

June 16, 2004

Via Electronic Mail

Glenn Bjorkland
bjorkpvcc@aol.com

Michael Kahn
Folger, Levin & Kahn LLP
275 Battery Street, 23rd Floor
San Francisco, CA 94111
mkahn@flk.com

Carl Wood
Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
cxw@cpuc.ca.gov

**Re: Comments of Elk Hills Power, LLC to the California Electricity Generation
Facilities Standards Committee on Revised General Duty Standard No. 4**

Dear Committee Members:

Pursuant to the letter issued on June 7, 2004 (June 7 Letter) by Commissioner Carl Wood as presiding officer of the California Electricity Generation Facilities Standards Committee (Committee), Elk Hills Power, LLC (Elk Hills) submits its comments regarding the proposed revisions to General Duty Standard No. 4 (Revised Standard) referenced in the June 7 Letter.¹

¹ In voluntarily submitting these Comments to the Committee, Elk Hills expressly reserves its right to challenge fully, in an appropriate forum, the relevant portions of SBX2 39 and the authority conferred on the Commission therein, as well as any requirement the Commission may attempt to impose on Elk Hills pursuant to such authority. Nothing in this submittal constitutes a waiver of such rights or any of the arguments that have been raised in a variety of pleadings filed with the Commission by Elk Hills in this proceeding relating to jurisdiction over EWGs.

Background

On May 6, 2004, the Commission issued its “Decision Adopting General Order Implementing and Enforcing Electric Generator General Duty Standards, Maintenance Standards, and CAISO’s Outage Coordination Protocol” (D.04-05-018) (Decision) pursuant to an Order Instituting Rulemaking to Implement the Provisions of Public Utilities Code § 761.3 Enacted by Chapter 19 of the 2001-2002 Second Extraordinary Legislative Session, dated November 21, 2002 (OIR). Docket No. R.02-11-039. The OIR seeks to implement Senate Bill 39XX (SBX2 39), which added Section 761.3 of the Public Utilities Code. In this proceeding, the Commission has stated that it will develop rules to i) implement and enforce the generator operating and maintenance standards adopted by the Committee; and ii) enforce the California Independent System Operator Corporation’s (CAISO) outage scheduling protocols.

The Decision found that it was unable to implement and enforce the proposed General Duty Standard No. 4.² Noting that General Duty Standard No. 4 made specific reference to potential behaviors – economic and physical withholding – that might violate requirements imposed by the Federal Energy Regulatory Commission (FERC), the Decision raised the question as to how the Commission might properly enforce the standard as originally drafted. The Decision requested that the Committee consider revising the scope and applicability of General Duty Standard No. 4 in order to “specifically tailor its language to those regulatory purposes of public health and safety and system reliability that are squarely within the authority of this Commission.” Decision at p. 24.

Comments

In response to the Decision, the June 7 Letter proposes that the Committee adopt a Revised Standard that 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,

² As originally proposed by the Committee, General Duty Standard No. 4 provided as follows:

No Facility shall be operated and maintained in a manner such that its output is scheduled, delivered, adjusted or withheld: (a) for the purpose of unfairly, unjustly or unreasonably influencing wholesale electricity generation prices established by the Federal Energy Regulatory Commission, (b) by falsely declaring that a Facility has been forced out of service or otherwise become unavailable, or (c) by failing to comply with the must-offer conditions of a participating generator agreement.

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

Elk Hills incorporates by reference the objections with regard to the General Duty Standards raised in its June 7, 2004 Application for Rehearing filed in R.02-11-039. Elk Hills noted that the adoption of the General Duty Standards by the Committee and the subsequent implementation and enforcement of such standards by the Commission, even on a temporary or interim basis, is not expressly authorized by SBX2 39. Elk Hills also discussed how the General Duty Standards are so vague and nebulous that it would be impossible for a Generating Asset Owner to know at any given moment whether it is in compliance with a given General Duty Standard.

This lack of specificity is particularly evident with regard to the Revised Standard. Among other things, the Revised Standard would require a generator to keep its facility on line during a warning, alert or system emergency, unless "the reasonably expected cost of continued operation exceeds the public benefit, considering the facility's contribution toward maintaining reliable electric supply under current conditions." It is unclear what factors are to be included for the purposes of measuring the public benefit pursuant to this requirement. Moreover, the Revised Standard appears unreasonably to require the generator to undertake this open-ended cost/benefit assessment during conditions that may amount to an emergency at its facility.³

In addition, at least with respect to EWGs, the adoption of the Revised Standard is unnecessary in that tariffs, protocols and agreements administered by the appropriate regulatory agency are already in place to implement and enforce the concepts set forth in this standard. Generators connected to the CAISO grid, such as Elk Hills, are already obligated via Participating Generator Agreements (PGAs) to comply with the CAISO

³ According to the language of the Revised Standard, this requirement would apply in the event of a "forced outage." Elk Hills assumes that the Committee's intent here was to require the above steps be taken with regard to a *planned* outage. The CAISO Tariff denotes a forced outage as "an Outage for which sufficient notice cannot be given to allow the Outage to be factored in to the Day-Ahead Market or Hour-Ahead Market Scheduling processes." ISO Tariff, Appendix A – Master Definitions Supplement, Original Sheet No. 316. A forced outage is thus by definition unplanned and therefore beyond the generator's control. As such, it would in most cases be impossible for a generator to undertake the steps required in the Revised Standard prior to a forced outage.

Glenn Bjorkland, et al.
June 16, 2004


rules and protocols regarding the scheduling and delivery of the output of their facilities, as well as the scheduling and coordination of plant outages.

These requirements include revisions to the CAISO Tariff recently filed at the FERC to clarify generators' obligations with regard to the CAISO must-offer requirement, and the process for seeking a waiver of the must-offer requirement. *See* CAISO Tariff Amendment 60, filed May 11, 2004, in FERC Docket No. ER04-835-000. Thus, it is unnecessary for the Revised Standard to seek (without so stating directly) to require generator compliance with the must-offer conditions of the CAISO Tariff, because the PGAs are on file with and under the jurisdiction of FERC, and the must-offer conditions present in the CAISO Tariff apply to the generator via its PGA, and would thus be enforced by FERC. As such, the Revised Standard encroaches on the exclusive jurisdiction established by the Federal Power Act for FERC with regard to the justness and reasonableness of wholesale rates, and practices affecting the same in wholesale markets.

Conclusion

The Revised Standard exceeds the scope of the Committee's role as defined in SBX2 39, and raises serious state/federal jurisdictional issues. The Revised Standard is too vague and broad to be meaningfully implemented and enforced. Finally, the Revised Standard is unnecessary to the extent it seeks to impose obligations on generators that already exist. Therefore, Elk Hills respectfully urges the Committee to abandon the Revised Standard. Alternatively, and at a minimum, the Revised Standard could be used as a guide to the Committee in formulating specific standards pursuant to SBX2 39.

Respectfully submitted on behalf of
Elk Hills Power, LLC


Daniel A. King
Sempra Energy
101 Ash Street, HQ13
San Diego, CA 92101-3017
E-mail: daking@sempra.com