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August 16, 2010

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California Energy Commission  
Docket Office  
1516 Ninth Street, MS-4  
Sacramento, CA 95814

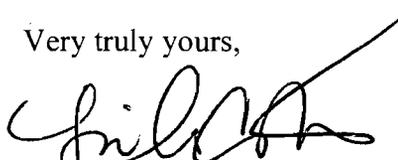
**Re: Docket No. 08-AFC-3 – Mirant Marsh Landing, LLC**

To the Docket Office:

Enclosed for docketing in the above-referenced proceeding are the *Comments of Mirant Marsh Landing, LLC on the Presiding Member's Proposed Decision*. Please file this document in Docket No. 08-AFC-3.

Thank you for your assistance.

Very truly yours,



Lisa A. Cottle

cc: Proof of service list for Docket No. 08-AFC-3

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA**

Application for Certification for the  
Mirant Marsh Landing Generating Station Project

Docket No. 08-AFC-3

**COMMENTS OF MIRANT MARSH LANDING, LLC  
ON THE PRESIDING MEMBER'S PROPOSED DECISION**

August 16, 2010

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA**

Application for Certification for the  
Mirant Marsh Landing Generating Station Project

Docket No. 08-AFC-3

**COMMENTS OF MIRANT MARSH LANDING, LLC  
ON THE PRESIDING MEMBER'S PROPOSED DECISION**

In accordance with the *Notice of Availability of the Presiding Member's Proposed Decision and Notice of Full Commission Hearing* issued on July 23, 2010, Mirant Marsh Landing, LLC ("Mirant Marsh Landing") submits its comments on the Presiding Member's Proposed Decision ("PMPD") for the Marsh Landing Generating Station Project ("MLGS" or "Marsh Landing Project"). The PMPD reflects the Committee's recommendation that the Commission approve the Application for Certification for the Marsh Landing Project, subject to the Conditions of Certification adopted in the PMPD, and grant Mirant Marsh Landing a license to construct and operate the Marsh Landing Project. The PMPD is scheduled to be considered for adoption by the full Commission on August 25, 2010.

Mirant Marsh Landing agrees with all of the findings, conclusions and Conditions of Certification in the PMPD. Mirant Marsh Landing very much appreciates the efforts of Staff and the Committee to complete this proceeding in such a timely manner.

Below Mirant Marsh Landing provides an update regarding two developments that have occurred since the PMPD was issued, namely: (1) on July 29, 2010, the California Public Utilities Commission ("CPUC") approved the power purchase agreement for the MLGS; and (2) on July 30, 2010, the California Independent System Operator ("CAISO") released the Phase II Interconnection Study for the Bay Area Transition Cluster of projects ("Transition Cluster"), which includes the Marsh Landing Project. These two developments were expected to occur after the PMPD was issued and are addressed in the text of the PMPD. As a result, they require only minor updates to the PMPD, as described below and in the proposed Errata that is attached to these comments. The attached Errata also includes minor edits to correct a few

typographical errors in the PMPD. Mirant Marsh Landing requests that the PMPD and the attached Errata be presented for Commission approval on August 25, 2010.

**A. CPUC Approval of MLGS Power Purchase Agreement**

As noted in the PMPD, Mirant Marsh Landing has entered into a long-term power purchase agreement with Pacific Gas and Electric Company for the output of the MLGS. (PMPD, p. 2.) When the PMPD was issued, a draft CPUC decision approving the MLGS power purchase agreement had been released for comment, but the CPUC had not yet voted to adopt it. The PMPD therefore includes the following statement in brackets on page 4: “[The California Public Utilities Commission (CPUC) approved/is expected to approve the PPA in July 2010.]”

The CPUC approved the MLGS power purchase agreement on July 29, 2010. The resulting CPUC decision, Decision 10-07-045, can be viewed at [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/121605.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/121605.PDF). To reflect this development, the bracketed sentence on page 4 of the PMPD should be modified as follows:

{The California Public Utilities Commission (CPUC) approved/~~is expected to approve~~ the PPA ~~in~~ on July 29, 2010 in CPUC Decision 10-07-045.}

**B. CAISO Issuance of Phase II Interconnection Study**

The PMPD notes that Mirant Marsh Landing has applied for interconnection of the MLGS under the CAISO’s Large Generator Interconnection Process (“LGIP”) and that the CAISO is processing interconnection requests together in clusters or groups. (PMPD, p. 26.) The MLGS is part of the Transition Cluster of projects, which initially consisted of twelve projects, but which now consists of only six projects. The CAISO prepared a Phase I Interconnection Study (“Phase I Study”) that evaluated the addition of all twelve projects collectively, representing a total of 4,707 MW of new capacity, including 1,087 MW of new capacity for the Marsh Landing Project. (*Id.*) After the Phase I Study was issued, a number of Transition Cluster projects dropped out of the interconnection queue. In addition, the net amount of new MLGS capacity was reduced from 1,087 MW to 100 MW through a change in the project design and a change in the interconnection request to utilize transmission capacity currently assigned to the existing Contra Costa Power Plant units (which are scheduled to be retired at the

end of the day on April 30, 2013). These changes reduced the Transition Cluster from a total of 4,707 MW of new capacity to a total of 1,159 MW of new capacity. In light of these changes, the PMPD adopted Staff's finding that the Phase I Study does not provide a reasonable forecast of potential reliability impacts and is too speculative to be used for the Commission's licensing process. (*Id.*, p. 28.) The PMPD concludes that "relying on the information that was available when the Revised Staff Assessment was issued, we have not identified any likely indirect project transmission impacts that require assessment in this proceeding." (*Id.*, p. 29.)

