

Decision **04-05-017** May 6, 2004

**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  
(Filed November 21, 2002)

**INTERIM OPINION REGARDING COMMISSION IMPLEMENTATION  
AND ENFORCEMENT OF LOGBOOK STANDARDS  
FOR THERMAL POWERPLANTS**

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**INTERIM OPINION REGARDING COMMISSION IMPLEMENTATION  
AND ENFORCEMENT OF LOGBOOK STANDARDS  
FOR THERMAL POWERPLANTS**

**1. Summary**

Pub. Util. Code § 761.3 requires that the Commission implement and enforce operation and maintenance standards adopted by the California Electricity Generation Facilities Standards Committee (Committee). This order involves our implementation and enforcement of Committee-adopted Logbook Standards for thermal powerplants. (See Attachment A.)

Within 30 days of the date this order is mailed, an authorized representative of each covered electricity generation facility shall file a verified statement with the Director of the Consumer Protection and Safety Division (CPSD).<sup>1</sup> The statement shall indicate that (a) the facility is keeping required logbooks, (b) a compliance document has been prepared, and (c) logbooks and the compliance document are being updated and maintained. The compliance document will show where and how data required by the Logbook Standards are recorded and maintained for each facility. Only facilities 50 megawatts (MW) and larger are required to keep the specified logbooks, prepare a compliance document, and file the verified statement.

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<sup>1</sup> A proposed General Order (GO) was filed and served for comment by Ruling dated October 2, 2003, and included as part of a draft decision filed for comment on February 27, 2004. The proposed GO applies to “Generating Assets” and “Generating Asset Owners.” (Proposed GO, Sections 2.8 and 2.9.) “Covered electricity generating facilities” in this order are the same as “generating assets” in the proposed GO. Corporations and persons who “own, control, operate or manage” a covered facility in this order are the same as “generating asset owners” in the proposed GO. If the Commission adopts the GO, the GO language (i.e., proposed GO Sections 2.8 and 2.9) will control.

Within 12 months, respondents shall file and serve an application that addresses implementation and enforcement of a common format for recording and maintaining logbook data. The proceeding remains open.

## **2. Background**

Pub. Util. Code § 761.3 establishes the Committee for the purpose of adopting operation and maintenance standards for electric generation facilities.<sup>2</sup> It also directs that the Commission:

“implement and enforce standards adopted [by the Committee] for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation.”  
(§ 761.3(a).)

We opened this proceeding to implement § 761.3, and resolve issues that arise under that statute. Among other things, we address implementation and enforcement of standards adopted by the Committee.<sup>3</sup>

### **2.1. Logbook Standards and Committee Process**

The first standards adopted by the Committee, and filed with the Commission for implementation and enforcement, are Logbook Standards for thermal powerplants. Described briefly, the Committee adopted these standards using the following steps.

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<sup>2</sup> Senate Bill (SB) X2 39 (Burton and Speier), added by Statutes 2002, Second Extraordinary Session, Chapter 19, Section 4 (effective August 8, 2002). All statutory references are to the Public Utilities Code unless specified otherwise.

<sup>3</sup> As also required by SB X2 39, we opened this proceeding to develop rules “to enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.” (§ 761.3(a).)

On January 31, 2003, proposed logbook requirements were circulated to participants before the Committee. At its meeting on February 3, 2003, the Committee endorsed the setting of dates for serving comments and reply comments. By Ruling dated February 7, 2003, the proposed logbook requirements were formally served on participants before the Committee, with comments due by February 24, 2003, and reply comments due by March 3, 2003. Timely comments were served by Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); AES Alamitos, LLC, AES Huntington Beach, LLC, and AES Redondo Beach, LLC (AES); Mirant Delta, LLC and Mirant Potrero, LLC (Mirant); El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (West Coast Power or WCP); Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (Reliant); Midway-Sunset Cogeneration Company (Midway-Sunset); and Constellation Generation Group (Constellation).<sup>4</sup> No reply comments were served.

On March 28, 2003, revised proposed Logbook Standards were distributed to the Committee and participants before the Committee. At its meeting on April 1, 2003, the Committee heard public comments on the revised proposed Logbook Standards from Mirant, PG&E, SCE and Dynegy, Inc. (Dynegy). After discussion, the Committee adopted the revised proposed Logbook Standards, but limited their application to thermal powerplants. On

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<sup>4</sup> A copy of these comments may be found on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov) by clicking on "Electric Generation Standards Committee."

April 2, 2003, the adopted Logbook Standards were filed with the Commission, and served on parties. (See Attachment A, Sections I and II.)

In summary, the adopted Logbook Standards define requirements for facility logs and specify the information that must be maintained. For example, each facility is required to maintain a Control Operator Log. This log is a chronological history of the facility, including detailed entries regarding operation and maintenance. Generators may elect to record certain kinds of information in logs separate from the Control Operator Log. These separate logs are the Equipment Out of Service Log and Work Authorization Log. Logs must be retained in hard copy, electronic format, or both, for a minimum of five years from the date of the log entry.<sup>5</sup> All information must be readily available at all times to operators, Commission staff, and other authorized personnel.

## **2.2. Commission Process**

By Scoping Memo and Ruling dated February 19, 2003, the Assigned Commissioner identified the issues, and set dates for the filing and service of proposals and comments on several matters, including implementation and enforcement of Logbook Standards.<sup>6</sup> Timely comments on implementation and

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<sup>5</sup> The proposed GO (filed and served October 2, 2003 for comment) requires that all records, including logbooks, be retained “for the entire period that the Generating Asset is in Active Service or remains available for Active Service, plus three additional years.” (Section 11.4 of the proposed GO.) If the Commission adopts the GO as proposed, the data retention period shall be the longer of the two that control in any particular situation (e.g., minimum of five years, or life of asset plus three years).

<sup>6</sup> The February 19, 2003 Scoping Memo and Ruling established Phase 2 of this proceeding for that purpose, and identified eight issues for consideration by the Commission. It also set several dates for the filing and service of various pleadings (e.g., proposals, comments, reply comments, motions for formal hearing, responses to motions for formal hearing).

enforcement of Logbook Standards were filed and served on April 8, 2003, by PG&E; SDG&E; Reliant; WCP; Mirant; CPSD; Duke Energy North America (DENA); and Elk Hills Power, LLC (Elk Hills). Timely reply comments were filed and served on April 14, 2003, by CPSD, Mirant, Elk Hills and AES. Motions for formal hearing were due by April 14, 2003. No motions were filed.

Parties raise limited general issues, and comment on eight specific issues. We first address two threshold matters: (a) jurisdiction; and (b) authority to adopt, implement, and enforce Logbook Standards. We then address the eight specific issues identified in the Scoping Memo.

### **3. Jurisdiction: Hydro, Nuclear, EWGs, Other**

As a threshold matter, some parties assert that the Committee has no jurisdiction to adopt standards for many types of powerplants, and the Commission has no jurisdiction to implement and enforce such standards. In particular, several parties say that hydroelectric and nuclear powerplants are exempt from these standards. Other parties contend that exempt wholesale generators (EWGs) subject to federal jurisdiction cannot be made subject to state jurisdiction by § 761.3.

#### **3.1. Hydroelectric**

The adopted Logbook Standards under consideration here apply only to thermal powerplants. The issue of their application to hydroelectric powerplants is moot with respect to this decision, and we will not address it at this time.<sup>7</sup>

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<sup>7</sup> At its meeting on April 1, 2003, the Committee directed staff to develop Logbook Standards for hydroelectric facilities. Those proposed standards were circulated for comment on May 9, 2003, with comments served May 19, and reply comments served

*Footnote continued on next page*

**3.2. Nuclear and Other Plants Specifically Excluded by § 761.3**

We implement Committee-adopted thermal Logbook Standards for each facility used to generate electric energy by the use of thermal energy owned by an electrical corporation or located in California, with the following exceptions:

1. Nuclear-powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations.
2. Qualifying small power production facilities or qualifying cogeneration facilities (both called qualifying facilities, or QFs) within the meaning of §§ 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§ 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (FERC; 18 C.F.R. §§ 292.101 to 292.602, inclusive).
3. Generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load.
4. Facilities owned by a local publicly owned electric utility as defined in § 9604(d).
5. Facilities at a public agency that are used to generate electricity incidental to the provision of water or wastewater treatment.

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May 23. At its meeting on June 3, 2003, the Committee deferred action on hydroelectric Logbook Standards to a subsequent meeting pending additional staff work. The Committee adopted Logbook Standards for Hydroelectric Generating facilities at its meeting on April 7, 2004.

6. Facilities owned by a city and county operating as a public utility, furnishing electric service as provided in § 10001.

These exceptions are set forth in §§ 761.3(d) and (h). The Committee recognized these exceptions in Resolution No. 1.<sup>8</sup> The Committee's list of exemptions is consistent with § 761.3, and we adopt the same exemptions for our implementation and enforcement of Logbook Standards for thermal powerplants.

### **3.3. EWGs**

Several parties assert that Commission implementation and enforcement of Committee standards cannot govern operation and maintenance practices of EWGs.<sup>9</sup> Rather, they claim that EWGs are regulated under federal law and exempt from state regulation. Although we acknowledge the fact that the Federal Energy Regulatory Commission (FERC) has adopted a rule involving the sales of electric power into the wholesale market that affects the scheduling of maintenance by EWGs, for the reasons discussed in more detail below, we do not believe that FERC's assertion of authority in this regard in any way preempts

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<sup>8</sup> The Committee adopted Resolution No. 1 on May 2, 2003, and filed it with the Commission on May 16, 2003. Resolution No. 1 identifies the facilities to which Committee-adopted General Duty Standards for Operation and Maintenance (GDS) apply. In error, Resolution No. 1 states "city or county" regarding the sixth excluded type facility. Here, we adopt "city and county" consistent with § 761.3(h)(3), and as correctly stated in Committee Resolution No. 3, adopted June 3, 2003.

<sup>9</sup> The Public Utilities Code defines EWGs as: "The term 'exempt wholesale generator' has the same meaning as found in Section 79z-5a of Title 15 of the United States Code, and regulations enacted pursuant thereto." (Section 228.5(c).)

the state from taking action to oversee maintenance and operation activities either at power plants generally, or at EWGs in particular.

### 3.3.1. State Law

The Commission is charged with implementing and enforcing standards adopted by the Committee:

“for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation.” (§ 761.3(a), emphasis added.)

An electrical corporation “includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state...” with limited exceptions.<sup>10</sup> (§ 218(a).) As a result, the Commission must apply Committee-adopted operation and maintenance standards to electricity generation facilities of every corporation or person who owns, controls, operates or manages any electric plant for compensation within

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<sup>10</sup> Exceptions are where electricity is generated on or distributed by the producer through private property solely for the use of its tenants and not for sale or transmission to others. (§ 218(a).) Exceptions also include a corporation or person employing (a) cogeneration technology or producing power from other than a conventional power source for specific purposes, (b) landfill gas technology for the generation of electricity for specific purposes, (c) digester gas technology for the generation of electricity for specific purposes, or (d) cogeneration technology or power production from other than a conventional power source for the generation of electricity physically producing electricity prior to January 1, 1989 and furnishing that electricity to immediately adjacent real property for use thereon prior to January 1, 1989. (§ 218(b) - (e).) These exceptions are generally already within the exceptions covered by §§ 761.3(d) and (h). We separately state these exceptions in Attachment A, however, to identify specific plants that might be excluded in addition to those already listed.

