

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division
Electric Generation Performance Branch

San Francisco, California
Date: December 20, 2007
Resolution EGPB-5

RESOLUTION

**RESOLUTION GRANTING APPROVAL OF THE
FINAL REPORT ON THE AUDIT OF THE MOSS
LANDING POWER PLANT PERFORMED BY THE
ELECTRIC GENERATION PERFORMANCE
BRANCH OF THE CONSUMER PROTECTION AND
SAFETY DIVISION, AND AUTHORIZING PUBLIC
DISCLOSURE OF THE FINAL AUDIT REPORT**

SUMMARY

This Resolution grants the request of the Consumer Protection and Safety Division (“CPSD” or “staff”) for approval of the Electric Generation Performance Branch’s (EGPB) Final Report on the Audit of the Moss Landing Power Plant owned by Dynegy Inc. (“Moss Landing” or “the Plant”) dated October 31, 2007, (“Final Audit Report”). This Resolution also authorizes disclosure of the redacted Final Audit Report to the public.

BACKGROUND

General Order 167, “Enforcement of Maintenance and Operation Standards for Electric Generating Facilities” (effective September 2, 2005) sets forth maintenance, operation, and logbook standards for electric generating facilities in California (referred to as “Generating Asset Owners” or “GAOs” in the General Order.) General Order 167 was adopted in response to legislation enacted by the California Legislature in 2002, codified in Public Utilities Code 761.3, which requires the Commission to “implement and enforce standards ... for the maintenance and operation of facilities for the generation of electric energy” in California. Section 11.1 of General Order 167 notifies GAOs subject

to the General Order that regular and systematic audits will be conducted in order to ensure compliance with General Order 167.¹

The Moss Landing audit is the fifth audit conducted by CPSD under General Order 167. The Final Audit Report is the result of an iterative process between staff and the Plant, including the review of data requests, a one-week on-site visit by the CPSD audit team, issuance of the preliminary audit report, review and receipt of the Plant's response and Corrective Action Plan, and a meet and confer period. CPSD issues a public version of its final audit reports at the conclusion of each of the plant audits, detailing its findings and recommendations, and requesting Commission approval.

Section 15.4 of General Order 167 allows GAOs to request confidential treatment of information by indicating the specific law or statutory privilege prohibiting disclosure. Moss Landing requested that certain materials and reports related to the audit be treated confidentially by letter dated May 3, 2007.² However, Moss Landing has not requested confidential treatment of the Final Audit Report.

DISCUSSION

1. Final Audit Report Findings and Recommendations

Starting in December 2005, the CSPD audit team visited Moss Landing to determine compliance with maintenance, operation, and logbook standards in General Order 167. The methods used to conduct the audit included:

- Review of plant history and performance;
- Preparation of detailed data requests;
- A site visit from December 5 through 9, 2005; including
- Discussions with plant management;
- Reviews of procedures and records;
- Observations of operations and maintenance activities;
- Interview with rank and file employees; and
- Inspections of equipment and infrastructure.

The audit focused on adequacy of existing programs and recent programmatic changes. First, the audit team looked at the Plant's programmatic changes in response to a

¹ See also, D.04-05-018, pp. 15-16; additional detail on audit procedures is found in the "Maintenance Standards for Generators with Suggested Implementation and Enforcement Model, Section 3, Verification and Audit Process, Appendix C to D.04-05-018.

² Letter to Randy Wu, General Counsel for CPUC, from Brian T. Cragg, counsel for Dynegy Moss Landing, dated May 3, 2007. CPSD is not seeking disclosure of these reports or other related audit materials by this resolution.

catastrophic gas turbine failure and a massive oil tank fire. The team also looked at the Plant's safety program, boiler and high-energy piping inspection program, plant security, and employee and contractor training and qualifying protocols. A full description of the audit, including the procedures, findings, recommendations and conclusions is contained in the Final Audit Report attached as Appendix A to this Resolution.³

CPSD's Preliminary Audit Report, which was provided to Moss Landing on October 24, 2006, identified potential violations of the Maintenance and Operation Standards, and recommended that the Plant take corrective actions.

On December 8, 2006, Moss Landing submitted a Corrective Action Plan to CPSD in response to the Preliminary Audit Report. CPSD and Moss Landing next held a teleconference on Feb. 16, 2007 and a meet-and-confer meeting on Apr. 19, 2007. CPSD subsequently revised the draft Final Audit Report based on additional information that the Plant provided.

The Final Audit Report details staff's preliminary findings and recommendations, the corrective actions that the Plant has taken to date, and CPSD's recommendations for follow-up action. In most instances, Moss Landing has already resolved the finding by taking corrective action. In three instances, CPSD has requested that the Plant report on the progress of its corrective actions and submit an additional analysis.

The results of CPSD's audit indicate that the continued implementation of the proposed corrective actions will adequately address all of the findings in the Final Audit Report. CPSD found no need for formal enforcement action based on the audit findings. CPSD does, however, request that the Commission order Moss Landing to complete implementation of corrective action items 2.2, 2.6, and 2.10 by June 30, 2008. Corrective action items 2.2, 2.6, and 2.10 are listed in the section of the Final Audit Report entitled "Executive Summary."

