

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of  
Public Utilities Code § 761.3 enacted by Chapter  
19 of the 2001-02 Second Extraordinary  
Legislative Session.

Rulemaking 02-11-039

**INITIAL COMMENTS OF ELK HILLS POWER, LLC  
ON ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE RULING**

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*On behalf of Elk Hills Power, LLC*

April 1, 2005

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**I. INTRODUCTION**

Pursuant to Article 19 of the Commission’s Rules of Practice and Procedure, Elk Hills Power, LLC (“Elk Hills”) submits its comments regarding the “Assigned Commissioner and Administrative Law Judge Ruling (A) Regarding Remaining Issues and Technical Modifications to GO 167 and (B) Setting PHC” (“Ruling”).<sup>1</sup>

Description of Elk Hills

Elk Hills owns a combined-cycle electric generation facility near Bakersfield, California consisting of two gas-fired combustion turbine generators and a steam turbine generator with a total nominal power output of approximately 550 MW. Elk Hills has been determined by the Federal Energy Regulatory Commission (“FERC”) to be an EWG

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<sup>1</sup> In voluntarily filing these Comments and further participating in this proceeding, 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 filing constitutes a waiver of such rights or any of the arguments that have been raised in a variety of pleadings filed with the Commission in this proceeding relating to jurisdiction over exempt wholesale generators (“EWGs”).

pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended by the Energy Policy Act of 1992.<sup>2</sup>

#### Rulemaking Proceeding

On November 21, 2002, the Commission issued 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 (“OIR”). The OIR seeks to implement SBX2 39. 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 California Electricity Generation Facilities Standards Committee (“Committee”); and (ii) enforce the California Independent System Operator Corporation’s (“CAISO”) outage scheduling protocols.

#### General Order

On May 6, 2004, the Commission issued D.04-05-018, which adopts General Order 167 (“GO 167”) providing rules for the implementation and enforcement of General Duty Standards for operation and maintenance, and more detailed standards for the maintenance of generation facilities (“Maintenance Standards”). After soliciting written comments and informal feedback from generating asset owners (“GAOs”) via committee workshops held September 20-21, 2004, the Committee on October 27, 2004, adopted its “Operation Standards for Generating Asset Owners” (“Operating Standards”). On December 16, 2004, the Commission issued its “Interim Opinion Regarding Commission Implementation and Enforcement of Generator Operation Standards” D.04-

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<sup>2</sup> *Elk Hills Power, LLC*, Docket No. EG03-31-000 (Letter Order dated January 29, 2003).

12-049, which added the Operating Standards to the existing GO 167 implementation and enforcement provisions for the Maintenance Standards (together, the “O&M Standards”).

## **II. COMMENTS**

The stated goals of the Ruling are to “(a) examine whether or not there are ways to mitigate what might otherwise become future conflicts in implementation and enforcement, and (b) make incremental improvements in the program to increase benefits and reduce costs within the adopted GO 167 structure.” Ruling at p. 2. Elk Hills appreciates the Commission’s desire to engage stakeholders in such efforts, inasmuch as, once parties have gained experience with the practical impacts of the implementation and enforcement mechanisms created by GO 167, there will very likely be room for improvement in how the Commission’s program is managed.

Despite the Ruling’s laudable goals, Elk Hills is concerned that stakeholders may not have had sufficient time to assess what types of specific improvements need to be made to the Commission’s generator O&M implementation and enforcement program. Many aspects of the program are still in the early stages. For instance, the deadline for GAOs to submit a certificate of compliance with regard to their adherence to the Operating Standards was only last week.

Moreover, GAOs are still in the process of working with the staff of the Commission’s Consumer Protection and Safety Division to develop a suitable form of Operation Plan Summary (with a workshop to be convened on April 6). Once that document is finalized, GAOs will have 120 days during which to ensure that the supporting documentation required by the Operation Plan Summary is completed.

Furthermore, it is Elk Hills' understanding that the CPSD audits of GAOs have recently commenced pursuant to GO 167. However, many – if not most – GAOs have yet to be audited or receive audit reports. As such, many stakeholders do not have the full benefit of the experience of the audit process that could inform their comments in response to the Ruling.

The Ruling inquires as to the potential value of mediation as a means of anticipating and potentially resolving areas of potential conflict and/or identifying incremental program improvements. Ruling Attachment B at p. 1. As a general matter, Elk Hills agrees that an alternate means of dispute resolution such as mediation could be an appropriate vehicle for “anticipating and resolving what might otherwise be future conflicts,” depending on the nature of the issue to be resolved. *Id.* at p. 3. Like the Commission, Elk Hills too is interested in a process that would “make GO 167 work in the best possible ways at the least possible costs for all stakeholders.” *Id.* Elk Hills further agrees with the Commission that, in order to maximize the potential benefits for all stakeholders, such a process should be voluntary, confidential, and time-limited.

As noted above, however, Elk Hills questions whether at this early stage stakeholders' limited experience with the Commission's implementation and enforcement regime pursuant to GO 167 will prevent identification of a complete catalog of relevant issues for inclusion in such a process. While stakeholders may have identified certain threshold issues that are ripe for mediation at the present, other concerns or conflicts may not become apparent until after GAOs and CPSD have the benefit of experience under the program. To that end, any alternative dispute resolution process initiated by the Commission pursuant to the ACR should provide stakeholders with an opportunity in

future phases to identify issues for conflict resolution, recognizing that such issues can arise once GAOs and the CPSD have practical experience working under the current implementation and enforcement regime provided by GO 167.

### **III. CONCLUSION**

Given the early stage of the Commission's implementation and enforcement efforts pursuant to GO 167, the Commission may benefit from more meaningful stakeholder feedback if it postpones, or at least phases, its efforts pursuant to the Ruling until such time as GAOs – along with the CPSD – have had an opportunity to gain more experience under the current implementation and enforcement scheme for the O&M Standards.

Elk Hills appreciates the opportunity to participate in this rulemaking and looks forward to working with the Commission to address and resolve the issues raised by this proceeding.

Respectfully submitted this 1st day of April 2005.

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By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the **INITIAL COMMENTS OF ELK HILLS POWER, LLC ON ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE RULING** has been transmitted to each party of record on the service list in R.02-11-039 by electronic mail. I have also sent hard copies by Federal Express to Administrative Law Judges Burton Mattson and John E. Thorson, and Commissioner Michael R. Peevey.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2005 at San Diego, California.

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Adrian Elizabeth Sullivan