California or located in California, with limited exceptions. The statute does not exclude EWGs.<sup>11</sup>

The Legislature specifically named plant types and categories that are excluded (e.g., nuclear, QFs, self-generation, publicly owned, incidental to water provision or wastewater treatment, owned by a city and county public utility). The Legislature could have, but did not, exclude EWGs.<sup>12</sup>

Section 5 of Article XII of the California Constitution gives the Legislature “plenary authority, unlimited by the other provisions of this constitution...to confer additional authority and jurisdiction upon the

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<sup>11</sup> WCP asserts that § 761.3 cannot include EWGs because EWGs are not public utilities. Rather, public utility status requires that the entity hold itself out as a public utility with dedication to serve the public, according to WCP. (WCP Comments April 8, 2003, page 12, footnote 16.) We disagree. Public utility status is not required to be subject to § 761.3. The Commission is obligated to implement and enforce standards for the operation and maintenance of facilities for electricity generation by “an electrical corporation.” (§ 761.3(a).)

Similarly, WCP and others claim that the Commission regulation is limited to public utilities. To the contrary, the PU Code provides the Commission with specific regulatory responsibility and authority over several entities. For example, energy service providers (ESPs) must comply with requirements implemented and enforced by the Commission. (Section 394 et seq.) This includes an ESP submitting to an investigation by the Commission (including access to accounts, books, papers and documents), and paying compensation, including reparations, upon the Commission granting such an award in a complaint proceeding. Similarly, load-serving entities must comply with Commission orders. (See Decision 04-01-050.)

<sup>12</sup> We note the State’s authority over power producers, including EWGs, pursuant to Cal. Const. Article XII, Section 3, which provides, in pertinent part, that:

“Private corporations. . . that . . . operate. . . a plant . . . for. . . the production, generation. . . of. . . power. . . directly or indirectly. . . are public utilities subject to control by the Legislature.”

commission...”<sup>13</sup> Pursuant to Section 5, the Legislature has specifically extended the applicability of Commission implementation and enforcement of operation and maintenance standards to EWGs, and conferred additional authority and jurisdiction upon the Commission through the following provision:

“Notwithstanding subdivision (g) of Section 216 and subdivisions (c) and (d) of Section 228.5, the commission shall implement and enforce standards adopted [by the Committee] for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation.” (§ 761.3(a).)

Some parties point to § 228.5(d) and conclude that the Commission lacks jurisdiction over EWGs. Section 228.5(d) states:

“Notwithstanding any other provision of law, an exempt wholesale generator is not a public utility subject to the general jurisdiction of the commission solely due to the ownership or operation of the facility.”

EWGs may not be “subject to the general jurisdiction of the commission solely due to the ownership or operation of the facility.” (Section 228.5(d).) Nonetheless, the Legislature has seen fit to make them explicitly subject to the additional, special, specific jurisdiction vested in the Commission to enforce operations and maintenance standards pursuant to § 761.3. Pursuant

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<sup>13</sup> Cal. Const. Article XII, Section 5; County of Inyo v. PUC (1980) 26 Cal. 3d 154, 164. The only limitations on the Legislature’s power are that the legislation must expressly extend the Commission’s authority (County of Inyo, supra, at 165-66) and the additional authority conferred by legislative enactment must be “cognate and germane to the regulation of utilities.” (Morel v. Railroad Commission of California (1938) 11 Cal. 2d 488, 492; People v. Western Airlines (1954) 42 Cal. 2d 621, 634.)

to Article XII, Section 5 of the Constitution, the Legislature was clearly within its rights to vest the Commission with this additional authority.

In fact, § 761.3 specifically directs that the Commission implement and enforce Committee-adopted standards to be followed by an electrical corporation notwithstanding specific provisions of the Public Utilities Code that would otherwise exclude EWGs from Commission jurisdiction (i.e., §§ 216(g), 228.5(c), 228.5(d)). As a result, the law provides the Commission with the specific and necessary jurisdictional basis to apply adopted standards to EWGs.

Moreover, the Legislature made specific findings and declarations in adopting § 761.3 that further support this conclusion. (Section 1, Chapter 19, SB X2 39.) In particular, the Legislature found and declared that:

- a. Electric generating facilities and powerplants in California are essential facilities for maintaining and protecting the public health and safety of California residents and businesses.
- b. It is in the public interest to ensure that electric generating facilities and powerplants located in California are effectively and appropriately maintained and efficiently operated.
- c. Owners and operators of electric generating facilities and powerplants provide a critical and essential good to California residents.
- d. To protect the public health and safety and to ensure electrical service reliability and adequacy, the Commission and the California Independent System Operator (CAISO) shall develop uniform operating practices and procedures, and the Commission shall enforce compliance with those practices and procedures.

It is of particular importance that in extending the reach of the Commission's authority to implement and enforce powerplant operation and

maintenance standards to EWGs, the Legislature focused on the need to protect public health and safety, and on the need to protect public service adequacy and reliability. With respect to electric power generating facilities located within the state, these underlying policy considerations of public health and safety and of public service adequacy and reliability are undoubtedly matters of state concern, both legislative and regulatory. Moreover, the state's jurisdiction over matters of public health and safety, and over the adequacy and reliability of public services (which certainly must be read to include jurisdiction over the adequacy and reliability of the electric power supplies needed to meet the demands of the customers of the electric utilities regulated by this Commission) in no way conflicts with, impedes, or in any way subordinates, the jurisdiction of FERC over the rates and tariffs charged by the EWGs.

A number of the parties to this proceeding have pointed out that the regulation of wholesale energy transactions is within the exclusive domain of FERC. We do not disagree that pursuant to the Federal Power Act,<sup>14</sup> FERC has exclusive authority over rate-setting in wholesale power markets and over the prices that EWGs may charge for the power they provide. Indeed, §761.3(c) explicitly acknowledges that we are not authorized either to set rates for wholesale power sales in interstate commerce or to approve the sale or transfer of control of an EWG's facilities.

However, our inability to regulate wholesale energy transactions in no way implicates or limits our ability, under state law, to regulate in order to protect the public health and safety of California's energy users or to assure the

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<sup>14</sup> 18 U.S.C. § 824(b)(1).

reliability and adequacy of their power supply. The Federal Power Act explicitly confirms this by withdrawing from FERC all regulatory authority with respect to “facilities for the generation of electric energy.”<sup>15</sup> Unfortunately, certain commenters have attempted to conflate these two entirely distinct, and unrelated, regulatory functions, one of which, relating to wholesale rates and tariffs, is within the exclusive purview of FERC, but the other of which, relating to public health and safety and the adequacy and reliability of public services, is clearly within the authority of the state and of this Commission. We have previously explained how the authority of the California Independent System Operator (ISO) over transmission system reliability in no way inhibits us from taking actions to protect public health and safety and to assure the adequacy and reliability of the state’s energy supply. See Decision D.99.07-028.<sup>16</sup> We direct the attention of the parties to our reasoning on the jurisdictional question addressed

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<sup>15</sup> Section 201(b) of the Federal Power Act provides that “The commission ...shall not have jurisdiction ... over facilities for the generation of electric energy.” Section 201(a) of the Federal Power Act confirms existing state authority in this regard.

<sup>16</sup> In that Decision, we pointed out that although AB 1890 empowered the California ISO to operate the transmission grid and to carry out certain reliability-related functions, AB 1890 did not deprive the Commission of its related safety jurisdiction or of its continuing jurisdiction over reliability. Thus, in the wake of AB 1890, the jurisdiction of the ISO and the Commission with respect to system reliability overlap. Where there is an apparent conflict between two statutes, the courts will attempt to harmonize them by giving effect to both statutes. San Diego Gas & Electric Company v. City of Carlsbad (1998) 64 Cal.App.4<sup>th</sup> 785, 793. Moreover, where the jurisdiction of two agencies overlaps, jurisdiction is concurrent. In such cases, subject to judicial review, an entity subject to the jurisdiction of both agencies must comply with the rules and regulations of both agencies. See, Orange County Air Pollution Control District v. Public Utilities Commission (1971) 4 Cal.3d 945, 950-51.

in that Decision, which is directly analogous to the jurisdictional question we are faced with in this Decision.

We accordingly believe that the language of SBX2 39 and §761.3 provides us with clear and explicit authorization to implement and enforce generator maintenance and operation standards, even as to EWGs, so long as our regulatory purpose in so doing is guided by, and limited to, the public health and safety and service adequacy and reliability considerations that are unquestionably the business and the responsibility of the state and of this Commission. Excluding EWGs from the provisions of SB X2 39 would eliminate an important number of powerplants the Legislature has found and declared to be essential facilities providing a critical and essential good. Excluding EWGs would frustrate the legislative goals of protecting public health and safety and ensuring electrical service reliability and adequacy. Our implementation and enforcement of generator maintenance and operation standards is intended to, and will, support these goals of protecting public health and safety and ensuring electrical service reliability and adequacy, thereby assuring the continued availability of a critical and essential public good, namely, electric power to the customers of California's investor-owned electric utilities.

Moreover, excluding EWGs would limit Commission implementation and enforcement to the few remaining powerplants of PG&E and SCE.<sup>17</sup> The Commission already has this jurisdiction. (§ 451, 701, 761, 768)

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<sup>17</sup> SDG&E appears not to have any powerplants now subject to § 761.3 by reporting that it “currently does not operate any generation facilities, but SDG&E has a direct interest in the rules adopted in this proceeding as a utility regulated by the California Public Utilities Commission (‘Commission’) and if SDG&E acquires generation facilities in the future.” (SDG&E Comments on Logbook Standards dated April 8, 2003, page 1.)

We decline to interpret § 761.3 in a manner that would make its passage meaningless.

The fact that we may have independent authority under state law to implement and enforce such standards does not gainsay the fact that FERC also has authority to regulate wholesale rates and tariffs. Under its authority, in order to protect against anti-competitive behavior or the exercise of market power in wholesale energy markets, FERC may impose conditions, indirectly touching upon plant maintenance, on EWGs in connection with their sales into the wholesale market.<sup>18</sup> However, the fact that a FERC rule may indirectly impact the maintenance of generation facilities does not confer jurisdiction upon FERC over the generation facilities themselves. As discussed above, Section 201(b) of the Federal Power Act is explicit in denying to FERC jurisdiction over generation facilities, while that Act does assign to FERC responsibility over wholesale price formation. However, FERC's limited and indirect actions to date in regard the scheduling of generator maintenance are intended to implement FERC's unquestioned authority over ratemaking within wholesale markets; they

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<sup>18</sup> See, Order Amending Market-Based Rate Tariffs and Authorizations, 105 FERC ¶61,218, November 17, 2003, in which, *inter alia*, FERC approved a Market Behavior Rule requiring EWGs to operate and schedule generation facilities and undertake maintenance in a manner complying with FERC-approved regulations of the applicable power market. We note that in adopting this Order, FERC clarifies that the Rule in question is not intended to serve as an independent basis to impose any new obligations on sellers or to further regulate bilateral markets. 105 FERC ¶61,218, at para. 21. In other words, this rule in no way expands FERC's existing regulatory authority, and leaves fundamental regulatory authority over power plant maintenance and operations where the Federal Power Act so clearly placed it, namely, in the hands of the states.

are in no way intended or structured to address the public health and safety and service reliability and adequacy concerns that are at the heart of SB X2 39.

