

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

Related Case: California Public Utilities Commission Rulemaking 02-11-039

**COMMENTS OF EL SEGUNDO POWER, LLC, LONG
BEACH GENERATION LLC, CABRILLO POWER I LLC,
AND CABRILLO POWER II LLC (COLLECTIVELY, WEST
COAST POWER) ON THE PROPOSED OPERATIONS
STANDARDS AND GUIDELINES FOR GENERATORS**

September 10, 2004

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Pursuant to a letter from Presiding Officer Carl Wood, dated August 23, 2004, El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, West Coast Power¹ (“WCP”)) submit their comments on the Proposed Operations Standards and Guidelines for Generators, currently under consideration by the California Electricity Generation Facilities

¹ West Coast Power is a partnership equally owned by subsidiaries of Dynegy Power Corp. and NRG West Coast LLC. WCP refers collectively to the limited liability companies that own and operate approximately 2,300 MW in Southern California: Cabrillo Power I LLC, which operates the Encina power plant previously owned by San Diego Gas & Electric Company; Cabrillo Power II LLC, which operates 13 combustion turbines in the San Diego area; El Segundo Power, LLC, which operates the El Segundo power plant previously owned by Southern California Edison Company (“SCE”); and Long Beach Generation LLC, which operates the Long Beach power plant also previously owned by SCE. The entities owning and operating these plants have each been determined by the Federal Energy Regulatory Commission to be exempt wholesale generators as defined under federal law and, pursuant to the provisions of federal law, are engaged “*exclusively* in the business of owning or operating, or both owning and operating, . . . eligible [electric generating] facilities and selling electric energy at *wholesale*.” (15 U.S.C. § 79z-5a(a)(1) (emphasis added).)

Standards Committee (“Committee”).²

I. INTRODUCTION AND OVERVIEW

At the outset of the Committee’s efforts to develop its Operations Standards, it cannot be stressed too strongly that the Committee and electric generators share a common goal: **to ensure that generation in California is available when needed to meet customers’ demand for electricity.** For its part, WCP places a high priority on maintaining and operating its plants in a way that maximizes their availability to meet electric demand, consistent with worker safety and environmental protection. WCP has accordingly developed comprehensive operating procedures designed to ensure that its generating units are available to meet market demands.

In keeping with the overall goal of ensuring availability, WCP urges the Committee to focus on (1) whether generators have adequate operating plans and procedures in place, (2) whether generators are following those plans and procedures and modifying them appropriately in response to new information and circumstances, and (3) whether those plans and procedures are adequate to provide the availability and reliability required to meet peak and off-peak demand. If the Committee’s approach to Operations Standards and guidelines is too detailed and prescriptive, the Committee could undermine the discretion and sound business and engineering judgment that support the prudent operation of generating plants. WCP also urges the Committee to judge generators’

² By voluntarily submitting these comments and further participating in this proceeding, West Coast Power is not in any way conceding that the Committee or the CPUC has jurisdiction over, or can lawfully compel a response to the Committee’s process or CPUC’s rulemaking by, WCP, the four named limited liability corporations, their affiliates, or the generating plants that they own and operate. WCP expressly reserves the right to challenge fully, in an appropriate forum, the relevant portions of Senate Bill (“SB”) SB 39XX and any requirement the Committee or the CPUC may attempt to impose on WCP, the four named LLCs, their affiliates, or other wholesale generators. Nothing in these comments constitutes a waiver of such rights, including these entities’ rights to seek relief in federal court for violations of federal law or the United States Constitution. WCP makes this express reservation pursuant to the provisions of *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 420 (1984); see *United Parcel Service v. California Public Utilities Comm’n*, 77 F.3d 1178, 1182 (9th Cir. 1996). Furthermore, WCP and the four LLCs do not consider themselves to be respondents in the CPUC’s rulemaking, because they are not “public utilities” as defined in the Public Utilities Code.

operating plans by the performance of their plants, rather than by administrative enforcement of unneeded, onerous, costly, and overly detailed requirements.

The generators that are the focus of the Committee's proposed Operations Standards³ already have extensive operating procedures, as a matter of business necessity. WCP's operating procedures, for example, consist of several thick notebooks (roughly the size of a parts catalog in an auto parts store). It is not necessary or appropriate to reinvent the wheel in formulating the Operations Standards, or to start from scratch to prescribe detailed and comprehensive operating requirements for these generators. In recognition of the generators' strong economic interest in maintaining the availability of their plants,⁴ the Committee can perform its responsibilities by reviewing the existing operating procedures (modified as appropriate in response to the Operations Standards) to ensure that they meet or exceed the adopted standards and thereafter using the plants' performance as a gauge of the adequacy of those procedures.

