consistent with Rule 3.2 this filing is due the following business day.

<sup>2</sup> The listed entities have authorized the undersigned to represent their support for this filing. 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.

for improving GO 167's implementation and enforcement. As the Commission is aware, EWGs have raised serious concerns about jurisdictional issues surrounding the statute, but have continued their voluntary and cooperative work with the Commission based upon a common desire to provide reliable power to California.

**I. The Commission Should Leave The Current Docket Open And Consider Additional Steps To Improve GO 167 After Additional Experience Is Gained This Summer.**

The ACR observes that the Commission and GAOs now have some experience working under GO 167, and therefore it may be time to consider improvements or examine ways to mitigate potential future conflicts. While the Indicated GAOs generally agree with the goals of avoiding unnecessary conflicts and reducing the burdens and costs of compliance, we believe that it is too early to address potential "open issues" for three distinct reasons.

First, the GAOs have a narrow group of employees and contractors focused upon pending GO 167-related issues, and these employees are now engaged on the Operation Plan compliance efforts, including the upcoming discussions on April 6, 2005 with Consumer Protection and Safety Division ("CPSD") Staff over the design and complexity of the Operation Plan Summary.

Second, the Indicated GAOs believe that the existing docket should remain open while more experience is gained with the GO 167 program, and then discuss open issues or potential improvements, particularly as there have been only a handful of audits to date to highlight potential concerns about the program.

Third and finally, the same company personnel who would participate in any such discussions about potential conflicts or areas of improvements for GO 167 are typically involved in facility maintenance efforts and other company preparations for the upcoming operating season. Therefore, these employees may be positioned to provide more insights after experience working with the various standards this coming operating season.

Accordingly, it is appropriate to hold-off on an immediate review of potential open issues and wait until after the summer operations season. At that time it may be most efficient to have an informal workshop or similar approach to discuss general GO 167 issues, including the potential for use of mediation techniques. Some delay now will allow company personnel to remain focused on pending compliance issues and preparation of facilities for reliable operation through the summer peak season.

**II. The Commission Should Review Three Open And Pending Implementation Issues And Consider Avoiding Unnecessary Compliance Efforts And Costs.**

There are, however, three areas that may be ripe for additional discussions and possible improvement in the near-term because related compliance activities are on the immediate time horizon and constitute open issues: (1) Whether the Operation Plan Summary document should cause GAOs to undertake additional work to create a “summary”, given that D.04-12-049 provided GAOs significant discretion in developing the form of their Operation Plan (ACR Attachment 1, Phase 3.1); (2) Whether the pending requirement that some entity file an application proposing a “common logbook format” should continue to be required (Attachment A, Phase 2.1); and, (3) Whether modifications should be made to Operation Standard No. 22 (“Readiness”), and perhaps other Standards, in light of the substantial changes underway to implement the Commission-developed resource adequacy requirement (“RAR”). These are three open implementation issues that, depending upon how they are resolved, could require significant additionally uncompensated regulatory costs on GAOs with little to no benefits in terms of enhanced reliability or administrative effort.

As noted in the recent informal comments of the Joint GAOs regarding the CPSD’s draft Operation Plan Summary document, a highly particularized form that includes addressing elements found in the Guidelines will result in significant new and unnecessary work for

GAOs.<sup>3</sup> Resolution of questions regarding the degree of flexibility GAOs should have in completing the Operation Plan Summary could help make GAO compliance efforts more efficient, and allow GAO employees to concentrate on maintaining facility reliability. The Operation Plan Summary form is currently being developed. CPSD will hold a workshop at the Commission on April 6 to discuss the Joint GAOs' proposal for an open and flexible format as submitted in January 2005 versus the highly particularized structure of the form presented by CPSD Staff in March. The GAOs would like a resolution that would not require additional substantive work to complete the Operation Summary Form above and beyond the work already done developing their individual Operation Plans.

Similarly, the pending requirement that some entity file an application with the CPUC in May concerning a common logbook format should be reconsidered. Given the breadth of technologies and the range of vintages found in California's generation fleet, efforts to develop a uniform, mandatory logbook format will not be an efficient use of Commission or GAO staff time. Rather, the regulatory focus should be on a clear articulation of what is required under the Logbook Standard and reviewing individual GAO compliance.