Because FERC and California have different purposes for taking actions that address the same activity, namely the maintenance and operation of powerplants owned by EWGs, we consider it important to try to harmonize the efforts we are taking in this and related decisions to implement California's generation facility maintenance and operation standards with the responsibilities of FERC. It does not serve the interests of California, FERC or the EWGs for there to be conflicting sets of rules that serve different regulatory purposes, but that address closely related subjects, in this case, those relating to generator maintenance and operation activities.

In this regard, certain parties have advocated that we should work with the ISO to implement generator maintenance and operation standards and an oversight process to support the coordinated availability of generation. Those parties are doubtless aware that the Committee is a joint entity made up of representatives of both the Commission and the ISO and that the staffs of the two entities collaborated fully on the development of the standards we adopt today.

We agree that it is in the best interests of all of the affected entities, including the EWGs, for there to be one single set of generator maintenance and operation standards that would serve both FERC's market-related concerns as well as California's public health and safety and service adequacy and reliability concerns.

Toward this end, and in a spirit of comity with our federal counterpart, FERC, we shall forward the standards that we adopt in this Decision, and in all related current and future decisions that implement generator maintenance and operation standards, to the ISO with a request that

the ISO submit these adopted standards to FERC for approval as amendments to the ISO's tariff. FERC approval of the same standards that we adopt will accomplish three important goals: (1) it will eliminate any potential conflict in the maintenance and operation requirements that the EWGs must comply with in order to satisfy the complementary, but different, policy concerns of the state and federal governments; (2) it will allow multiple, complementary regulatory purposes to be satisfied by a single set of standards, thereby promoting governmental efficiency and simplifying the job of the regulated community; and (3) it will encourage and support the important principle of collaborative federalism, under which the state and federal governments recognize and respect, and to the extent possible seek to harmonize, their respective regulatory purposes and the mechanisms they employ to achieve these purposes. In this last regard, we note that there are numerous areas of law and regulation (including, but certainly not limited to, environmental protection and criminal law enforcement) where the federal government and the states have adopted a collaborative approach. Although done for differing regulatory purposes, we see the adoption of identical standards relating to generator maintenance and operation by this Commission and by FERC both as a way to improve relationships and enhance collaboration and cooperation between the two agencies, and as an important step forward on the path to creating a stronger and better regulatory paradigm that serves everyone more efficiently and more effectively.

### **3.3.2. Federal Law**

EWGs assert that they are regulated under federal law and federal law preempts state law. For example, WCP says "some of the generators (the nonutility EWGs) are, under applicable precedents, beyond the jurisdictional

reach of the Commission for the relevant purposes.” (WCP Comments, April 8, 2003, page 6.) In support, WCP cites a Commission statement that “regulation of EWGs would directly conflict with Federal jurisdiction over wholesale power rates.” (WCP Comments, April 8, 2003, page 6, footnote 10, citing D.95-12-006, 62 CPUC2d 517, 537, Conclusion of Law 17.)

To the contrary, WCP’s citation is to a conclusion that addresses rate regulation. We are not engaging in rate regulation here. Rather, we are implementing and enforcing a limited and specific component of operation and maintenance standards. In any case, no such pronouncement by the Commission could control the action of the Legislature in otherwise extending Commission jurisdiction. (Southern California Gas v. PUC, (1979), 24 Cal. 3d 653, 658-59.)

The Legislature specifically noted the distinction between (a) rate regulation and (b) implementation and enforcement of operations and maintenance standards by saying: “Nothing in this section authorizes the commission to establish rates for wholesale sales in interstate commerce from those facilities...” (§ 761.3(c).) At the same time the Legislature directly required Commission implementation and enforcement of operation and maintenance standards with regard to electrical corporations, notwithstanding the specific provisions that might otherwise exclude EWGs. (§ 761.3(a).)<sup>19</sup>

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<sup>19</sup> WCP similarly cites a U.S. District Court opinion (which dismissed a number of California Attorney General lawsuits against various EWGs for alleged violations of California’s Unfair Business Practices Law) saying: “The Court held that state law was preempted by the filed rate doctrine, and stated, ‘it is clear that Congress intended the FPA [Federal Power Act] to preempt state law claims in the field of interstate wholesale electricity rate-setting, including practices affecting such rates.’” (WCP comments April 8, 2003, page 11 at footnote 15 *citing* People ex rel. Lockyer v. Mirant Corporation, No. C-01-1787-VRW (N.D.Cal. March 25, 2003), p.23.) We do not engage in rate-setting

*Footnote continued on next page*

In fact, FERC’s regulation of transmission and sale of electric energy at wholesale rates in interstate commerce extends “only to those matters which are not subject to regulation by the States.”<sup>20</sup> California regulates the “maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation,” and the Commission must implement and enforce operation and maintenance standards. (§ 761.3(a).) Moreover, the Commission must “enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.”<sup>21</sup> (§ 761.3(a).)

By applying operation and maintenance standards to the generating assets of EWGs, our regulatory role is within the authority reserved to the states by Congress with respect to electric generating facilities. At the same time, our implementation and enforcement of these standards does not disturb FERC’s ratemaking regulation of wholesale market transactions in interstate commerce.

### **3.4. New Facilities**

The Legislature did not limit the statute to existing facilities. As a new plant becomes operational and is maintained, it is similarly covered.

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here, but in the implementation and enforcement of operation and maintenance standards.

<sup>20</sup> 16 U.S.C. § 824(a).

<sup>21</sup> Powerplant outages are often related to operations and maintenance.

### 3.5. Out-of-State and Joint Ownership

SCE contends the Commission should make clear that implementation and enforcement neither extend to out-of-state facilities, nor to facilities that are owned by multiple owners.

We note that whether or not this Commission's jurisdiction to implement and enforce generator maintenance and operations standards extends to out-of-state facilities, the Commission does have jurisdiction over facilities owned and operated by an electric utility, such as SCE, to the extent that those facilities serve that utility's retail customers in California. Commission jurisdiction includes SCE's operation of the Mohave Generating Station. (See D.94-03-048, 53 CPUC2d 452, in Investigation 86-04-002.) Mohave is located outside of California, and is owned by several entities.<sup>22</sup>

Accordingly, even though Mohave is physically located outside of California, we have the ability to direct SCE to comply with the substance of the Logbook Standards we are adopting today (as well as such other generator maintenance and operations standards that we may also adopt) in its operation of the Mohave plant. However, if SCE can demonstrate that there are compelling reasons why the substance of such standards should not be applicable to SCE's operation of the Mohave plant, SCE may file an application with the Commission

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<sup>22</sup> Mohave is located in Laughlin, Nevada. According to SCE, it is owned by the Los Angeles Department of Water and Power, the Salt River Project Agricultural Improvement and Power District, the Nevada Power Company, SCE and others. We also note that SCE has interests in at least one other out-of-state fossil-fueled plant, the Four Corners Generating Station located in San Juan County, New Mexico. However, SCE is not the operator of that plant; Arizona Public Service Company is the operator of the Four Corners plant.

seeking an exemption from such standards in connection with its operation of that plant.

### **3.6. Conclusion on Covered Thermal Facilities**

Committee-adopted Logbook Standards for thermal powerplants apply to each facility used to generate electricity by the use of thermal energy that is owned by an electrical corporation or located in California, with limited exceptions. The standards apply to electric generation facilities of electrical corporations, including EWGs. The Standards apply to existing and new facilities. Logbook Standards for thermal powerplants do not apply to hydroelectric facilities. The Standards also do not apply to facilities specifically exempted by § 761.3 (e.g., nuclear, QFs, self-generation, publicly owned, incidental to water provision or wastewater treatment, owned by a city and county public utility).

## **4. Authority to Adopt Logbook Standards**

### **4.1. Logbook Standards are Operation and Maintenance Standards**

WCP, Mirant, AES and Dynegy contend that § 761.3 permits Commission implementation and enforcement of operation and maintenance standards, but that Logbook Standards are neither. As neither operation nor maintenance standards, WCP says:

“the Committee now has gone beyond its express statutory authorization to consider a third set of requirements not mentioned in the statute---logbook standards.” (Comments dated April 8, 2003, page 3, footnote deleted.)

These parties conclude that the Commission cannot implement and enforce Committee-adopted standards that are beyond the authority of the Committee to adopt.

To the contrary, Logbook Standards cover “the chronological history of the facility including detailed entries regarding the operations and maintenance of the facility.” (Logbook Standards, Section II, page 1; See Attachment A; emphasis added.) The purpose is to document facility operation and maintenance. Keeping records of these activities is a basic and prudent component of operation and maintenance practice. There is no reasonable dispute that the adoption of these standards is within the authority of the Committee, while implementation and enforcement are within the authority of the Commission.

Consistent and adequate record-keeping is an essential component of operation and maintenance practices. Even if the Committee had not adopted Logbook Standards, it would be necessary for the Commission to develop a record-keeping requirement in order to reasonably implement and enforce operation and maintenance standards.

Parties affirm that prudent operation requires reasonable logbook and data-recording. For example:

“The generators that are the focus of the Commission’s implementation already follow thorough logbook and data-recording practices as a matter of the prudent operation of their plants.” (WCP Comments April 8, 2003, page 5; emphasis added.)

Furthermore, logbooks are consistent with a high priority placed on maintaining and operating plants:

“For its part, WCP places a high priority on maintaining and operating its plants to maximize their availability to meet electric demand and to promote workplace safety and environmental protection. WCP maintains logbooks and

other records, consistent with that priority.” (WCP Comments April 8, 2003, page 5; emphasis added.)

We agree. Prudent operation and maintenance requires preparation of logbooks, and logbooks are consistent with placing a high priority on reasonable operation and maintenance of powerplants.

#### **4.2. Administrative Procedures Act**

PG&E raises the issue of whether or not the Committee must follow the California Administrative Procedure Act (APA).<sup>23</sup> PG&E believes the Committee must comply with the APA. If so, the Commission, according to PG&E, may not implement and enforce Committee-adopted standards if the Committee has failed to follow the requirements of the APA.

We are not persuaded that the Committee is subject to the rulemaking provision of the APA. The purpose of the APA is “to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations.” (Cal. Gov. Code § 11346(a).) “Regulation” is defined as:

“every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. (Cal. Gov. Code § 11342.600; emphasis added.)

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<sup>23</sup> Cal. Gov. Code § 11500 et seq.

For all chapters within Title 2, the term “state agency” is defined to mean “every state office, officer, department, division, bureau, board, and commission.” (Cal. Gov. Code § 11000.)

Section 761.3 neither constitutes the Committee as a state office, department, division, bureau, board, or commission, nor its members as officers. The Committee only exists by virtue of the joint participation of the Commission (a state agency) and the CAISO (a public benefit, nonprofit corporation, organized under the California Corporations Code pursuant to § 340 of the Pub. Util. Code). With limited exceptions, neither the Commission nor the CAISO are subject to the rulemaking provisions of the APA.<sup>24</sup>

Thus, we conclude that the rulemaking provisions of the APA do not govern the work of the Committee because the Committee is not a state agency. This conclusion is further supported by the fact that neither the Commission nor the ISO (whose members sit on the Committee) are generally subject to the rulemaking provisions of the APA.