WCP's example may underscore the point that extensive intervention and micro-management by the Committee in the operating practices of generators is unnecessary. WCP has in place comprehensive operating procedures for its generating plants. The financial covenants associated with the financing of WCP's plants require WCP to follow sound practices in the operation of its plants and include specific operating and maintenance procedures that WCP must observe. These procedures have been highly successful, as measured by an internal index that compares a unit's unavailability to respond to market demands with the unit's total potential market availability. By this measure, WCP's units have achieved very high levels of availability to meet market demand. WCP has also compiled an excellent safety record, reflecting

³ SB 39XX created exemptions from the operations standards for the majority of the state's generation resources.

⁴ In addition to the fact that plants earn revenues only when they are available and able to sell power into the market, many plants are subject to Reliability Must Run ("RMR") agreements with the ISO or contracts with the Department of Water Resources or other purchasers that require a specified level of reliability and prescribe penalties if the generators fail to meet the specified availability.

that worker safety is its highest priority and that its safety training exceeds the requirements of both the federal and state Occupational Safety and Health Administrations. WCP currently reports *daily* to both the California Independent System Operator (“ISO”) and the California Public Utilities Commission (“CPUC”) on the status of its units, and reports again when any of its units experiences an outage, either planned or unplanned. WCP has also fully cooperated with the CPUC inspectors that investigate outages at its plants. At no point have the inspectors concluded that an outage was unjustified. WCP also trains its employees and contractors to comply with federal, state, and local environmental requirements.

WCP’s experience leads it to conclude that it and other generators can work cooperatively with the Committee, the ISO, and the CPUC to develop Operations Standards that achieve the goal of ensuring the availability of generating plants without requiring extensive intervention, supervision, or micro-management by these governmental entities. In this spirit of cooperation, WCP offers the following comments.

II. COMMENTS ON THE OPERATIONS STANDARDS AND GUIDELINES

A. General Comments

As mentioned above, WCP believes the best approach to the Operations Standards is for the Committee to adopt general standards that set the expectations for individual Generator Asset Owners (“GAOs”) to implement as they review and, if appropriate, revise their existing operating procedures, rather than to adopt detailed, over-prescriptive standards that will needlessly impose significant costs on GAOs. The Committee should clearly understand that strict compliance with all the proposed standards and guidelines will require significant expenditures by GAOs that must somehow be recovered. The proposed standards seem to have their origin in the former world of cost-plus utility regulation, where utilities could recover all of their prudent expenditures for complying with regulatory requirements for operations and maintenance. In the more competitive industry structure of today, however, in most cases the GAOs

will have to recover the added costs required by these standards through their power contracts or from sales in the electricity market, which will put California generators at an economic disadvantage compared with out-of-state plants that are not subject to these costs. As was pointed on in the recent Energy Commission staff White Paper on aging power plants, in today's environment, many power plants are unable to cover even their operations and maintenance costs through market sales alone,⁵ and the additional costs of compliance with the Operations Standards will only worsen the economic outlook for these plants. The higher costs associated with the Operations Standards may lead some GAOs to retire or mothball their plants or units, a result that conflicts with California's goal of ensuring reliable, affordable electricity generation.⁶

Accordingly, WCP urges the Committee to carefully consider the repercussions that the Operations Standards it eventually adopts will have for electricity markets and for the state's energy policy goals. A narrow focus on the Operations Standards, without consideration of the broader energy issues confronting this state, would be counterproductive.

In addition, the Committee should be clear from the outset about the role of the numerous guidelines implementing the standards. In the case of the guidelines accompanying the maintenance standards the Committee adopted earlier, a significant disconnect appeared to develop between the intention of the Committee and the implementation by the CPUC. When the Committee adopted its maintenance standards, it gave GAOs the impression that it expected the generators to focus on compliance with the more general standards, rather than with the numerous assessment guidelines that accompanied the standards. The discussion reported at pages 293-295 of the Transcript of the Committee's meeting of May 2, 2003 supported that impression. As

⁵ "Resource, Reliability and Environmental Concerns of Aging Power Plant Operations and Requirements," Draft Staff White Paper (August 13, 2004), p. 5.

⁶ Energy Action Plan, adopted by the CPUC, Consumer Power and Conservation Financing Authority, and Energy Resources Conservation and Development Commission, p. 6.

Commissioner Wood summarized the discussion, “anything that is called a Standard is treated as a Standard; the things that are clearly marked as Guidelines are advice . . . to all the parties . . . as to how those standards might be interpreted and enforced.”

GAOs were quite surprised when the CPUC’s decision adopting a General Order enforcing the maintenance standards determined that the assessment guidelines, as well as the maintenance standards, were “enforceable standards.”⁷ This determination was then implemented through a maintenance matrix that required detailed information about each standard *and* each assessment guideline.

