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*Via Electronic Mail*

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**Re: Comments of Elk Hills Power, LLC to the California Electricity Generation Facilities Standards Committee on Proposed Operations Standards and Guidelines for Generators**

Dear Committee Members:

Pursuant to the notice issued on August 23, 2004 (Notice) by Commissioner Carl Wood as presiding officer of the California Electricity Generation Facilities Standards Committee (Committee), Elk Hills Power, LLC (Elk Hills) submits its initial comments regarding the "Proposed Operations Standards and Guidelines for Generators" (Operating Standards Document).<sup>1</sup>

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<sup>1</sup> 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 Senate Bill 39XX (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 exempt wholesale generators (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 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.

## **Comments**

- **If Applied Without Meaningful Flexibility, the Proposed Guidelines Will Unreasonably Hinder the Prudent and Efficient Operations of Generating Asset Owners**

As a general matter, Elk Hills finds many of the proposed "Guidelines" corresponding to the Standards to be unnecessarily proscriptive, and inconsistent with the stated purpose of SBX2 39, which among other things, seeks to ensure that generators are "effectively and appropriately maintained and efficiently operated." (Emphasis added).

Elk Hills recognizes that the Operating Standards Document includes a qualifying statement regarding the intent of the Guidelines, an appropriate step toward providing some assurance to Generating Asset Owners (GAOs) that the Guidelines realistically include some built-in leeway for those endeavoring to demonstrate compliance with the Operating Standards. The Operating Standards Document provides that:

The Committee has adopted these Guidelines so that Generators will have a clear idea of what is expected of them in meeting each standard. The Committee did not adopt this material as part of the Operations Standards themselves because there may be equally valid ways of meeting the standard that do not follow every provision of the Guidelines. However, Generators should consider the Guidelines in reviewing or reformulating their own policies, operating procedures, and implementation schedules, to assure that the concerns addressed by the Guidelines are addressed, where relevant, at each power generation unit.

Operating Standards Document at p. 8. The Maintenance Standards Document, adopted by the Committee on May 2, 2003, contains similar assurances with regard to the intent of the corresponding Maintenance Guidelines.<sup>2</sup>

While these statements provide some minimum level of comfort to GAOs as to what criteria the Committee intends to hold GAOs accountable for meeting, the experience of some GAOs during the implementation of the Maintenance Standards earlier this year gives rise to a concern that the Guidelines may not be as flexible as the Committee had initially indicated. Despite the assurances in the Maintenance Standards Document with regard to the intent of the Maintenance Guidelines, the detailed "Matrix" documentation that the Commission's Consumer Protection and Safety Division (CPSD) Staff required GAOs to complete in order to confirm compliance with the Maintenance Standards by June 14, 2004 required GAOs to address each Maintenance Guideline in its Maintenance Compliance Document by either showing compliance with each Guideline or by affirmatively demonstrating why the "failure to meet that [G]uideline does not constitute a failure to comply with the associate Performance Standard." See, "Instructions for Initial Certification of Maintenance Plan" and the "Compliance Matrix" documents posted on the Commission's website under the "Power Plant Standards Program" link.

In order to avoid another potential mismatch between the stated intent of the Guidelines serving as a flexible reference point and the practical effect of using the Guidelines as yardstick for measuring compliance, the Committee should at a minimum provide additional explicit assurance to GAOs. The Committee should make clear that the Guidelines are just that – guidelines, and not simply additional, more detailed Standards. While the latter view may result in CPSD auditors having to undertake less substantive analysis with regard to a given GAO's compliance plan, that view is

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<sup>2</sup> With regard to the Maintenance Guidelines, the Maintenance Standards document provides a follows:

For each performance standard there is a set of assessment guidelines intended to provide a sense of the breadth and depth of the standard. These represent of a collection of "Best Practices", and not an exclusive set of criteria to demonstrate that a standard is being met. Those performing audits and assessments must keep in mind that the assessment guidelines may not be all inclusive of activities associated with the performance standard. It may be beneficial to the user of this document to refer to Appendix A, Maintenance Guidelines for Electric Generating Facilities, to gain additional insight regarding how to satisfy a particular performance standard. Generating asset owners may use different approaches to meet the standards. Given that the assessment guidelines represent only a means to an end, the certification process emphasizes achievement of the performance standards.

Maintenance Standards Document at p. 1-3.

inconsistent with the currently stated intent of the Committee, and is at odds with the practical realities of power plant operations.