On the other hand, the Committee is required to provide “notice and opportunity for public comment.” (§ 761.3(b)(1).) The Committee has done so. As a result, we find that the Committee’s process for adoption of the thermal Logbook Standards is consistent with law, is reasonable, and does not bar Commission implementation and enforcement of those standards.

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<sup>24</sup> See Cal. Gov. Code § 11351(a), Article 5 (commencing with § 11346); Cal. Gov. Code §§ 11342.600 and 11000, discussed above. The APA applies to limited Commission actions, such as the Commission’s adoption of its Rules of Practice and Procedure.

## **5. Eight Specific Issues Identified in Scoping Memo**

The Scoping Memo identifies eight specific issues upon which parties were asked to comment. We address each one in order.

### **5.1. Implementation**

Issue: How should the Commission implement logbook requirements adopted by the Committee?

Parties offer a range of recommendations. PG&E proposes that logbook requirements be implemented through a Commission decision. SDG&E suggests they be implemented through the certification process for the maintenance program. Reliant advocates use of enforcement capability from FERC. DENA recommends generators prepare a compliance document. WCP and Elk Hills suggest using CAISO tariffs. Mirant recommends flexibility to recognize a range of existing record-keeping systems. CPSD proposes development of a GO. We adopt several of these recommendations.

#### **5.1.1. Compliance Document**

We adopt PG&E's recommendation to accomplish implementation and enforcement through this decision. No party proposes the specific form and wording of a GO. We may in a companion or subsequent decision adopt a GO to implement and enforce some or all of the Committee's adopted Standards, but decline to develop or adopt one for this decision.

We also adopt DENA's proposal to use a compliance document, and Mirant's proposal to permit reasonable flexibility. Parties report there are many ways to establish and maintain logbooks, along with the information specified in the Logbook Standards. Further, parties report that they do not necessarily use the same methods at present. We accept Mirant's assertion that it would be unreasonably burdensome to impose new rules requiring companies to

immediately make substantial changes to current procedures and systems, or duplicate existing systems by recording data in a Control Operator Log that is currently captured and maintained elsewhere. Use of a compliance document minimizes the burden on electricity generators, while ensuring that we may fulfill our responsibilities to implement the law.

As a result, our focus at this time is on whether the information is kept and is available, not the particular format. The compliance document should show where data required by the Logbook Standards is recorded and maintained for each facility. For example, DENA says that dispatch instructions from the CAISO are recorded in the CAISO-required Data Processing Gateway unit and the unit operator manually records material deviations. The compliance document would identify or “map” the location of this data.

As well as identifying the location of the data, the compliance document should show how the information is recorded and maintained (e.g., electronic format or hard copy). That is, information may not only be recorded in different places at different facilities, it might be recorded in electronic form at some units, but manually at other units. As users of the compliance document (e.g., Commission staff or other authorized personnel) go from unit to unit, this information will assist in locating and understanding the data. The compliance document should also state any other format or presentation protocols that must be understood to decipher the meaning of the data. Finally, the compliance document should state anything else reasonably necessary to fulfill or demonstrate compliance with Logbook Standards.

Mirant points out that Commission implementation and enforcement should recognize that not all facility operators have access to all the data specified in the Logbook Standards. For example, many plant Control

Operators do not communicate with the CAISO because the CAISO communicates with the scheduling coordinator responsible for plant dispatch. To the extent the communication is not with the Control Operator, we conclude that the Operator need only log that the data is unavailable.

SDG&E recommends that utilities have the discretion to seek Commission approval of their Logbook Standards implementation approach as part of the certification process for their Maintenance Standards. We may solicit further suggestions from parties on the details of whether and how to implement such an approach. Another approach is needed now, however. We will use the compliance document. We address other immediate implementation issues below as part of enforcement.

#### **5.1.2. Use of FERC or CAISO Tariffs**

Reliant, WCP, and Elk Hills recommended that we implement Logbook Standards through FERC and/or CAISO tariffs.<sup>25</sup> As discussed above, we shall seek a coordinated and collaborative state and federal enforcement of these standards. The Legislature directed that the Committee adopt standards, and that those standards be implemented and enforced by the Commission. We generally endorse the recommendation of Elk Hills and others that Committee-adopted standards be implemented in ways that “minimize the potential for federal/state jurisdictional conflicts with respect to the implementation and enforcement of Section 761.3 of the Public Utilities Code.” (Elk Hills Reply Comments, April 14, 003, page 2.) Toward this end, we shall forward the

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<sup>25</sup> WCP says it uses the term “CAISO tariff” for simplicity, but the standards could also be incorporated into a protocol or appendix to each generator’s Participating Generator Agreement enforced through FERC, rather than the CAISO tariff.

standards that we adopt in this Decision, and in all related current and future decisions that implement generator maintenance and operation standards, to the ISO with a request that the ISO submit these adopted standards to FERC for approval as amendments to the ISO's tariff. However, we take this action solely in a spirit of cooperation and comity. As we noted above, it is desirable for all concerned that there not be conflicting sets of rules that serve different regulatory purposes, but that may address closely related subjects, in this case, those relating to generator maintenance and operation activities. We emphasize, however, that by this action, we do not, nor do we intend to, concede or limit any authority of the State of California, either directly or indirectly.

## **5.2. Common Format**

Issue: Should electrical corporations or facilities located in the state be required to use a common format for paper and electronic copies of logbooks? If so, what specific format should be adopted?

No party but CPSD supports adoption of a common logbook format. No party makes a specific common format proposal that might now be adopted.

CPSD asserts that with more than 250 generating sites in California, a common logbook format will speed future staff analysis and audits. CPSD also states, however, that at this time it is more important for generators to keep logbooks than that they use the same format. CPSD proposes that the Commission postpone adoption of a common format until staff has had time to develop and propose a common format.

We adopt the unanimous recommendation that no common format be required at this time. We also agree with CPSD, however, that in the long run a common format will promote efficiency. We seek to have one proposed for our consideration.

In particular, a common format will assist us satisfy the findings and declarations expressed in the implementing legislation. For example, a common format will speed enforcement when necessary to determine whether events did or did not occur that jeopardize public health and safety. Also, a common format will promote consistent practices and procedures in the industry, which will ultimately promote public health and safety, effective and efficient operation and maintenance, and service reliability and adequacy.

Mirant and others contend that the Commission cannot impose a common format requirement when the Logbook Standards themselves do not impose formatting requirements, but allow facility owners flexibility (e.g., logbooks may be maintained in either hard copy or electronic format or both). To the contrary, the Commission's role is implementation and enforcement. (§ 761.3(a).) In that role, the Commission may consider whether or not to implement and enforce adopted standards in any particular or specific way. A common format is an element of implementation and will assist in enforcement. The Commission might, for example, adopt a common format for the data a generator keeps in hard copy form and a separate common format for the data that a generator keeps in electronic form.

Respondents, with staff assistance (to the extent staff resources permit), should develop a common logbook format proposal. The proposal should be filed and served as an application within 12 months of the date this decision is mailed.<sup>26</sup> The proposal should include a cost-effectiveness assessment (of

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<sup>26</sup> The Commission seeks to complete quasi-legislative proceedings within 18 months of their initiation. (SB 960, Section 13.) The goal is to complete this proceeding by May 21, 2004. (February 19, 2003 Scoping Memo, page 3.) We seek to have all major elements of

*Footnote continued on next page*

whether or not to adopt and implement a common format), a proposed common format (for Commission consideration), and an implementation schedule for a common format (if one is adopted).<sup>27</sup> In this way, generators themselves can have the most input on whether and how to develop, implement and enforce a common format that promotes California's interests while minimizing the costs and burdens on both the Commission and generators. We encourage one respondent to take the lead to coordinate efforts, draft the application, make the filing and perform service. Respondents should file a motion for a ruling by the Administrative Law Judge (ALJ) handling Logbook Standards to select one respondent to take the lead if respondents are unable to select one among themselves.

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implementation and enforcement in place by May 2004. Recent legislation provides that we must complete certain matters within 18 months of the date of the Scoping Memo, subject to limited extensions. (Assembly Bill 1735, adding § 1701.5(a).) If applicable to this proceeding, the goal would be to complete this matter by about August 19, 2004. In either event, we are confident that allowing respondents 12 months (i.e., until early 2005) to develop a common format proposal for our consideration is not unreasonable. We do not provide this amount of time with an expectation that the proposal necessarily be complex and detailed. Rather, we provide the 12 months in recognition of the fact that, while consideration of a common format is important, there are many important matters currently underway. We also wish to make clear that by ordering further consideration of the matter we are not prejudging the outcome. An application by a respondent is an efficient procedural vehicle for further consideration of this matter after R.02-11-039 is closed, and can (at the appropriate time after reasonable further consideration based on proposals and recommendations of parties) result in adoption or rejection of a common format.

<sup>27</sup> An application must also comply with other standard Commission requirements (e.g., applicant must "state in the application the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule [for the proceeding]." (Rule 6(a)(1).)

If respondents are unable to develop a common format for all Logbook Standards data for all generators, respondents should propose a common format for as much data as reasonably possible for as many generators as possible. The application should also include a recommendation regarding any additional procedural steps that respondents believe may be required for satisfactory Commission consideration of the issue (e.g., if one or more respondents wish to file and serve an alternative cost-effectiveness analysis or common format proposal, the filing should propose this procedural step). Applicants should also include anything else reasonably necessary for the Commission to make an informed decision.

### **5.3. Electronic Copy Available in “Real Time”**

Issue: Should an electronic copy of the logbooks be required to be available in “real time” to staff of the Independent System Operator and the California Public Utilities Commission (by access to a web site with entry by a unique password)?

No party recommends that an electronic copy of logbooks now be required to be available in real time on a remote basis (e.g., by password protected web site).<sup>28</sup> We agree. Rather, the existing logbook requirement is sufficient: all logbook “information must be readily available to operators, California Public Utilities Commission staff, and other authorized personnel at all times.” (Attachment A, page 2.)

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<sup>28</sup> We understand that real time remote access to some of the required logbook data is available to the CAISO staff. Some parties recommend that Commission staff consider seeking access to this data, if and when necessary, through the CAISO.

#### **5.4. Enforcement**

Issue: How should the Commission enforce logbook requirements?

We will enforce Logbook Standards through the compliance document. DENA recommends that respondents be provided 90 days, at a minimum, to develop and submit this document. Mirant concurs, saying owners should be given at least 90 days before being required to submit data responses to the CAISO or Commission regarding logbook data. We agree with this approach, but reduce the number of days to 30.