The Committee appears to view the guidelines for its proposed Operations Standards as advisory, “because there may be equally valid ways of meeting the standard that do not follow every provision of the Guidelines” (p. 8). In light of the experience with the guidelines for the maintenance standards, however, the Committee should provide extra emphasis and clarity of its intention with regard to the guidelines.

For similar reasons, WCP strongly endorses the Committee’s recommendation “that the [CPUC] implement the standards in a way that provides Generators considerable flexibility in meeting the standards while retaining accountability” (p. 8). Unduly prescriptive standards will inevitably be inconsistent with the needs of individual units and may directly conflict with the design basis of the unit, with potential results that could be directly contrary to the paramount goal of maintaining the availability of generation plants to meet demand. Flexibility will be key to the success of this effort and will determine whether the Operations Standards become helpful reminders that ensure the availability of generation or merely bureaucratic burdens that serve no useful purpose.

B. Specific Comments

WCP offers the following specific comments on certain provisions of the

⁷ D.04-05-018, Attachment B, p. 2.

proposed Operations Standards. Time constraints prevented WCP from developing comments on each standard and guideline, but WCP will continue its review of the proposed standards and will have additional specific comments to offer at the workshop scheduled for September 20 and 21.

1. Introduction

The proposed standards appear to jump the gun by assuming that GAOs will attend the workshops and provide oral and written comments (p. 7). This prediction will likely come true, but its appearance here underscores the fact that generators were not consulted before the proposed standards were issued. When the Committee considered maintenance standards, the initial proposal became the adopted standards without any changes, and it certainly appeared that the comments and participation of generators had absolutely no effect on the outcome. Here again, the Committee has developed proposed standards in a black box, without the input of the most affected and knowledgeable entities, and without the beneficial effects of public scrutiny. GAOs will wait with interest to see if their comments have any effect on the proposed Operations Standards, or if their efforts to work cooperatively with the Committee are again disregarded.

If it is the Committee's objective to "clearly articulate what is expected of Generating Asset Owners" (p. 7), the current version of the standards falls well short of achieving this goal. In addition, as mentioned above, the Committee's intent with regard what it expected of GAOs in the maintenance standards has been contradicted by after-the-fact additional requirements imposed by the CPUC (*i.e.*, guidelines as enforceable standards, requirement of using a detailed reporting matrix). From this experience, it is clear that any effort to clearly articulate what is expected of GAOs must take the CPUC's possible implementation and enforcement actions into account.

The objectives also refer to a "clear implementation and audit process" (p. 7). However, this process is not mentioned again in the proposed standards.

2. Standard 6: Training Support

The guidelines for this standard seem to assume that each plant site has a full-time training manager. The Committee should be aware that not all facilities have a training manager or supervisor. GAOs need to retain the discretion to determine how best to train their employees and the flexibility to meet the goals of this standard in the most efficient and effective way possible.

3. Standard 14: Clearances

For clarity and uniformity, the Committee should replace references to “clearances” in this section and throughout the proposed standards with the terminology used by CalOSHA—“Lockout/Tagout.”⁸

4. Standard 15: Communications and Tailboard Meetings

The Committee should explain what it means by the terms “tailboard meetings” and “tailboard teams.”

5. Standard 18: Unit Performance Testing

Standard 18 properly states the GAO’s obligation to conduct periodic performance testing and to react to the result of that testing. The guidelines for this standard, however, are too detailed and prescriptive. The recommended schedules for equipment testing in Tables 1 and 2 are acceptable as recommendations, but as discussed above, items that the Committee adopts as recommendations may be transformed into enforceable requirements when they are turned over to the CPUC for implementation and enforcement. Once again, the Committee should clarify that GAOs have the flexibility to perform equipment testing in a manner and according to a schedule that best suits the particular generating unit.

⁸ See Cal. Code of Regs., title 8, § 3314.

6. Standard 19: Emergency Grid Operations

Section B of the proposed standard states that the GAO should obtain regulatory relief when emergencies appear imminent. By their nature, emergencies are unexpected, and it will usually be impossible for a GAO to determine that an emergency is “imminent.” If this standard is intended to require GAOs to obtain regulatory approval before responding to an emergency, the standard would interfere with the overall goal of lessening the effect of an emergency. In addition, while it may be within the GAO’s ability to *seek* regulatory relief, *obtaining* regulatory relief is another matter, and is usually beyond the GAO’s control. For example, during an emergency shortage of natural gas, a generator may seek permission from the local air quality board to burn fuel oil (if the plant has the capability), but it is unlikely that the air board will grant the generator’s request.

GAOs or their scheduling coordinators already communicate with the ISO if they believe that their plants may go offline or reduce output as a result of equipment failure. To add another layer of approval to this existing procedure during grid emergencies is inefficient and unwise and could create a situation where the plant operator receives conflicting instructions.