- **Certain Standards Unnecessarily Duplicate Obligations Currently in Place Pursuant to Federal Law**

Certain Operating Standards would unnecessarily duplicate obligations that are currently in place pursuant to the CAISO Tariff and required for generators pursuant to the Federal Power Act. Specifically, the following standards call for GAOs to implement practices regarding their operations that, as parties subject to Participating Generator Agreements (PGAs) under the CAISO Tariff, the GAOs are already required to observe: (i) Standard 22 – Readiness; (ii) Standard 23 – Notification of Change in Plant Status; (iii) Standard 24 – Changes in Plant Status; and (iv) Standard 26 – Planning for Unit Storage.

The CAISO Tariff contains requirements that cover the above-listed practices for generators selling into the CAISO markets. In particular, Section 5 of the CAISO Tariff governs wholesale generators' readiness and changes in plant status via provisions to implement the must-offer obligation, compensation for generators operating subject to the must-offer obligation, and procedures for generators to request, and the CAISO to grant, exemptions to the CAISO must-offer obligation. As the Federal Energy Regulatory Commission (FERC) has explained, the must-offer obligation was imposed in early 2001 as an element of the mitigation and monitoring plan in response to the California energy crisis and is "designed to prevent withholding and thereby to ensure that the ISO will be able to call upon available resources in the real-time market to the extent that energy is needed."<sup>3</sup> Earlier this year, FERC conditionally approved Amendment 60 to the CAISO Tariff, which provides market participants with additional clarity with regard to the must-offer obligations of generators.<sup>4</sup>

The adoption of the above-listed Standards (and any other requirements that overlap with existing CAISO Tariff provisions governed by the FERC) by the Committee and the subsequent implementation and enforcement of those Standards by the Commission would raise serious and unavoidable state-federal jurisdictional conflicts. However, in keeping with the Presiding Commissioner's request in the August 23 Notice to limit comments regarding implementation and enforcement, rather than repeating the same here, Elk Hills herein incorporates by reference the jurisdictional arguments it has previously raised in its pleadings filed in this proceeding.<sup>5</sup>

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<sup>3</sup> *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 at 62,551 (2001).

<sup>4</sup> *California Independent System Operator Corporation*, 108 FERC ¶ 61,022 (2004).

<sup>5</sup> See "Comments of Elk Hills Power LLC on Draft Decision" in R.02-11-039, dated March 18, 2004, and "Initial Comments of Elk Hills Power, LLC On Draft Decision Regarding

Therefore, Elk Hills urges the Committee to reject the above-listed Standards (and any other requirements that overlap with existing CAISO Tariff provisions governed by the FERC), as unnecessarily duplicative.

- **The Guidelines for Standard 22 Would Impose Unreasonably Cost-Prohibitive Requirements on GAOs**

The Guidelines accompanying Standard 22 – Readiness would impose an extraordinarily excessive layer of additional costs on for GAOs. Proposed Guideline A requires that “generating facilities have contingency plans in place that ensure the uninterruptible supply of fuel and necessary commodities, including, but not limited to, all gases, consumables and cooling water necessary to operate the generating facility at full load.” (Emphasis added).

Imposition of this Guideline would, by any measure, require implementation of massive and cost-prohibitive redundancy on the part of the GAO. Even if cost was not taken into account, there is simply no such thing as a completely *uninterruptible* fuel supply, no matter how many contingency layers are added. Even the “firmest” firm gas capacity contracts are subject to interruption in events of force majeure and system maintenance.<sup>5</sup> Therefore, not only would imposition of this requirement be commercially unrealistic, it also would be impossible to achieve as a practical matter, economic considerations aside.

Similarly, Guidelines C and D require procedures to be in place to “ensure that adequate fuel and necessary commodities can be delivered to the generating facility to ensure full load for an indefinite time.” (Emphasis added). Again, as with the “uninterruptible” supply requirement, the Guidelines extending the obligation to ensure full load for “an indefinite time” appear to have been drafted without regard to potential cost implications, and are otherwise untethered from the basic commercial realities surrounding the operation of a power plant.

Elk Hills urges the Committee to reject Guidelines A, C and D, given that these Guidelines, as proposed, are commercially unrealistic and are otherwise impossible to achieve as a practical matter.

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Commission Implementation and Enforcement of Logbook Standards for Thermal Powerplants” in R.02-11-039, dated November 18, 2003.

<sup>6</sup> Upon reading the Guideline requiring an *uninterruptible* supply of fuel, etc., one GAO operator quipped, “That’s pretty hard to do here in earthquake country!”