We hereby grant CPSD's request for approval of the Final Audit Report. CPSD's General Order 167 audits provide a thorough assessment of the Plant's efforts to comply with General Order 167's maintenance, operation, and logbook standards. Our approval of the findings and recommendations in the Final Audit Report endorses the findings therein and requires Moss Landing to implement the corrective action measures identified in the Final Audit Report and provide progress or status reports as requested by CPSD.

³ This Draft Resolution does not include Appendix A. Appendix A is attached to the Confidential/Non-Public Version of the Draft Resolution circulated within the Commission only, and will be attached to the Final Resolution if disclosure is authorized and the Final Report approved by the Commission.

2. Public Disclosure of the Final Audit Report

As we have indicated above, GO 167, section 15.4, allows GAOs to make a request for confidential treatment of information that it believes should not be disclosed to the public. Section 15.4 places the burden on the GAO to prove why all or part of any document should be withheld from the public, and to indicate the specific law or statutory privilege prohibiting disclosure. This is the fifth of CPSD's audits to come before the Commission; CPSD's policy and practice is to make all of the Final Audit Reports public documents. As we stated in Resolution EGPB-1,

[I]mportant public interests may well be served by disclosure of General Order 167 audit reports. These include the public's right to know that generating facilities providing the electric service it relies on are operated in conformance with regulatory requirements. In addition, the release of audit reports will increase awareness of safety issues and best practices within the generating community. Allowing public access to audit reports will provide an incentive to GAOs to maintain their plants in top condition, which may lead to increased reliability. Moreover, in enacting Public Utilities Code 761.3, the Legislature found that "electric generating facilities and power plants in California are essential ...[to protect] the public health and safety of California residents and business," and that it is in the public interest to ensure that they are "appropriately maintained and efficiently operated."⁴

(Resolution EGPB-1, p. 7.)

We also stated, "Future audit reports conducted under General Order 167 will also be subject to public disclosure, unless it can be demonstrated that under the specific circumstances, the public interest in nondisclosure clearly outweighs the public interest in disclosure." (*Id.*)

Moss Landing has not requested confidential treatment of this Final Audit Report. Consistent with CPSD's policy not to disclose sensitive plant security information, CPSD's audit team has redacted specific portions of the audit report which address security issues from the public version of the Final Audit Report. Based on the foregoing, we find that the Final redacted version of the Final Audit Report should be made public.

⁴ SB 39XX, Ch. 19, Section 1, approved April 25, 2002; filed April 25, 2002.

COMMENTS

The Draft Resolution in this matter was mailed to the parties in interest on November 19, 2007, in accordance with Public Utilities Code § 311(g)(1) and Rule 14.5 of the Rules of Practice and Procedure.

Comments were filed by _____ on _____. We have made changes as appropriate based on reply comments.

FINDINGS OF FACT

1. General Order 167, “Enforcement of Maintenance and Operation Standards for Electric Generating Facilities” (effective September 2, 2005) sets forth maintenance, operation, and logbook standards for electric generating facilities in California. Section 11.1 of General Order 167 notifies GAOs subject to the General Order that regular and systematic audits will be conducted in order to ensure compliance with General Order 167.
2. The Final Audit Report is the result of an iterative process between staff and the Plant, including the review of data requests, a one-week on-site audit, issuance of the preliminary audit report, review and receipt of the Plant’s response and Corrective Action Plan, and a meet and confer period.
3. As part of the audit process, the CPSD audit team visited Moss Landing Power Plant from December 5, 2005 through December 9, 2005 to determine compliance with maintenance, operation, and logbook standards in General Order 167.
4. CPSD routinely issues final and public versions of all audit reports at the conclusion of each of the plant audits, detailing its findings and recommendations, and requesting Commission approval.
5. Section 15.4 of General Order 167 allows GAOs to request confidential treatment of information by indicating the specific law or statutory privilege prohibiting disclosure. No such confidentiality request was made for the Moss Landing Final Audit Report.
6. It is CPSD’s policy not to disclose detailed or sensitive plant security information.
7. CPSD’s General Order 167 audits provide a thorough evaluation of the Plant’s efforts to comply with General Order 167’s maintenance, operation, and logbook standards.
8. The results of CPSD’s audit indicate that the continued implementation of the proposed corrective actions will adequately address all of the findings in the Preliminary Audit Report. There is no need for formal enforcement action based on the audit findings at this time.

CONCLUSIONS OF LAW

1. Our approval of the Final Audit Report endorses the findings and recommendations therein, and requires Moss Landing to implement and report on the corrective action measures identified in Findings 2.2, 2.6, and 2.10 by June 30, 2008.

2. Important public interests may well be served by disclosure of General Order 167 audit reports, including the public's right to know that generating facilities are operated in conformance with regulatory requirements, and the incentives to GAOs to maintain their plants in top condition, which may lead to increased reliability.

3. The redacted Final Audit Report should be made available to the public.

ORDER

1. The Consumer Protection and Safety Division's request for disclosure of the "Final Report on the Audit of the Moss Landing Power Plant," dated October 31, 2007, is granted.

2. Moss Landing shall complete implementation of the corrective actions in Findings 2.2, 2.6, and 2.10 and report thereon by June 30, 2008.

3. This Resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting held on December 20, 2007. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director