This standard and the accompanying guidelines should be revised to reflect that communications between the plant and the ISO are channeled through the Scheduling Coordinator for the specific plant. For example, the references to “CAISO” in Guidelines B and L(a) should be replaced with “Scheduling Coordinator.”

In addition, the reference to “shirted work” in Guideline L(f) is unfamiliar to WCP. The Committee should clarify this term or provide a more familiar synonym.

7. Standard 22: Readiness

Section B of proposed Standard 22 requires the GAO to prepare its facility for “credible, severe operating conditions.” This provision raises two issues. First, who

determines what are *credible* severe conditions? Will the operator be second-guessed if it decides that certain unlikely severe conditions are not credible? Second, preparation for severe operating conditions, even those deemed credible, can involve a significant expenditure to deal with a situation that may be unlikely to occur. How can or should a generator recover the costs of this preparation?

Guideline C requires contingency plans whenever storage facilities are inadequate “to ensure full load operations for an indefinite time.” By definition, facilities will always be inadequate to meet this standard, since “an indefinite time” could mean a period well beyond any reasonable period of reliance on storage. Reasonable fuel supply contingency plans are a good idea, but this guideline creates more confusion than clarity and could greatly increase the cost of complying with the Operations Standards, with no proportional corresponding benefit.

8. Standard 24: Changes in Plant Status

Standard 24 is similar to the proposed General Duty Standard No. 4 proposed earlier this summer, and WCP will refer the Committee to its comments on the proposed General Duty Standard, filed on June 16, 2004.

Standard 24 also attempts to grant the CPUC an authority that it does not have, at least with regard to Exempt Wholesale Generators (“EWGs”), under relevant provisions of federal law. These arguments are now familiar to the Committee, and it is sufficient here to say that any attempt by the CPUC to control an EWG’s decision to operate or not to operate a generating unit would conflict directly with the Federal Energy Regulatory Commission’s exclusive jurisdiction over wholesale sales of power and with the provisions of the FERC-approved tariffs of the ISO. The ISO’s tariffs give it a limited ability to require the operation of facilities owned by EWGs without infringing on the takings provision of the United States Constitution, but no legal basis exists for allowing the CPUC to exercise comparable powers, and any attempt to give the CPUC this power disregards existing law.

9. Standard 26: Planning for Unit Storage

This standard requires a GAO to “prepare and submit plans and procedures for storage of the unit” at least 30 days before it notifies the CPUC and the ISO of a change in unit status. This standard is also confusing. To whom are the plans to be submitted? If the submission is to the CPUC or ISO, why submit the plans 30 days before the notice of the change in unit status? The Committee needs to consider and clarify what it intended to accomplish with this standard.

In addition, the extensive list under Guideline E is overly detailed, prescriptive, and unnecessary. This entire list should be deleted and replaced with the following simple statement: “The GAO should follow acceptable industry practices to prepare a unit for lay-up or mothballing.”

10. Standard 28: Equipment and Systems

The guidelines for this standard are lengthy, detailed, and confusingly numbered. As a general comment, the guidelines should promote flexibility, and statements that a checklist format or procedure must be followed (Section H(4)(D)(2)(ff), p. 53; Section H(4)(E)(1), p. 55) or that certain practices are not permissible (Section H(4)(C)(2)(g), p. 51) should be modified to clarify that they reflect recommendations, not strict requirements.

In addition, the Committee should be aware that the maintenance schedules recommended by equipment vendors may conflict with the guidelines, and GAOs should have the flexibility to institute schedules that better reflect the operation of their own equipment. In addition, some of the requirements listed in these guidelines may conflict with the requirements of other governmental agencies.

III. CONCLUSION

WCP urges the Committee to focus on the development of sound, general standards, rather than on excessively detailed and prescriptive guidelines. The proposed

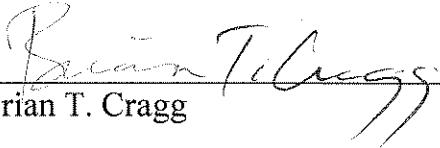
guidelines duplicate existing operational procedures, federal rules, and ISO tariffs and further no regulatory objective. The guidelines will be costly to GAOs and ultimately to ratepayers if they are implemented as requirements.

WCP has noted some ways in which the proposed Operations Standards could be improved. WCP appreciates the opportunity to present its reaction to the proposed standards, and WCP looks forward to working cooperatively with the Committee, the CPUC, and the ISO to develop Operations Standards that meet the needs of all affected parties.

Respectfully submitted this September 10, 2004 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
E-mail: bcragg@gmssr.com

BY:



Brian T. Cragg

Attorneys for El Segundo Power, LLC,
Long Beach Generation LLC, Cabrillo
Power I LLC, and Cabrillo Power II LLC