The compliance document is to show how the data “required under the Logbook Standards is collected, recorded and maintained [by a generator] through the course of its ordinary business practices.” (DENA Comments dated April 8, 2003, page 3.) Preparation of the compliance document should not involve the development of new data collection or business practices. Generators should be able to document existing data collection and maintenance within 30 days.<sup>29</sup>

As a result, each electric corporation and generation facility subject to § 761.3(a) should, within 30 days of the date this order is mailed, prepare a

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<sup>29</sup> Those unable to comply within 30 days may request an extension of time by letter to the Executive Director. (Rule 48(b).) The letter must be received at least three business days before the date for compliance. The letter must state convincing reasons why the extension should be granted. Absent such reasons, the request may be denied. Further, unless there are particularly compelling reasons to the contrary, the letter should state that there will be compliance by day 30 for all data which can be identified and included in the compliance document, with the request for extension limited to the subset of data which cannot be identified in the compliance document by the 30th day.

compliance document. The compliance document does not need to be filed with the Commission, but must be prepared and maintained by the facility. Not filing the compliance document will reduce administrative burden on the facility and staff. Nonetheless, it must be available to staff upon request (e.g., an on-site inspection, oral request, written request).

Each electric corporation and generation facility subject to § 761.3(a) should, however, within 30 days of the date this order is mailed, file a verified statement. The statement should confirm that:

- a. the facility is maintaining logbooks in compliance with the requirements for Logbook Standards,
- b. the compliance document required by California Public Utilities Commission has been prepared and is available at the generation facility site, and
- c. logbooks and the compliance document are being and will be updated and maintained as necessary.

The filing should be made with the CPSD Director, not the Docket Office. Unless otherwise ordered in a particular case, the verified statement will not be accepted for filing by the Commission's Docket Office, and will not be retained in the formal files for this proceeding. Rather, filing of the verified statement will be part of the ongoing administrative and regulatory responsibilities of CPSD. Only one original verified statement needs to be filed with the CPSD Director. No copies need to be served on the service list, and, as a result, no certificate of service is required.<sup>30</sup>

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<sup>30</sup> This filing requirement is similar to the one for annual reports. (See, for example, GO 65-A.)

The verified statement needs to be filed only once. A sample verified statement is contained in Attachment B.

Further, we limit preparation of thermal logbooks, preparation of the compliance document, and the filing of a verified statement to thermal facilities that are 50 megawatts (MW) and larger. We do this because we seek to focus on the largest and most important facilities serving California load as the program is initially implemented and enforced. This limit reasonably balances the administrative burden on facilities, the industry and the Commission against the need to ensure public health, public safety, service reliability and adequacy. Changes to this limit, if any, may be considered in the future by decision, resolution or other appropriate means.

No party proposes a specific enforcement mechanism for our consideration at this time regarding Thermal Logbook Standards (e.g., schedule of fines, GO language). As a result, we rely on existing enforcement authority (e.g., §§ 2100 et seq.). Since this order includes EWGs, our enforcement extends to EWGs. (See, for example, §§ 2110, 2111, 2112, 2113, 2114.) While we decline to adopt any program-specific mechanisms at this time, parties may recommend more specific mechanisms in comments on the proposed GO.<sup>31</sup>

We must briefly address two other recommended enforcement approaches. First, as noted above, Reliant, WCP, and others recommended that we would rely exclusively on FERC and CAISO tariffs to enforce the standards adopted by the Committee. As already noted above, in order to encourage a

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<sup>31</sup> By Ruling dated October 2, 2003, a proposed GO was filed and served for comment. A draft decision with a revised GO was filed and served for comment on February 27, 2004.

collaborate state-federal approach to dealing with our complementary respective regulatory purposes, we shall forward the standards that we adopt in this Decision, and in all related current and future decisions that implement generator maintenance and operation standards, to the ISO with a request that the ISO submit these adopted standards to FERC for approval as amendments to the ISO's tariff. However, our determination to seek to implement a collaborative enforcement approach with the ISO and FERC does not mean that we should exclusively rely upon them for the enforcement of the Committee-adopted standards.

Finally, we decline to adopt SDG&E's recommendation to allow utilities the opportunity to employ Performance Based Ratemaking (PBR) to implement and enforce compliance with Logbook Standards. Only SDG&E recommends use of PBR. According to SDG&E, however, it does not own any generation facilities or powerplants now subject to Committee-adopted Standards. Other utilities, such as PG&E and SCE, do not request the option to apply for PBR. The use of PBR for this purpose is, therefore, essentially moot, at least for now.

#### **5.5. Public Utility Status**

Issue: Does, or should, implementation and enforcement vary depending upon whether the electrical corporation or facility located in the state is or is not a public utility?

We generally agree with Mirant and others that Logbook Standards should be applied on a uniform, fair and nondiscriminatory manner to all thermal facilities subject to § 761.3. For the reasons stated above, we apply Logbook Standards to all "facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable

operation.” (§ 761.3(a).) Covered plants include those owned by EWGs. Plants that are not covered are limited and specific (e.g., nuclear, QFs, self-generation, publicly owned, incidental to water provision or wastewater treatment, owned by a city and county public utility). (§§ 761.3(d) and (h).) Moreover, Logbook Standards apply on a nondiscriminatory basis to all facilities covered by the law, whether or not the owner or operator is named as a respondent in this proceeding.

### **5.6. Changes**

Issue: How should the Commission implement changes, if any, to Logbook Standards subsequently adopted by the Committee?

We agree with the recommendations of PG&E, DENA, and others, that changes should be handled in a fair and open process, after notice and opportunity for comment, with a reasonable period for implementation and enforcement of adopted changes. Depending upon the change and when it occurs, this may or may not require the opening (or reopening) of a formal proceeding. We decline, for the reasons stated above, to adopt the recommendation of WCP and others to implement changes through modifications to CAISO tariffs.

Parties also address whether or not the Commission may implement changes only if first initiated by the Committee. We need not identify, or limit, all the ways in which changes might occur, but we note three. First, all parties agree that changes might result from revisions adopted by the Committee and submitted by the Committee to the Commission for implementation and enforcement. Second, a party might file a petition for modification of a Commission decision. Third, the Commission might initiate a change in a Commission decision after notice and opportunity for comment. (§ 1708.)

We decline at this time to adopt SDG&E's proposal to implement changes in Logbook Standards through the biennial re-certification of the Maintenance Program, so as to not impose additional complications on Maintenance Program implementation and enforcement. Nonetheless, we welcome further suggestions from parties as implementation and enforcement of Maintenance Standards are more fully developed.

Some parties contend that Commission implementation and enforcement must cease when the Committee sunsets on December 31, 2004. (§ 761.3(b)(3).) We disagree. The law provides that specific things must be accomplished by December 31, 2004: (a) the Commission and the CAISO shall jointly establish the Committee; (b) the Committee shall adopt and may thereafter revise standards for operations and maintenance; and (c) the Commission and the CAISO shall support the Committee with a reasonable amount of staff time. (§§ 761.3(b)(1) and (2).) The provisions in “this subdivision [i.e., in § 761.3(b)] shall be operative only until January 1, 2005.” (§ 761.3(b)(3).) No other provisions of § 761.3 sunset on December 31, 2004.

That is, nothing in the law states or requires that Committee-adopted operations and maintenance standards terminate on December 31, 2004, even if the Committee expires. Nothing terminates Commission implementation and enforcement (i.e., there is no sunset provision to § 761.3(a)).

Moreover, we note that once the Commission decides a matter, it becomes a Commission decision and is subject to the Commission's interpretation, implementation and enforcement. This applies to matters as potentially complex and enduring as a settlement (wherein one might argue that complicated items have been “decided” by parties at a point in time to last for the duration of the settlement with the matter to be implemented as intended by

parties, not as interpreted as the Commission).<sup>32</sup> It also applies to other matters decided by the Commission. No less than a settlement or other matters, this includes Commission adoption of Committee Standards for the purpose of implementation and enforcement.

A decision that is operative for many years may periodically need to be interpreted or amended. We expect parties to seek reasonably necessary clarifications of, or changes to, adopted standards by referring them back to the Committee during the life of the Committee.

We see no merit in the argument presented by Mirant and others, however, that “the only reasonable interpretation of the sunset requirement is that all Committee-adopted standards in effect at the time must cease to be effective [when the Committee sunsets on December 31, 2004].” (Comments on Draft Decision, November 18, 2003, page 13.) There is no compelling reason to believe the Legislature intended for the expenditure of limited resources by respondents, parties, the Committee, the CAISO, the Commission—and potentially the courts—to develop, implement and enforce reasonably complex operations and maintenance standards that would apply for a period of only about two years.<sup>33</sup> While the Legislature did provide that some provisions sunset on December 31, 2004, those provisions involve the Committee but neither

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<sup>32</sup> See, for example, D.88-12-083 (30 CPUC2d 189, 225-226) regarding the Commission’s approval of a settlement agreement regarding the Diablo Canyon nuclear powerplant.

<sup>33</sup> Section 761.3 (SB 39xx) became effective on August 8, 2002. Under the interpretation advocated by some parties, if the Committee had adopted standards to be effective on January 1, 2003, and if the standards expire on December 31, 2004, they would be effective for no more than 24 months.

involve the standards themselves nor Commission implementation and enforcement.

Mirant and others correctly assert that the standards have the potential to become obsolete or unworkable over time. The State is not powerless to respond, however. The State need not simply abandon adopted standards. Nor must the State simply continue to implement and enforce unworkable standards. Rather, implementation and enforcement remains before the Commission. If standards become obsolete or unworkable, parties may propose that the Commission make reasonable changes, so that Commission implementation and enforcement remains reasonable. Most importantly, “to the extent the [matter] requires interpretation after it is adopted in a Commission decision, it is the Commission’s interpretation that prevails.” (D.88-12-083 (30 CPUC2d 189, 226.) This includes adopted standards as well as their implementation and enforcement.

Thus, no time limit controls two of the three methods for future changes to Commission implementation and enforcement: a party may submit a petition for modification, or the Commission might initiate its own change at any time. Similarly, depending upon the outcome of our Maintenance Program implementation and enforcement, we may or may not later adopt SDG&E’s proposal to implement changes in Logbook Standards through Maintenance Program re-certifications.

### **5.7. Specific Recommendations**

Issue: Each party should state the specific recommended vehicle (e.g., General Order) and specific recommended language the party proposes be adopted by the Commission.

The issues of a decision or GO, and specific language, are addressed above. Nothing further is proposed by parties, or needs to be addressed.

**5.8. Other: Confidentiality**

Issue: Each party should state anything else necessary for Commission consideration in implementing and enforcing logbook requirements.

Reliant raises the issue of confidentiality, noting that Logbook Standards require the recording of individuals' names. This and other personal information is inappropriate for a public document, according to Reliant. Elk Hills agrees, recommending more generally that commercially sensitive information must be protected. Elk Hills proposes that the Commission adopt a presumption that logbook information is commercially sensitive and will not be disseminated unless expressly authorized by the party submitting the data.

This concern is largely made moot by our adopted approach. That is, the verified statement will contain no confidential information, and, in any event, need not be served.

Moreover, logbooks themselves need not be filed or served. Rather, they must be "readily available to ...Commission staff, and other authorized personnel at all times." (Attachment A, page 2.)

Similarly, no comments directly address or convince us that the compliance document will present this concern. That is, the compliance document will map where and how data is recorded and maintained; it will not reveal the data itself. Further, the compliance document need not be filed or served. Should Commission staff seek a copy of the logbooks or compliance document, respondents may submit some or all to staff with a request that some

or all be treated confidentially, with citation to appropriate authority for the requested confidential treatment.

