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**VIA ELECTRONIC MAIL**

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Re: Pacific Gas and Electric Company's Comments on the California Electricity Generation Facilities Standards Committee's Proposed Revision to General Duty Standard No. 4

Dear Committee Members:

Pacific Gas and Electric Company (PG&E) offers the following comments on the California Electricity Generation Facilities Standards Committee's (Committee's) proposed revision to General Duty Standard (GDS) 4.

I. Background

On June 7, 2004, Commissioner Wood issued a notice proposing that the Committee adopt a revised GDS 4, which provides as follows:

Unless the California Independent System Operator and the California Public Utilities Commission affirmatively declare that a generating facility is unneeded during a specified period of time, every generating facility shall maintain the ability (through adequate staffing, maintenance, provision of fuel and materials, and any other necessary actions) to provide power upon request, with no more delay than is necessary to conduct normal start-up procedures. With respect forced outages during warnings, alerts or system emergencies, each generating facility shall make power available to the grid as necessary to support the reliability of the state's electric system and the resulting safety of the public, and shall not take or keep capacity out-of-service unless (a) there is danger to the safety of plant personnel or the public or (b) the reasonably expected cost of continued operation exceeds the public benefit, considering the facility's contribution toward maintaining reliable

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electric supply under current conditions. When making a decision about taking a forced outage, a facility shall consult with the California Independent System Operator.

This revision to GDS 4 was proposed in response to the California Public Utilities Commission's (Commission) decision adopting General Order 167, in which the Commission determined that the original GDS 4 might violate requirements imposed by the Federal Energy Regulatory Commission (FERC).<sup>1</sup> Accordingly, the Commission declined to implement GDS 4, and instead referred the standard back to the Committee for further consideration. PG&E submits these comments on the revised GDS 4 in accordance with the schedule set forth in Commissioner Wood's June 7<sup>th</sup> notice.

## II. Specific Comments on Revised GDS 4

PG&E respectfully submits that the objectives of the revised GDS 4 are already sufficiently met through the existing GDSs and the extensive procedures and obligations contained in the California Independent System Operator (ISO) Tariff and Outage Coordination Protocol (OCP). Accordingly, for the reasons described more fully below, PG&E recommends the Committee decline to adopt the revised GDS 4.

### A. The Existing GDSs Already Accomplish The Goals Of Revised GDS 4.

The existing GDSs already require generating facilities to: (1) "be operated and maintained in a safe, reliable and efficient manner that reasonably protects the public health and safety of California residents, businesses, employees, and the community;" (2) "be operated and maintained so as to be reasonably available to meet the demand for electricity, and promote electric supply system reliability, in a manner consistent with prudent industry practice;" and (3) "comply with the protocols of the California Independent System Operator for the scheduling of powerplant outages."<sup>2</sup>

Like these existing GDSs, revised GDS 4 appears to be focused on requiring generating facilities to maintain availability for safe and reliable electricity supply, and ensuring that generators receive prior approval before taking scheduled outages. PG&E submits that the revised GDS 4 adds little these existing standards and, as discussed more fully below, may actually frustrate and disrupt ongoing implementation of existing procedures set forth in the ISO's Tariff and OCP.

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<sup>1</sup> Decision 04-05-018 at p. 24.

<sup>2</sup> See GDSs 1 – 3. As the Committee is aware, numerous parties have challenged the authority of the Committee and Commission to adopt and enforce the ISO's Outage Coordination Protocol.

B. Revised GDS 4 Unnecessarily Duplicates, And Potentially Frustrates, The Detailed Procedures Already Contained In The ISO Tariff And OCP.

The ISO already has established detailed procedures and protocols governing all of the areas covered by the revised GDS 4, including the approval of scheduled outages, the necessity of generators to respond to ISO orders during system emergencies, and the obligation of generators to notify the ISO of forced outages. Specifically, the ISO Tariff and OCP provide that:

- No generator may initiate a scheduled outage without first obtaining ISO approval.<sup>3</sup>
- Generators must submit to the ISO (a) an annual proposed maintenance plan by October 15 of each year; (b) quarterly updates to the annual plans by the 15th of each January, April, and July; and (c) written notification of any known changes to the outage plan.<sup>4</sup>
- The ISO may revoke an earlier approval of a scheduled outage to protect system reliability.<sup>5</sup>
- In the event of an imminent or threatened system emergency, the ISO may order a generator to bring its generating unit on- or off-line, to increase or curtail the unit's output, or to alter scheduled deliveries of energy or ancillary services.<sup>6</sup>
- A generator that fails to comply with ISO orders during imminent or threatened system emergencies is subject to potential sanctions, unless it can demonstrate to the ISO that it was physically incapable of responding to the order or that compliance with the order would have violated state or Federal law.<sup>7</sup>
- Generators must notify the ISO as soon as they become aware of a situation likely to result in a forced outage.<sup>8</sup>
- Within forty-eight (48) hours of the commencement of a forced outage, generators must provide the ISO with information explaining the cause of the forced outage, as well as any remedial actions taken.<sup>9</sup>
- The ISO may investigate forced outages and refer potential gaming or other questionable conduct to FERC.<sup>10</sup>

It is no surprise that the ISO has established these detailed procedures. As the transmission system operator, the ISO is responsible for ensuring safe, reliable and efficient

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<sup>3</sup> ISO Tariff §§ 2.3.3.2 & 2.3.3.8; ISO OCP §§ 4.2, 4.3.3, 4.3.6 & 4.3.8.