The third open issue that is ripe for resolution at this time is whether Operation Standard ("OS") No. 22 regarding "readiness services" should be revised in light of the significant progress that has occurred with respect to the Commission's RAR policies, and the utilities' extensive procurement-related work, and because provision of so-called "readiness services" requires compensation. The Indicated GAOs believe that OS 22 should only apply to those facilities that have commercial arrangements to provide capacity (such as an RAR-related capacity contract or CAISO RMR contract) or other mechanisms that can provide compensation

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<sup>3</sup> See *Joint Generator Asset Owners' Comments Concerning The March 11, 2005 Staff Draft Operation Plan Summary*, March 25, 2005, posted at [ftp://ftp.cpuc.ca.gov/gopher-data/generation\\_standards/050325\\_Jt\\_GAO\\_Op\\_Pln\\_Sum\\_Cmts\\_fin.pdf](ftp://ftp.cpuc.ca.gov/gopher-data/generation_standards/050325_Jt_GAO_Op_Pln_Sum_Cmts_fin.pdf).

for the services. Where such commercial arrangements are in place the types of operational practices contemplated in OS 22 will occur as a matter of course. Absent such arrangements, the facilities should not be required to maintain availability without compensation. Accordingly, at minimum, the ratemaking caveat provided in OS 24 should also apply to OS 22. Making such a change before the summer's peak operating season would improve the implementation of GO 167 by clarifying GAOs' obligations and by reducing the incurrence of uncompensated costs. Other jurisdictional and constitutional issues arising under OSs 22-26, may be better addressed after this summer.

### **III. The Mediation Approach Suggested In The ACR Has Promise, But Additional Work May Be More Appropriate After The Summer Season.**

The ACR discusses a "mediation process" and calls for a more detailed discussion at a prehearing conference scheduled for April 12, 2005. The Indicated GAOs generally support the concept of a voluntary, confidential and time limited process to discuss various issues concerning GO implementation and enforcement and to preemptively identify points of potential conflict or concern based on the collective experience to date. However, as noted in Section I above, GAOs are currently attempting to complete existing compliance tasks, and right now they have limited experience with program implementation. Other than the three items identified in Section II above—the form of the Operation Plan Summary, the common logbook format application due in May, and the modification of OS 22 to limit the "readiness services" requirement — it will likely prove more beneficial to hold the prehearing conference after the summer operating season.

### **IV. Conclusion**

The Indicated GAOs appreciate the ACR's suggestion for a cooperative effort to improve the implementation and enforcement design of GO 167. We believe that it may be more

beneficial keep the docket open and discuss certain open issues after the summer operating season is completed so that GAO employees and contractors can focus on current operation and maintenance tasks. However, three pending “open issues” should be addressed because they can help avoid unnecessary effort and expense without hurting system reliability: whether there is a real need for the highly particularized Operation Plan Summary form suggested by CPSD staff; whether the May 2005 filing requirement for a common logbook format is necessary; and the modification of OS 22 to limit the “readiness services” requirement to compensated generation. Addressing those issues soon can help avoid significant and unnecessary work and related costs. Other open issues may be more efficiently addressed after the summer operating season. Additionally, leaving the existing docket open will provide additional time through the operating season for CPSD Staff and GAOs to gain better experience with the GO’s implementation while allowing GAO personnel to concentrate on providing reliable service this summer. Lastly, the Indicated GAOs believe that the mediation concept may hold promise as a mechanism to address program improvements and avoid potential conflicts, but that it may be more beneficial to consider the concept after pending compliance work is completed and the summer operating season winds down.

Dated: April 1, 2005

Respectfully submitted,

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On Behalf of the Indicated GAOs

**CERTIFICATE OF SERVICE**

I, Eric Janssen, am over the age of 18 years and employed in the City and County of Sacramento. My business address is 2015 H Street, Sacramento.

On April 1, 2005, I served the within document, *Comments Of The Indicated Generating Asset Owners On The Assigned Commissioner And Administrative Law Judge Ruling* in R.02-11-039, with electronic mail service, as prescribed in R.02-11-039, and with personal service on the Assigned Commissioner and Assigned Administrative Law Judges, at San Francisco, California.

Executed on April 1, 2005, at Sacramento, California.

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Eric Janssen



R.02-11-039  
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