## **6. California Environmental Quality Act**

The California Environmental Quality Act (CEQA) requires that public agencies prepare an environmental impact report whenever the discretionary approval of a proposed project may cause significant adverse impacts on the environment.<sup>34</sup> Certain classes of activities have been determined not to have a significant effect on the environment and are exempt from CEQA.<sup>35</sup> One of these categorical exemptions applies to the operation and maintenance of existing electric power generation facilities. We believe the adoption of Logbook Standards for thermal powerplants is exempt from CEQA since the standards pertain to the operation and maintenance at existing electric power generating facilities.<sup>36</sup> Moreover, to the extent they apply to a new facility, the new facility will be subject to applicable CEQA review when development of the facility is proposed. As a result, we direct the Executive Director to file a notice of exemption indicating this determination.

## **7. Comments on Draft Decisions**

### **A. Comments on Commissioner Wood's Draft Decision**

On October 29, 2003, the draft decision of Commissioner Carl Wood was filed and served on parties in accordance with Pub. Util. Code § 311(g)(1)

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<sup>34</sup> Cal. Pub. Res. Code § 21002.1 (West 2003).

<sup>35</sup> CEQA Guidelines § 15300.

<sup>36</sup> *Id.* § 15301(b).

and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed and served on November 18, 2003, by PG&E, SCE, SDG&E, Mirant, Reliant, Elk Hills, DENA, AES, WCP, and the Western Power Trading Forum. Reply comments were filed and served on November 24, 2003, by WCP.

Based on the comments and reply comments to Commissioner Wood's draft decision, we make several changes that streamline the program and moderate the cost and burden on covered facilities and the Commission, as reflected in the order we adopt here. For example, we eliminate the need to enter limited information when some data is unavailable, seek cost-effectiveness information for our consideration in possible future adoption of a common logbook format, eliminate consideration of remote access to data in real-time, increase the MW size (from 10 to 50 MW) for entities to prepare a compliance document and submit a verified statement,<sup>37</sup> and remove the delegation of authority to the CPSD Director to modify the criteria for filing.<sup>38</sup> We also clarify several points, such as implementation and enforcement when a covered facility is located out-of-state or owned by several entities, and the Commission's authority to interpret, implement and enforce its own decisions.

At the same time, however, we decline to adopt the recommendation to defer this and other Commission decisions until the Committee has completed adoption of all standards, and the Commission can issue one implementation

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<sup>37</sup> This modification is in response to the general concern regarding mitigation of burden on covered facilities and Commission staff to the extent reasonable, while still meeting important state goals (e.g., public health, public safety, reliability, stability, adequacy).

<sup>38</sup> In our decision adopting a General Order, we consider whether or not to delegate certain authority to the Executive Director.

and enforcement order. The Committee is adopting standards over time, but implementation and enforcement should not wait. A standard for the keeping of records is relatively straightforward. The Legislature intended program implementation with some degree of urgency. The best implementation is after reasonable consideration of parties' comments on each standard as adopted.

We also make limited changes based on comments filed March 18, 2004, in this proceeding regarding the draft decision to adopt a General Order.<sup>39</sup> In particular, comments suggest that some respondents may be confused between the requirements for a compliance document (retained at the generation facility site) and a verified statement (filed with the CPSD Director). We incorporate changes in both this decision and the General Order decision that clarify the requirements related to the document and statement.

#### **7.1. Data Retention Period**

In comments on the draft decision, SCE recommends that the timelines for document retention be standardized. That is, the Logbook Standards for Thermal Powerplants requires data retention for five years, the proposed GO requires retention for the life of an asset plus three years, and federal regulations require record preservation for up to 25 years. (SCE comments on draft decision at page 7, citing 18 CFR 125.) In particular, SCE says federal regulations require SCE to keep generation and output logs for three years, while station and system generation reports and clearance logs must be kept for six years.

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<sup>39</sup> This is the draft decision of ALJ Thorson mailed February 27, 2004 entitled: "Draft Decision Adopting General Order Implementing and Enforcing Electric Generator General Duty Standards for Operation and Maintenance, Maintenance Standards, and CAISO's Outage Coordination Protocol."

We decline to adopt SCE's recommendation. Nonetheless, we encourage respondents and parties to give further thought to this matter and, if appropriate, subsequently present a comprehensive and complete proposal.

The issue was neither presented to the Committee in a timely manner, nor presented in any way that convinced the Committee to adopt a period other than five years. Parties should consider bringing the matter back to the Committee during the life of the Committee.<sup>40</sup>

Similarly, the matter was not presented to the Commission regarding Logbook Standards in a timely way. That is, federal regulations could have been cited in parties' comments in April 2003 on Commission implementation and enforcement of Logbook Standards, but were not. Federal regulations regarding preservation of records of public utilities and licensees contain retention periods from "destroy at option" to 25 years. Regarding operation and maintenance of non-nuclear production facilities, the period appears to vary from one year to 25 years. Whether federal retention periods cover all data required in Logbook Standards is unclear. Moreover, the federal scheme might be effectively overridden by another provision that specifies the retention period is five years for reports to state regulatory commissions. (18 CFR 125.3 at item 41.)

If the federal scheme is relevant, respondents and parties may give further consideration to the federal timeframes, and make a recommendation that more clearly demonstrates whether or not the federal scheme covers all data

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<sup>40</sup> Consistent with the discussion above, consideration of the matter might be undertaken by the Commission as part of the Commission's adoption, implementation and enforcement of Standards, particularly after the Committee expires on December 31, 2004.

at issue here; more clearly specifies which of the data is to be retained for which period (e.g., destroy at option, one year, three years, five years, six years, 25 years, some other period); and includes other necessary information to make a clear, compelling and comprehensive recommendation. Respondents and parties should do so before the Committee, as appropriate, and may do so before the Commission (including in comments on the proposed GO) to assist the Commission make each element of the adopted program compatible.

### **7.2. Waiver of Logbook Standards**

In comments on the draft decision, Elk Hills contends that the decision should be modified to permit a generator to seek and obtain a waiver of one or more of the specific Logbook Standards. We decline to make this change.

No party earlier made a viable claim that any of the required logbook data is unnecessary, irrelevant or would be unavailable. Elk Hills now argues that a waiver mechanism should be adopted “in recognition of the various means by which a generating facility might keep its records, and in order to provide a practical level of flexibility with respect to implementation and enforcement.” (Comments dated November 18, 2003, page 14.)

The Standards already permit data to be kept in hard copy or electronic form. No other data retention technique was identified that would require adoption of a waiver mechanism to permit recognizing “various means” by which data is kept.

Implementation is by use of a compliance document. This approach obviates the need for any facility to change how or where it compiles its data. Rather, it only requires that the data and its location be documented or “mapped.” This already provides a “practical level of flexibility.” We are not

persuaded that a waiver mechanism is needed to provide an increased level of flexibility.

Moreover, even if we were persuaded to consider a waiver process here—which we are not—Elk Hills fails to propose a specific approach for such waiver, and we decline to fashion one ourselves at this late date in the process of adopting this decision.<sup>41</sup> Even if we did fashion one, parties may desire a round of comment on the proposed mechanism. To the extent truly necessary, parties may consider making such specific recommendation in comments later in this proceeding.

### **B. Comments on Draft Alternate Decision**

On April 22, 2004, the draft alternate decision of President Peevey was filed and served on parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission’s Rules of Practice and Procedure. Comments were filed and served on April 29, 2004, by PG&E, SCE, SDG&E, Mirant, DENA, AES, WCP, Elk Hills and High Desert Power Project, LLC. Reply comments were filed by AES. The comments do not raise any new issues that have not already been considered and discussed above. However, in response to the repeated

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<sup>41</sup> For example, would the pleading (e.g., that one or more Logbook Standards be waived) be before the Committee or the Commission? If before the Commission, what type pleading that would be filed (application, petition for modification, motion, advice letter, other)? Would the pleading be served, would comments and replies be permitted, what would be the period for comments and replies? Would the pleading initiate a proceeding subject to Article 2.5 of the Commission’s Rules of Practice and Procedure (e.g., categorization, Scoping Memo, proposed decision (PD), 30 days for public comment on the PD)? Would the process result in a Commission decision or could the decision be delegated to staff? Would there be an appeal process and if so, what would be the parameters?

contentions to the effect that we have no jurisdiction to adopt these standards, we have added some further clarifying language in Sections 3.3 and 5.1.2 above. We have also revised the discussion, in Section 3.5 above, in response to SCE's concerns about the Commission's jurisdiction over out-of-state facilities operated by SCE.

## **8. Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner. John E. Thorson and Burton W. Mattson are the assigned ALJs in this proceeding.

### **Findings of Fact**

1. On April 2, 2003, the Committee filed its Logbook Standards for Thermal Powerplants with the Commission for Commission implementation and enforcement pursuant to § 761.3(a).
2. Timely comments and reply comments were filed and served regarding Commission implementation and enforcement of Logbook Standards, but no motion for formal hearing was filed.
3. The adopted Logbook Standards under consideration here apply only to thermal, not hydroelectric, powerplants.
4. Excluding EWGs would eliminate powerplants the Legislature has determined are essential facilities providing a critical and essential good to California, and would frustrate the legislative findings and declarations in SB 2X 39.
5. The Commission's implementation and enforcement of Logbook Standards for thermal powerplants are implementation and enforcement of operation and maintenance standards, not the establishment of wholesale electricity rates for transactions in interstate commerce.

6. FERC approval of the same generator maintenance and operation standards that the Commission adopts will eliminate potential conflicts in the maintenance and operation requirements that the EWGs must comply with in order to satisfy the complementary, but different, policy concerns of the state and federal governments; will allow multiple, complementary regulatory purposes to be satisfied by a single set of standards, thereby promoting governmental efficiency and simplifying the job of the regulated community; and will encourage and support the important principle of collaborative federalism, under which the state and federal governments recognize and respect, and to the extent possible seek to harmonize, their respective regulatory purposes and the mechanisms they employ to achieve these purposes.

7. Logbook Standards address the chronological history of the facility, including detailed entries regarding the operation and maintenance of the facility.

8. Keeping records of operation and maintenance of a facility is a basic and prudent component of operation and maintenance practice.

9. The Committee has provided notice of, and received public comment on, proposed thermal Logbook Standards.

10. There are many ways to establish and maintain logbooks, along with the information specified in the Logbook Standards, and electric generation facilities do not necessarily use the same methods at present.

11. It would be unreasonably burdensome to implement Logbook Standards by requiring electric generation facilities to immediately make substantial changes to current procedures and systems, or duplicate existing systems by again recording data that is currently captured and maintained elsewhere in the company or facility.

12. The Commission's focus at this time is on whether logbook information is kept and is available, not the particular format.

13. A compliance document can show where and how data required by the Logbook Standards is recorded and maintained.

14. Not all facility operators have access to all the data specified in the Logbook Standards.

15. While no party supports adoption of a common logbook format at this time, there are potentially some benefits to a common logbook format.

16. With more than 250 generating sites in California, a common logbook format may speed future staff analysis and audits, promote efficiency, and assist the Commission ensure that the public interest findings and declarations in SB 2X 39 are being achieved by these essential electric generating facilities (e.g., that they are being effectively and appropriately maintained and efficiently operated to promote public health and safety, ensure service reliability and ensure service adequacy).