The Revised Staff Assessment and the PMPD noted that the Phase II Study was expected to be issued in July 2010. (*See* PMPD, p. 28.) In the Revised Staff Assessment, Staff explained that interconnection of all six remaining Transition Cluster projects collectively could require upgrades to certain transmission lines identified in the Phase I Study. (Exhibit 300, p. 5.5-8.) At the evidentiary hearing on July 1, 2010, Staff's witness testified that any necessary upgrades are likely to involve reconductoring of existing transmission lines, rather than more significant upgrades such as the construction of a new substation. (7/1/10 Reporter's Transcript ("RT") 27:14-28:7.) In the Revised Staff Assessment, Staff explained that if the Phase II Study finds that upgrades are required for interconnection of all six Transition Cluster projects, then any necessary permitting and associated review under the California Environmental Quality Act ("CEQA") would be performed by the CPUC or another permitting authority. (Exhibit 300, p. 5.5-8.) This is included in Finding of Fact 4 on pages 28-29 of the PMPD.

As expected, the CAISO issued its Phase II Study for the Transition Cluster on July 30, 2010. Mirant Marsh Landing docketed the Phase II Study in this proceeding on August 10, 2010. As explained below, issuance of the Phase II Study does not require material changes to the analysis in the PMPD, and does not require any change to the findings, conclusions or Conditions of Certification adopted in the PMPD.

First, like the Phase I Study, the Phase II Study identifies the upgrades to the transmission system that are predicted to be needed to accommodate the interconnection of all six Transition Cluster projects in the aggregate, which now consist of a total of 1,159 MW of new capacity, including 100 MW of new capacity for the Marsh Landing Project. The Phase II Study does not identify any project-specific upgrades that are required only for interconnection of the MLGS.

The Phase II Study thus does not indicate that the Marsh Landing Project requires specific upgrades to the transmission system.

Second, the Phase II Study is consistent with the expectations that were included in the Revised Staff Assessment and discussed at the evidentiary hearing. The Phase II Study indicates that the construction and interconnection of all six Transition Cluster projects would require the reconductoring of existing transmission lines that are identified in the Revised Staff Assessment. These lines are the Contra Costa-Windmaster line (16.5 miles of reconductoring), the Windmaster –Delta Pumps line (1.8 miles of reconductoring), and the Los Positas-Newark line (21.2 miles of reconductoring). (CAISO Phase II Study, p. 2 (Table A) and pp. 23-27; *see also* Exhibit 300, p. 5.5-8.) The Phase II Study also indicates that interconnection of all six projects would require 8 miles of reconductoring on the Kelso-Tesla transmission line. (CAISO Phase II Study, p. 2 (Table A) and p. 25.) In all, the Phase II Study identifies the need for 47.5 miles of reconductoring to accommodate all six Transition Cluster projects. This is slightly less than the 49 miles of reconductoring that was discussed as a potential outcome at the evidentiary hearing. (7/1/10 RT 31:7-16.) As anticipated at the hearing, the Phase II Study does not identify the need for significant upgrade projects such as new substations or new transmission lines. The Phase II Study thus does not present any surprises and is consistent with the PMPD and the record in this proceeding.

Third, due to the nature of the “cluster” study approach being utilized in the CAISO’s LGIP, the impacts identified in the Phase II Study are still speculative, albeit to a lesser degree than those identified in the Phase I Study. While one phase of uncertainty has passed now that six projects have progressed through issuance of the Phase II Study, it is not possible to know for certain whether all six projects will actually interconnect as anticipated until each project has executed a Large Generator Interconnection Agreement (“LGIA”). As explained at the hearing by Mirant Marsh Landing’s transmission system engineering witness, “even after the Phase 2 study comes out, we really won’t know for sure what facilities are still going to go in service or be constructed and then what reinforcements will be needed for those to mitigate the impact of those facilities.” (7/1/10 RT 29:5-9.) The CAISO does not require projects to make an additional collateral posting and execute an LGIA until 180 days after the Phase II Study was issued. Transition Cluster projects could drop out of the process at the end of the 180 day period, which would reduce the impacts analyzed in the Phase II Study. (7/1/10 RT 28:19-29:4.) Due to

this uncertainty, the upgrades identified in the Phase II Study, which are predicated on the interconnection of all six Transition Cluster projects, remain speculative until all six Transition Cluster projects have executed their LGIAs.

