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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Informational Proceeding on Methods for Satisfaction of California Environmental Quality Act Requirements Relating to Greenhouse Gas Emissions Impacts of Power Plants.	Docket Number 08-GHG OII-1 Order No. 08-1008-11

MIRANT'S COMMENTS IN RESPONSE TO NOVEMBER 19, 2008 WORKSHOP

Mirant California, LLC; Mirant Delta, LLC; Mirant Potrero, LLC; Mirant Marsh Landing, LLC; and Mirant Willow Pass, LLC (collectively, "Mirant") hereby provide these further comments regarding possible approaches to evaluating the emission of greenhouse gases (GHGs) under the California Environmental Quality Act (CEQA) in the power plant siting process. These further comments are made with reference to the discussions that occurred during the Commission's workshop that took place on November 19, 2008.[1]

In its opening comments dated November 7, 2008, Mirant identified two fundamental factors that must be considered and accounted for in assessing possible approaches to evaluating potential GHG and global climate change impacts under CEQA: (1) CEQA is not structured to serve as an effective tool to reduce GHG emissions in the electricity sector; and (2) the combination of the existing GHG Emission Performance Standard ("EPS") (and any future energy efficiency standards applicable to electric generating facilities) in conjunction with the upcoming adoption and implementation of AB 32 standards and the anticipated multi-sector GHG cap and trade program, essentially make application of CEQA to power plant GHG emissions unnecessary. With these fundamental factors in mind, Mirant

[1] Two of the Mirant companies, Mirant Marsh Landing, LLC, and Mirant Willow Pass, LLC, currently have Applications for Certification ("AFCs") on file and pending before the Commission: (1) Marsh Landing Generating Station (08-AFC-03); and (2) Willow Pass Generating Station (08-AFC-06). Accordingly, the manner in which the Commission decides to address GHG emissions in the siting process will directly affect Mirant.

recommended that CEQA should be applied, if at all, programmatically rather than on a case-by-case basis. Specifically, emissions from projects that are permitted to contract with a Load Serving Entity under the EPS rules (including those units with a capacity factor under 60%) should be considered to make a less than significant cumulative contribution to global climate change, so that further CEQA analysis and mitigation is unnecessary. In the alternative, these units should be deemed to have applied all feasible mitigation measures, since under AB 32 they will be subject to requirements that must achieve the "maximum technologically feasible and cost-effective" reductions in GHG emissions. See, e.g., Health and Safety Code section 38560(c).

At the November 19th Workshop, Mr. Ratliff of the Commission staff described two choices facing the Commission under CEQA. The Commission could adopt a zero emissions baseline standard under which every project that emits GHGs is deemed to significantly impact the environment. Alternatively, the Commission could employ an electrical system approach under which a proposed project is evaluated in the context of a regional electrical system and determined whether that project increases or reduces GHGs in the context of the regional system. If the project reduces GHGs within the electrical system, then there is not a significant impact on the environment.

Mirant's opening comments in support of the EPS thresholds as the basis for determining a CEQA significance threshold are consistent with the electrical system approach. There is sufficient evidence available to the Commission to conclude that a power plant that meets the EPS thresholds is actually helping to reduce GHGs and on that basis should be determined not to have a significant impact on the environment (at least in the context of GHG emissions). In effect, the Commission would be relying on the electrical system approach to evaluate on a case-by-case basis the impacts of a particular power plant.

Mirant does not believe that a detailed system study is necessary to draw the conclusion that a power plant meeting the EPS framework actually reduces GHG emissions on a system-wide basis. The EPS framework was developed through a comprehensive stakeholder process at the California Public Utilities Commission. However, to the extent the Commission nonetheless deems it necessary to undertake a system study such as that described in the joint comments of PG&E, SDG&E and SCE, Mirant emphasizes that such study is only necessary to accommodate power plants that come on-line prior to 2012, after which the requirements of AB 32 should lead to a determination that new power plants will not contribute to an increase of GHG emissions.

Finally, the last portion of the November 19th Workshop addressed the possible mitigations that could be imposed if a power plant is deemed to significantly impact the environment. In particular, the description of the Climate Action Reserve gives some cause for optimism that an AB 32 cap and trade program will be well-served by a liquid market for offsets. However, the availability of the Climate Action Reserve's "carrots," i.e., CRTs or climate reserve tons, should not factor into the Commission's threshold determination of whether to impose "mitigation" obligations in the first place on plants that actually already help to reduce GHG emissions.

Furthermore, the very real and disturbing possibility that new power plants would face multiple GHG reduction obligations was confirmed during the mitigation segment of the November 19th Workshop. In particular, the Air Resources Board staff person who addressed offsets could not state authoritatively that mitigations imposed under CEQA would be taken into account for purposes of compliance with regulations adopted under AB 32. The possibility of double dipping, particularly when a comprehensive GHG reduction plan exists under AB 32, should provide the Commission all the rationale it needs to adopt measures that rely on AB 32 requirements, and not CEQA, to achieve targeted GHG reductions. As discussed during the November 19th Workshop, new power plants offer the hope of facilitating compliance with GHG reduction goals; they should not have to bear a disproportionate share of such reductions through mitigations applied through CEQA in addition to AB 32 requirements.

Dated this 12th day of December, 2008, at Pittsburg, CA.

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