17. A common logbook format is an element of implementation and may assist in enforcement.

18. These benefits (i.e., facilitating future staff analysis and audits, promoting efficiency, assisting the Commission ensure that the public interest findings and declarations in SB 2X 39 are achieved) support consideration of a common format that, if adopted, might be phased in over time.

19. The compliance document will show how data required under the Logbook Standards is collected, recorded and maintained by a covered electric generating facility through the course of its ordinary business practices.

20. Only SDG&E recommends the use of PBR to implement and enforce compliance with Logbook Standards, and other utilities, such as PG&E and SCE, do not request the option to apply for PBR.

21. The verified statement that the facility is in compliance with Logbook Standards, and has prepared and is maintaining logbooks and a compliance document, will not present concerns about disclosure of personal or commercially sensitive information.

22. If a generator subject to § 761.3 is asked to provide a copy of its logbooks or compliance document, the generator may provide a copy with a request that the document(s) be subject to protection with citation to appropriate authority for that protection.

23. The logbooks and compliance document themselves need not be filed or served, but must be readily available to Commission staff and authorized personnel at all times.

### **Conclusions of Law**

1. A formal hearing on thermal Logbook Standards is neither necessary nor required.

2. Pursuant to §§ 761.3(d) and 761.3(h), and consistent with Committee Resolution No. 1, thermal Logbook standards should not apply to:

- a. Nuclear-powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations;
- b. Qualifying small power production facilities or qualifying cogeneration facilities within the meaning of §§ 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the

Federal Energy Regulatory Commission (FERC; 18 C.F.R. Secs. 292.101 to 292.602, inclusive);

- c. Generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load;
- d. Facilities owned by a local publicly owned electric utility as defined in California Pub. Util. Code § 9604(d);
- e. Facilities at a public agency that are used to generate electricity incidental to the provision of water or wastewater treatment; and
- f. Facilities owned by a city and county operating as a public utility, furnishing electric service as provided in California Pub. Util. Code § 10001.

4. Notwithstanding other provisions of the Public Utilities Code that might otherwise exempt EWGs (§ 228.5(d)), the Commission should implement and enforce standards adopted by the Committee for the operation and maintenance of electric generation facilities owned by an electrical corporation or located in California to ensure their reliable operation. (§ 761.3(a).)

5. An electrical corporation includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within California, with limited and specific exceptions. (§ 218.)

6. The Commission should implement and enforce SB 2X 39 in ways that achieve the Legislative finding and declarations stated therein, which include:

- a. Electric generating facilities and powerplants in California are essential facilities for maintaining and protecting the public health and safety of California residents and businesses;
- b. It is in the public interest to ensure that electric generating facilities and powerplants located in California are effectively and appropriately maintained and efficiently operated;

- c. Owners and operators of electric generating facilities and powerplants provide a critical and essential good to California residents; and
- d. To protect the public health and safety and to ensure electrical service reliability and adequacy, the Commission shall enforce compliance with operations and maintenance practices and procedures for electric generation facilities developed by the Commission and the CAISO.

7. The law identifies the specific categories of facilities and powerplants the Legislature excludes from California's adoption, implementation and enforcement of operation and maintenance standards (e.g., nuclear, QFs, publicly owned), and the legislation does not exclude EWGs.

8. The Legislature provided specific additional jurisdiction to the Commission to implement and enforce Committee-adopted operation and maintenance standards, including with regard to EWGs.

9. EWGs should be included in Commission implementation and enforcement of thermal Logbook Standards.

10. Federal law does not preclude Commission implementation and enforcement of operation and maintenance standards with respect to generating assets owned by EWGs; applying such standards to the generating assets of EWGs is within the authority reserved to the states by Congress with respect to electric generating facilities; and Commission implementation and enforcement of such standards does not disturb FERC's ratemaking regulation of wholesale market transactions in interstate commerce.

11. The Federal Power Act withholds jurisdiction from FERC respecting facilities used for the generation of electric energy and leaves such authority with the states.

12. The Executive Director should forward the standards adopted in this Decision, and in all related current and future decisions that implement generator maintenance and operation standards, to the ISO with a request that the ISO submit these adopted standards to FERC for approval as amendments to the ISO's tariff

13. The Committee is not a state agency, Committee members are not officers, and the APA does not govern the Committee's procedures.

14. Thermal Logbook Standards should be implemented and enforced through a compliance document, and an authorized representative should file a verified statement of compliance regarding logbook standards and the compliance document.

15. The compliance document should show:

- a. where data required by the thermal Logbook Standards is recorded and maintained,
- b. how data is recorded and maintained (e.g., hard copy or electronic),
- c. any necessary format or presentation protocols that must be understood to decipher the meaning of the electronically or manually maintained data, and
- d. anything else reasonably necessary to fulfill or demonstrate compliance with thermal Logbook Standards.

16. Each electric generation facility subject to § 761.3 that is 50 MW or larger should be required to file a verified statement with the CPSD Director within 30 days of the date this order is mailed.

17. The verified statement should:

- a. identify the subject electric generation facility owned by an electrical corporation or located in California,

- b. confirm that the facility is maintaining logbooks in compliance with the requirements for Logbook Standards,
- c. confirm that the compliance document required by California Public Utilities Commission has been prepared and is available at the generation facility site, and
- d. confirm that logbooks and the compliance document are being and will be updated and maintained as necessary.

18. A common format should not be required at this time for data recorded and maintained pursuant to thermal Logbook Standards, but respondents, with staff assistance (to the extent staff resources permit), should develop a common format for Commission consideration.

19. Within 12 months of the date this decision is mailed, respondents should file an application that contains the information identified in this order.

20. Existing authority in the Public Utilities Code should be used to enforce thermal Logbook Standards, and no new rules, protocols or mechanisms pursuant to that authority should be adopted in this order. Additional enforcement methods may be set forth in a General Order subsequently adopted by the Commission.

21. Committee-adopted operation and maintenance standards do not expire, or otherwise become unenforceable, after December 31, 2004, even if the Committee expires.

22. The Commission is never excused from implementation and enforcement of Committee-adopted operation and maintenance standards.

23. CEQA provides a categorical exemption for projects regarding the operation and maintenance of existing electric generating facilities, and a new

facility will be subject to applicable CEQA review when construction of the facility is proposed.

24. The Executive Director should file a notice of exemption from CEQA regarding thermal Logbook Standards.

25. This order should be effective immediately so that Logbook Standards for thermal plants can be implemented and enforced without delay, and the legislative findings and declarations contained in SB 2x 39 can be secured for California citizens without delay.

### **INTERIM ORDER**

#### **IT IS ORDERED** that:

1. The Commission shall implement and enforce Logbook Standards for thermal powerplants adopted by the California Electricity Generation Facilities Standards Committee (Committee) as contained in Sections I and II of Attachment A.

2. Thermal Logbook Standards shall apply to each existing and new facility that generates electric energy by the use of thermal resources owned by an electrical corporation or located in California subject to the limited exceptions stated in Section III of Attachment A, and shall apply to electric generation facilities that are 50 megawatts (MW) or larger.

3. Within 30 days of the date this order is mailed, an authorized representative of each electrical generation facility subject to Pub. Util. Code § 761.3 that is 50 MW or larger shall file one original verified statement with the Director of the Commission's Consumer Protection and Safety Division (CPSD). Within 30 days of the date of initial operation of a new facility, an authorized representative of each electrical generation facility subject to Pub. Util. Code

§ 761.3 that is 50 MW or larger shall file one original verified statement with the CPSD Director. The verified statement shall include at least the following:

- a. the identify of the subject electric generation facility owned by an electrical corporation or located in California (with relevant identification and contact information),
- b. confirmation that the facility is maintaining logbooks in compliance with the requirements for Logbook Standards for thermal powerplants,
- c. confirmation that the compliance document required by this decision has been prepared and is available at the generation facility site,
- d. confirmation that logbooks and the compliance document are being and will be updated and maintained as necessary, and
- e. signature, name, title, address, telephone number, facsimile number, electronic mail address, and other relevant information regarding the authorized representative.

The compliance document shall contain the following:

- a. where data required by the thermal logbook standards is recorded and maintained,
- b. how data is recorded and maintained (e.g., hard copy or electronic),
- c. any necessary format or presentation protocols that must be understood to decipher the meaning of the electronically or manually maintained data, and
- d. anything else reasonably necessary to fulfill or demonstrate compliance with thermal logbook standards.

4. Respondents shall meet with Commission staff (to the extent staff resources permit) to discuss a common format for recording and maintaining thermal Logbook Standards data. Within 12 months of the date this decision is mailed,

respondents shall file an application which contains (a) a cost-effectiveness assessment (of whether or not to adopt and implement a common format); (b) one or more proposals for recording and maintaining logbook data in a common format for most, if not all, Logbook Standards data; (c) an implementation schedule for the common format; (d) applicant's (or applicants') recommendation(s); and (e) anything else reasonably necessary for the Commission to make an informed decision on a common format. One respondent shall take the lead in preparing and filing the application. Respondents shall file a motion for a ruling by the Administrative Law Judge handling Logbook Standards to appoint one respondent to take the lead if respondents are unable to select one among themselves.

5. The Executive Director will file a notice of exemption from the California Environmental Quality Act regarding Logbook Standards for thermal powerplants.

6. The Executive Director will forward the standards adopted in this Decision, and in all related current and future decisions that implement generator maintenance and operation standards, to the ISO with a request that the ISO submit these adopted standards to FERC for approval as amendments to the ISO's tariff.

This order is effective today.

Dated May 6, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

**ATTACHMENT A**

**R.02-11-039**

**ELECTRICITY GENERATING FACILITIES LOGBOOK STANDARDS  
FOR THERMAL POWERPLANTS**

Parts I and II adopted on April 1, 2003 by the  
California Electricity Generation Facilities Standards Committee

## **ELECTRICITY GENERATING FACILITIES LOGBOOK STANDARDS FOR THERMAL POWERPLANTS**

Parts I and II adopted April 1, 2003 by the  
California Electricity Generation Facilities Standards Committee

### **I. PURPOSE**

The intent of this document is to define the requirements for facility logs for plants generating electricity by the use of thermal energy.

### **II. GENERAL**

Each generating facility shall maintain a Control Operator Log that contains the chronological history of the facility including detailed entries regarding the operations and maintenance of the facility. Where information is unit specific, information for each unit must be recorded and so identified.

The Control Operator Log is a formal record of real time operating events as well as the overall status of the generating units and auxiliary equipment under the purview of the Control Room Operator. The log shall also contain an accurate and concise record of important and/or unusual events involving operations, maintenance, water chemistry, safety, accidents affecting personnel, fires, contractor activities, environmental matters, and any other pertinent information concerning the operation of the facility. The log shall also record communications between the facility and outside entities including but not limited to the Independent System Operator (ISO), scheduling coordinators or headquarters facilities, regulators, environmental agencies, CalOSHA or similar agencies. The log shall be maintained notwithstanding and in addition to any other similar requirements that mandate that events be recorded. The generator must collect and record all information specified in these standards. All such information must be readily available to operators, California Public Utilities Commission staff, and other authorized personnel at all times.

Notwithstanding the above, generators may elect to record certain kinds of information in separate logs, as authorized by either Exception 1 or Exception 2

below. The information specified in Exception 1 may be recorded in an Equipment Out of Service Log. Similarly, the information specified in Exception 2 may be recorded in a Work Authorization log. Information recorded in these separate logs need not be recorded in the Control Operator log.