<sup>4</sup> ISO Tariff § 2.3.3.5; ISO OCP §§ 2.2.1 – 2.2.4.

<sup>5</sup> ISO OCP §§ 4.3.8 – 4.3.9.

<sup>6</sup> ISO Tariff § 5.6.1.

<sup>7</sup> ISO Tariff §§ 5.6.3.1 – 5.6.3.2.

<sup>8</sup> ISO Tariff §§ 2.3.3.9.2; ISO OCP § 6.1 – 6.2.

<sup>9</sup> ISO Tariff § 2.3.3.9.5.

<sup>10</sup> *Id.*

electric service and operation of the transmission system within California.<sup>11</sup> The ISO is also in a unique position to make decisions regarding whether and when generators should be permitted to take scheduled outages or, conversely, when they should be ordered to generate electricity – the ISO alone is in possession of the information required to determine whether more generation is “needed,” particularly in real-time. Indeed, maintaining adequate generation reserves is one of the ISO’s core functions.<sup>12</sup> Although revised GDS 4 proposes to insert the Commission into this decision-making process, it fails to either define the procedures by which the Commission will determine whether a generating facility is “needed,” or acknowledge that the Commission will not always have access to the information required to make an informed decision.

As written, revised GDS 4 could be interpreted as requiring an affirmative declaration by *both* the Commission and the ISO before a generator may take a scheduled outage or place a unit into seasonal lay-up during a period of anticipated extended shutdown. Revised GDS 4 raises numerous practical implications and unanswered questions regarding how this proposed joint decision-making by the Commission and ISO would be implemented. Does the Committee envision that Commission staff will be present at the ISO control center at all times to assist in making decisions about whether and when a generating facility is “needed”? What does the Committee propose to do if Commission and ISO staff disagree on the necessity of a particular generating facility? What if this disagreement occurs in real time? Would one entity have veto authority over another’s decision?

PG&E also notes that some of the elements of the revised GDS 4 conflict with the ISO Tariff. For example, revised GDS 4 requires generators to make power available to the grid during system emergencies unless (a) there is danger to the safety of plant personnel or the public or (b) the reasonably expected cost of continued operation exceeds the public benefit, considering the facility’s contribution toward maintaining reliable electric supply under current conditions. By contrast, the ISO Tariff requires generators to make power available to the grid during system emergencies only upon specific request by the ISO, and then only if the plant is physically capable of operating and compliance with the request will not result in a violation of state or Federal law. Why are these standards different? How will the differences be reconciled?

These and other questions quickly lead to the conclusion that inserting the Commission into the decision making process for determining whether a generator may take an outage or must offer its generation to the ISO grid not only unnecessarily duplicates existing procedures contained in the ISO Tariff and protocols, but also has the potential to frustrate the ISO in the performance of its core function – maintaining system reliability. As described in earlier

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<sup>11</sup> See Cal. Pub. Util. Code §§ 345 & 345.5.

<sup>12</sup> See Cal. Pub. Util. Code § 345 (“The Independent System Operator shall ensure efficient use and reliable operation of the transmission grid *consistent with achievement of planning and operating reserve criteria no less stringent* than those established by the Western Systems Coordinating Council and the North American Reliability Council.”) (emphasis added).

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comments in this proceeding, revised GDS 4 also infringes on FERC's exclusive jurisdiction in this area.<sup>13</sup> For these reasons, the Committee should decline to adopt revised GDS 4.

C. Revised GDS 4 Appears To Misconstrue The Nature Of A Forced Outage.

Revised GDS 4 states that, "[w]ith respect forced outages during warnings, alerts or system emergencies," a generating facility must make its power available unless certain conditions are met and that, "[w]hen making a decision about taking a forced outage, a facility shall consult with the California Independent System Operator." These provisions appear to misconstrue the nature of a forced outage, which by definition does not involve decision-making. A forced outage is just that – an outage that cannot be scheduled or deferred. As described above, the ISO Tariff already contains provisions for the ISO to receive notification of forced outages, and to investigate whether an alleged forced outage may have been the result of gaming or other inappropriate market behavior.<sup>14</sup> Accordingly, these provisions in revised GDS 4 are not only unworkable as written, but are also entirely unnecessary.

PG&E would like to thank the Committee for the opportunity to provide these comments. For the all of the above-stated reasons, PG&E respectfully urges the Committee not to adopt revised GDS 4.

Sincerely,

/s/

Janet C. Loduca

cc: Electronic Service List, Rulemaking 02-11-039

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<sup>13</sup> PG&E previously has provided the Committee with comments on the scope and extent of FERC's exclusive jurisdiction under Section 205 and 205 of the Federal Power Act. PG&E will not repeat those arguments here, but incorporates them by reference. *See* PG&E's Comments on Committee's Proposed General Duty Standards, submitted May 19, 2003 (May 19, 2003 Comments). Because revised GDS 4 proposes to grant the Commission jurisdiction over matters within the exclusive purview of the ISO and FERC, it violates principles of federal preemption. In addition, because Revised GDS 4 seeks to enforce obligations already imposed on generators through the Participating Generator Agreements (PGAs), the Committee should not adopt Revised GDS 4 until the Commission has obtained authority from FERC to enforce the PGAs, as contemplated by the legislature when it enacted Cal. Pub. Util. Code § 761.3. *See* May 19, 2003 Comments at pp. 3 – 4.

<sup>14</sup> ISO Tariff §§ 2.3.3.9.2 – 2.3.3.9.5.