

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

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

**SUPPLEMENTAL 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**

October 1, 2004

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Pursuant to a letter from Presiding Officer Carl Wood, dated September 17, 2004, El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, West Coast Power<sup>1</sup> (“WCP”)) submit their supplemental comments on the Proposed Operations Standards and Guidelines for Generators, currently under consideration by the California Electricity Generation

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<sup>1</sup> 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).)

Facilities Standards Committee (“Committee”).<sup>2</sup>

WCP participated in the workshops on September 20 and 21, 2004, and WCP has joined in the effort by a variety of Generation Asset Operators (“GAOs”) that has led to today’s submission of the Joint GAO Proposed Revisions to the Proposed Operations Standards and Suggested Guidelines for Generators (“Joint GAO Revisions”). Throughout this proceeding, WCP has made no secret of its objection to any attempt by the Committee or the California Public Utilities Commission (“CPUC”) to exert jurisdiction over Exempt Wholesale Generators like WCP. Despite this jurisdictional objection, WCP has consistently attempted to cooperate with the Committee and the CPUC in an effort to develop workable and effective operations and maintenance standards.

The Joint GAO Revisions are the latest manifestation of the effort of WCP and other generators to work cooperatively with the Committee, the California Independent System Operator (“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.

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<sup>2</sup> 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.

## **I. THE DISTINCTION BETWEEN STANDARDS AND GUIDELINES IS CRITICAL**

A critical element of the Joint GAO Revisions is the concept, which the Committee has previously endorsed,<sup>3</sup> that the standards, and only the standards, will be the subject of enforcement, while the guidelines are only advisory. The standards should be designed to set reasonable goals without prescribing the details of how each GAO goes about achieving those goals. WCP believes the best approach to the operations standards is for the Committee to adopt general standards that set the expectations for individual GAOs to implement as they review and, if appropriate, revise their existing operating procedures, rather than to adopt and enforce detailed, over-prescriptive standards and guidelines that will needlessly impose significant costs on GAOs.

The important point that only standards will be enforced is emphasized in the letter transmitting the Joint GAO Revisions to the Committee and in WCP's September 10 comments on the proposed operations standards. WCP will not repeat its arguments here, but the importance of this point cannot be emphasized too much.

WCP is encouraged that 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." In light of the experience with the guidelines for the maintenance standards,<sup>4</sup> however, the

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<sup>3</sup> 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 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."

<sup>4</sup> Despite the clear distinction the Committee drew between maintenance standards and guidelines, as discussed in the preceding footnote, the CPUC's decision adopting a General Order enforcing the maintenance standards determined that *both* the guidelines and the standards, were "enforceable standards." (D.04-05-018, Attachment B, p. 2.) This determination was then implemented through a maintenance matrix that required detailed information about a GAO's compliance with each standard *and* each guideline.

Committee should provide extra emphasis and clarity of its intention with regard to the purpose of the guidelines.

## **II. THE NEED FOR FLEXIBILITY**

Unduly prescriptive standards and guidelines 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 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. One consistent emphasis of the Joint GAO Revisions is the need to develop standards and guidelines that have enough flexibility to cover a wide variety of generation technologies, vintages, fuels, and other differences.

## **III. COMMENTS ON SPECIFIC PROVISIONS**

WCP joins several other GAOs in recommending the deletion of Standards 1, 10, and 14 and their associated guidelines. Each of these standards duplicates the requirements of existing law and regulation. GAOs are already required to comply with these existing laws and regulations, and these standards are therefore superfluous.

In addition, WCP agrees with many the GAOs that Standard 28 duplicates the requirements of other standards and should be deleted, and the guidelines associated with Standard 28 should be moved to a separate appendix.

## **IV. CONCLUSION**

For all these reasons, WCP urges the Committee to focus on the development of sound, general operations standards, rather than on excessively detailed and prescriptive guidelines. If the guidelines are implemented as requirements, they will be costly to GAOs and ultimately to ratepayers. The standards and guidelines as originally proposed should be modified as recommended in the Joint GAO Revisions,

and certain proposed standards and guidelines should be deleted.

If the Committee clarifies that only the standards will be the object of enforcement and if the Committee modifies the standards and guidelines as suggested in the Joint GAO Revisions and these comments, WCP is confident that generators will voluntarily comply with the operations standards, and will not feel a need to pursue formal jurisdictional challenges. WCP appreciates the opportunity to present its reaction to the proposed standards and guidelines, and WCP will continue to work cooperatively with the Committee, the CPUC, and the ISO to develop reasonable operations standards that meet the needs of all affected parties.

Respectfully submitted this October 1, 2004 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,  
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Brian T. Cragg

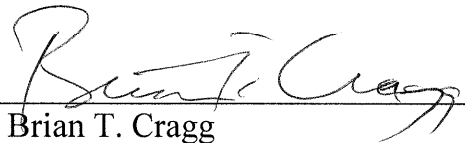
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