All required logs entries shall be retained in hard copy, electronic format, or both for a minimum period of five years from the date of the log entry. Each log entry shall start by recording the time of the event. The Generating Asset Owner (GAO) is responsible for maintaining the integrity of the generating facility logs.

Each facility must record a Plant Status Entry at least once each calendar day. If practicable, the control operator shall make that entry at midnight; however, a facility may for operational reasons elect to make that entry at another time. In any case, the Plant Status Entry must be made at the same time each day, except when emergency conditions require a postponement. In the case of such emergency conditions, the entry for that day shall be made as soon as it is safe to do so.

Information in the Plant Status Entry shall include:

1) Unit status, if on line, including:

- Current Mega Watt (MW) load.
- Generator Kilo Volt (KV) and Mega VAR (MVAR) readings.
- Fuel type and availability.
- For units equipped with Automatic Generation Control (AGC), the status of AGC equipment, including the availability of AGC, its operational status (on or off), and the normal range of output possible when the unit is operating under AGC.
- Condenser water box differential pressures, condenser back pressure/vacuum readings, boiler and pre-boiler water chemistry readings (if applicable).
- Status of environmental monitoring equipment.

Or if off line:

- Type of outage with expected return date/time (including the ISO outage ID number).
- Any other reason the unit is off line.

- 2) Any unit MW output restrictions (de-rates) including reasons for and expected time/date of release (including the ISO outage ID number).
- 3) Status of any environmental constraints (for example total annual NOx allowable emissions vs. year to date total emissions or, for jet peakers, total allowable run time vs. current year to date actual run time).
- 4) Equipment out of service, including any equipment that has been isolated and prepared for an upcoming work authorization with particular emphasis on redundant equipment that if the primary equipment fails, will result in a load restriction or a unit trip (see Exception 1).
- 5) Any abnormal operating conditions.
- 6) Outstanding work authorizations commonly referred to as clearances (see Exception 2).
- 7) Status of any retention/waste basins.
- 8) Status of any water conditioning equipment such as facility demineralizers and in stream demineralizers.
- 9) The on hand quantities of large consumables including distilled water, hydrogen, nitrogen and hypochlorite, if applicable.
- 10) Any other pertinent information regarding the status and reliability of the facility.

The first entry in the Control Operator Log at the start of a shift shall identify each operator on that shift and by some regular means distinguish his/her responsibilities (list in a regular order the identity of the Shift Supervisor(s), Control Operator(s), Assistant Control Operator(s) and Plant Equipment Operator(s)). This initial entry shall indicate that the crew has ascertained the plant status through the shift turnover, review of the log and a check of the indications and alarms in the control room.

Events shall be logged chronologically as they occur. Significant entries will include the control operator's name at the end of the entry preceded by the name(s) of others involved in the activity.

The events recorded in the Control Operator log shall include, but are not limited to, the following:

- 1) Any changes to generator MW output (except when on AGC). The current load of the unit shall be recorded as well as the new target load and the reason for the load change including:
  - a) As directed by the day ahead schedule.
  - b) Deviations from the schedule as directed by a scheduling coordinator.
  - c) Load reductions for scheduled equipment outages (cleaning condensers, pump repairs, etc.).
  - d) ISO directions.
  - e) Unplanned unit equipment problems (forced derates) including load restrictions for environmental causes.
  - f) Reducing to minimum load.
  - g) Any other reason.
- 2) Starting and stopping of equipment and any associated abnormal conditions.
- 3) Significant operations and milestones in the process of major operations such as start-ups, shutdowns and heat-treats.
- 4) During a unit start up, once on line, each generator load increment released to the scheduling coordinator.
- 5) Each instance where a unit is placed on or removed from AGC, including a notation if the AGC limits are set for a different value than the normal AGC range for that unit.
- 6) Any changes to the future schedule for generator output.
- 7) Detailed account of unit trips including any known or suspected causes and remedial action taken.
- 8) Load limit position anytime it is placed at any value less than full load and reason for such action.
- 9) All information related to planned outages or de-rates, including but not limited to communications with scheduling coordinators, headquarters, or the ISO regarding such outages (including requests to take an outage; and notification to the facility that such outages have been approved or denied), the nature of the work to be completed during the outage, initial and revised return-to-service

dates, completion of milestones in such work, requests to the ISO or others for extension of such outages including the reason for that extension, and completion of such outages. All entries shall include the date, time, duration, reason or explanation and the identities of all involved.

- 10) All information related to forced outages or de-rates, including but not limited to communications with scheduling coordinators, headquarters, or the ISO regarding such outages; the nature of the problem; progress reports on further diagnosis of the problem or on ongoing repairs; estimated and revised return-to-service dates; the nature of any extended work to be completed during the outage; completion of milestones in such work; and completion of such outages. All entries shall include the date, time, duration, reason or explanation and the identities of all involved.
- 11) All work authorizations issued and released and the reason for such work.
- 12) Equipment placed in a not normal status.
- 13) Equipment declared out of service (OOS) including date and time of initial OOS declaration.
- 14) Any current or potential fuel-supply problems.
- 15) Results of performance tests including heat rate tests, hotwell drop tests, turbine stop valve tests, etc.
- 16) Equipment outages of environmentally sensitive equipment or environmental monitoring devices.
- 17) All out-of-limit water chemistry conditions including duration and remedial actions, as well as all boiler chemical feeds and boiler drum blowdowns where applicable.
- 18) Changes in equipment/systems status (such as a suspected boiler tube leak, fouled condensers, or a feedwater heater tube leak).
- 19) Detailed information regarding environmental limitations exceeded, including the date, time, duration, amount, and any known or suspected cause.
- 20) Detailed reports of observations related to transmission system or facility trouble involving frequency or voltage deviations.

- 21) Report of any industrial accident including all details of the incident and the names of all parties involved.
- 22) All other pertinent information concerning the operation of the facility including names of all individuals involved.

Exceptions:

1. In lieu of logging equipment out of service information in the plant status entry, an Equipment OOS Log may be utilized, at the discretion of the GAO, to track equipment declared out of service. The work authorization program is intended to provide a safe work environment for current maintenance activities. If a delay is encountered in the repair process, the work authorization should be released and the equipment declared OOS. If the OOS designation is expected to be of short duration (five days or less), the OOS entry should be carried forward in the plant status Control Operator Log entry. If a longer period is anticipated, the OOS entry can be recorded in the OOS log to avoid carrying it forward repeatedly in the CO log. Information in the OOS log shall include the following:
  - Equipment description
  - Date declared OOS
  - Reason for being declared OOS
  - Estimated time for equipment to return to service
  - Name of person declaring equipment OOS
  - Maintenance order number or similar tracking mechanism
  - Contact person(s)
  - Date equipment is returned to service
2. In lieu of logging outstanding work authorizations in the plant status entry, a Work Authorization log book may be utilized, at the discretion of the GAO, during periods of construction, overhauls, or major work; and contains work authorizations, commonly referred to as clearances issued, released, and associated with the special activity. All other entries pertaining to the special activity shall be entered in the Control Operator log. Work authorization log entries do not need to be carried forward for each plant status but may remain for the duration of the special activity. Information in the Work Authorization log shall include the following:
  - Date and time the clearance was issued.

- Name of the Control Operator or Assistant Control Operator issuing the clearance.
- Identification of clearance.
- Name of person the clearance is issued to.

### **III. THERMAL PLANTS TO WHICH THESE STANDARDS ARE APPLICABLE**

Thermal Logbook Standards are applicable to each facility that generates electric energy by the use of thermal resources owned by an electrical corporation or located in California that is 50 MW or larger. Thermal Logbook Standards are not applicable in the following cases (see California Pub. Util. Code §§ 761.3(d), 761.3(h)):

1. Nuclear-powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations.
2. Qualifying small power production facilities or qualifying cogeneration facilities within the meaning of §§ 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive).
3. Generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load.
4. Facilities owned by a local publicly owned electric utility as defined in California Pub. Util. Code § 9604(d).
5. Any public agency that may generate electricity incidental to the provision of water or wastewater treatment.
6. Facilities owned by a city and county operating as a public utility, furnishing electric service as provided in California Pub. Util. Code § 10001.

Electrical corporation does not include electric plant:

- a. where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others (§ 218(a)),
- b. employing cogeneration technology or producing power from other than a conventional power source solely for one or more of three named purposes (§ 218(b)),
- c. employing landfill gas technology for one or more of three named purposes (§ 218(c)),
- d. employing digester gas technology for one or more of three named purposes (§ 218(d)), and
- e. employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989 (§ 218(e)).

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

R.02-11-039

**SAMPLE VERIFIED STATEMENT**

The following is a sample verified statement. Electric generating facilities may use a different verified statement as long as it accomplishes the same objectives. Similarly, Consumer Protection and Safety Division (CPSD) may develop and recommend to generators a different sample verified statement as long as it accomplishes the same objectives.

**SAMPLE:**

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

Verified Statement Regarding Logbooks and Compliance Document.	<hr/> (Number may be entered by CPSD.)
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**VERIFIED STATEMENT REGARDING LOGBOOKS AND COMPLIANCE DOCUMENT**

I verify that the electric generation facility identified below is owned by an electrical corporation or located in California. (Public Utilities Code Section 761.3.) I further verify that:

- a. the facility maintains logbooks in compliance with the requirements for Logbook Standards for Thermal Powerplants,
- b. the compliance document required by California Public Utilities Commission has been prepared and is available at the generation facility site,
- c. logbooks and the compliance document are being and will be updated and maintained as appropriate and necessary.

The electric generation facility is:

\_\_\_\_\_ (name of facility)  
\_\_\_\_\_ (address of facility)  
\_\_\_\_\_ (owner of facility)  
\_\_\_\_\_ (address of facility owner)  
\_\_\_\_\_ (contact person)  
\_\_\_\_\_ (title)  
\_\_\_\_\_ (telephone number)  
\_\_\_\_\_ (electronic mail address)  
\_\_\_\_\_ (other relevant information regarding  
facility, owner and contact person)

Verification by employee or officer:

I am an employee or an officer of the electric generation facility identified above that is subject to Public Utilities Code Section 761.3. I am authorized to make this verification on its behalf. The above statements are true of my own knowledge, except as to matters that are stated on information or belief, and as to those matters, I believe them to be true. I have exercised due diligence and reasonable care in determining the truth, or believed truth, of these matters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(date) (Name of City)

\_\_\_\_\_  
Signature  
Name  
Title (if applicable)  
Address  
Telephone Number  
Facsimile Number  
E-mail Address  
Other relevant information

Verification by attorney:

I am the attorney for the electric generation facility identified above that is subject to Public Utilities Code Section 761.3, and an employee or officer of the facility is absent from the County of \_\_\_\_\_, California, where I have my office. I make this verification for that reason, and I am authorized to do so. The above statements are true of my own knowledge, except as to matters that are stated on information or belief, and as to those matters, I believe them to be true. I have exercised due diligence and reasonable care in determining the truth, or believed truth, of these matters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

(date)

(Name of City)

\_\_\_\_\_  
Signature

Name

Title (if applicable)

Address

Telephone Number

Facsimile Number

E-mail Address

Other relevant information

(END OF ATTACHMENT B)