- **Certain Guidelines Are Unreasonably Vague, Potentially Resulting in a GAO Being Out of Compliance Based on Vague or Non-Existent Criteria**

Depending on how the Guidelines are interpreted, as discussed above, certain Guidelines, due to their utilization of subjective criteria and/or vague terminology, could result in a GAO being found to be “out of compliance” without any meaningful understanding of how its performance was being measured. Examples of these provisions include the following:

- **Standard 18 – Performance Testing.** The Guidelines provide that the GAO establishes and carries out a program of regular unit and system testing, similar to the schedules recommended in the Guidelines. The nature of the tests conducted and recommended schedules do not apply universally to the operations of all GAOs. As such, the Guidelines should make clear that the GAO will not be found to be out of compliance with Standards 18 to the extent it exercises its reasonable judgment under the circumstances in meeting the requirements of this Standard.
- **Standards 19 – Emergency Grid Operations, and Standard 21 – Plant Security.** Guideline I for Standard 19 provides that the GAO must “consider the impact on emergency operation of coincident alerts from the National Infrastructure Protection Center” (NIPC). Guidelines B and C for Standard 21 require the GAO to “respond to alerts” from the NERC Electricity Sector Information Sharing and Analysis Center (ES-ISAC) or NIPC national threat alert notification system, and to place itself in alert status “if local conditions warrant it regardless of the current national alert status.” These Guidelines do not specifically delineate how the GAO is to consider and/or respond to ES-ISAC and NIPC alerts; nor do the Guidelines describe how the GAO determines if an alert status is warranted based on local conditions. As such, the Guidelines should make clear that the GAO will not be found to be out of compliance with Standards 19 or 21 on an after-the-fact basis to the extent the GAO exercises its reasonable judgment under the circumstances in meeting the requirements of these Standards.
- **Standard 28 – Equipment and Systems.** As with the above provisions, the Guidelines associated with Standard 28 should only be used as applicable; otherwise, some guidelines would seem to require installation of equipment, *i.e.*, vacuum pumps. Additionally, certain Guidelines call for corrective actions if operations are impacted, yet do not quantify the level of impact triggering the corrective action. A condition or event may impact system or equipment performance to a small degree, and, once it gets large enough, a prudent operator would take action. However, a strict

(and therefore unreasonable) reading of the Guidelines might require action to be taken immediately, even when the impact is negligible. An example would be when an offline water wash is performed. A small amount of degradation occurs every hour that a CTG is operated. Once this builds up to a sufficient level, the unit is taken offline and cleaned. This periodicity varies from unit to unit and from site to site. Again, as with the above Standards, the Guidelines associated with Standard 28 should make clear that the GAO will not be found to be out of compliance with Standard 28 to the extent it exercises its reasonable judgment under the circumstances in meeting the requirements of this Standard.

- **Standard 14 Should Clarify That the Corresponding Guidelines Are Not Intended to Exceed the Cal/OSHA Lockout/Blockout Requirements and Methods**

Proposed Operating Standard 14 relates to clearance procedures for work performed on equipment. Guidelines A and B include requirements that “clearance tags make clear what equipment and systems are out of service, how long, and why,” and that the “[c]learance tags make clear who requested and approved the clearance, and what must be done to remove the clearance.” Guideline E further provides that tags are to be “non-reusable, attachable by hand, self-locking, and secure unless deliberate effort is applied.”

Cal/OSHA Title 8 specifically regulates Lockout/Blockout requirements and methods. The aforementioned Guidelines appear to impose obligations on GAOs that that would exceed the requirements of Title 8. For example, the Title 8 requirements provide that a tag must state: (i) the reason for the lockout; (ii) the name and contact information for the employee working on the equipment; and (iii) the date and time the tag was put into place. 8 CCR 2320.6 (2004). The proposed Guidelines would require the GAO to go beyond the Cal/OSHA requirements. While the Guidelines suggest methods and procedures that may be useful and practical in some circumstances, a GAO should not be found to be out of compliance with Standard 14 if it meets the requirements of Cal/OSHA. Accordingly, the Guidelines should be revised to provide that they are not intended to exceed the lockout/blockout requirements of Title 8.

### **Conclusion**

As discussed above, a number of the Operating Standards unnecessarily duplicate obligations currently in place pursuant to federal or state law. Moreover, the Commission must ensure that the proposed Guidelines that correspond with the Operating Standards are implemented in a manner that does not hamper the efficient operation of a generating facility. Still other Guidelines are too vague and broad to be meaningfully implemented and enforced, or would impose excessive and unreasonable costs on GAOs seeking to

comply, and must therefore be modified or rejected in their entirety. Elk Hills respectfully urges the Committee to revise the Operating Standards accordingly.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jim McArthur", is written over a horizontal line. The signature is stylized and extends to the right of the line.

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