Fourth, while the need for the identified upgrades remains speculative until all LGIAs are executed as explained above, at the evidentiary hearing the transmission system engineering witnesses explained that “reconductoring is usually a pretty straightforward process,” making it unlikely that reconductoring would result in environmental impacts that could not be mitigated to less than significant levels. (7/1/10 RT 32:15-20.) If transmission upgrades are required following completion of the remainder of the LGIP, then any necessary permitting and associated CEQA review would be performed by the CPUC or another permitting authority. (Exhibit 300, p. 5.5-8) As noted above, the PMPD already reflects this finding on pages 28-29. At the hearing, it also was pointed out that Mirant Marsh Landing has provided an analysis of potential environmental impacts associated with reconductoring the transmission lines identified in the Revised Staff Assessment. That analysis shows that impacts associated with reconductoring can be reduced to less than significant levels with mitigation measures that are commonly applied for reconductoring projects. (7/1/10 RT 32:20-34:20; Exhibit 9(n)(1).)

Finally, following issuance of the Phase II Study, the CAISO’s LGIP and the requirement for an executed LGIA prior to interconnection will ensure that the MLGS complies with applicable transmission system engineering and reliability LORS. (PMPD, p. 29.) This was confirmed at the hearing when Mirant Marsh Landing’s witness testified that “the ISO and PG&E wouldn’t allow a generator to interconnect without making sure that all facilities needed to maintain reliability are in place.” (7/1/10 RT 36:11-15.) As the PMPD finds, conformance with applicable transmission system engineering and reliability LORS is further assured by Condition of Certification TSE-5, which requires the submittal of the Phase II Study and the executed LGIA prior to the start of construction of the MLGS transmission facilities, and requires the project owner to ensure that the design, construction, and operation of the transmission facilities conform to all applicable LORS. (PMPD, p. 29.) The Conditions of Certification adopted in the PMPD therefore are adequate to ensure that the MLGS will comply with all applicable transmission system engineering LORS.

For these reasons, issuance of the Phase II Study can be addressed through minor modifications to the PMPD to reflect the fact that it now has been issued and that it conforms with the record in the proceeding and the analysis in the PMPD. Mirant Marsh Landing recommends the following changes to the first full paragraph on page 27 of the PMPD:

The CAISO is ~~preparing~~ **prepared** a Phase II Interconnection Study for the Transition Cluster projects that is ~~scheduled for~~ **was released** ~~in~~ **on July 30, 2010 and docketed in this proceeding on August 10, 2010. The Phase II Interconnection Study does not identify upgrades that are required specifically for the MLGS. The Phase II Interconnection Study instead determines that the addition of all six Transition Cluster projects collectively would require upgrades to the transmission system that are consistent with expectations discussed in the Revised Staff Assessment and during the evidentiary hearing. As confirmed at the hearing, the need for the upgrades identified in the Phase II Interconnection Study remains speculative until all Transition Cluster LGIAs are executed. (7/1/10 RT 28-29.)** ~~Once~~ **Now** that the Phase II Interconnection Study is complete, MLGS will progress through the LGIP and will not be allowed to interconnect with the CAISO transmission system without an executed Large Generator Interconnection Agreement (LGIA). In its capacity as the operator of the transmission system, the CAISO will not approve the MLGS interconnection or execute the LGIA until it has determined that the MLGS will comply with all applicable LORS in the area of transmission system engineering and that all potential impacts to the transmission system are adequately mitigated such that interconnection of the MLGS complies with all applicable reliability standards. The LGIA Process and the requirement for an executed LGIA thus ensures that interconnection of the MLGS will comply with all applicable reliability standards and transmission system engineering LORS.

In addition, on page 28, Finding of Fact 3 should be revised as follows:

3. **Phase II Interconnection Study.** The CAISO is ~~completing~~ **has completed** its Phase II interconnection study (Phase II Study) for the Transition Cluster. The Phase II Study ~~will analyze~~ the potential reliability impacts associated with the remaining 6 projects in the Transition Cluster and ~~will assesses~~ a total of 1,159 MW of new capacity (rather than 4,707 MW), including 100 MW of new capacity for the MLGS (rather than 1,087 MW). (Exhibit 300, pp. 5.5- 10; **Phase II Study, p. 1-2.**) Staff concluded that the Phase II Study will provide a much better forecast of the reliability impacts of the MLGS and the other Transition Cluster projects than the Phase I Study. (*Id.*, p. 5.5-9.) Staff ~~expects~~ **expected** that the reliability impacts of 1,159 MW ~~will~~ **would** be significantly smaller than the impacts of the 4,707 MW that were studied in the Phase I Study. (*Id.*, p. 5.5-10.) **The Phase II Study results are consistent with the Revised Staff Assessment and testimony provided at the evidentiary hearing.** Staff

also expects that the MLGS will conform to reliability LORS after completion of the Phase II Study and execution of the LGIA. (*Id.*) We find that the MLGS will conform to all applicable transmission and reliability LORS upon completion of the LGIP.

Mirant Marsh Landing appreciates the opportunity to submit these comments. As stated above, Mirant Marsh Landing requests that the PMPD and the attached Errata be presented for Commission approval on August 25, 2010.

August 16, 2010

Respectfully submitted,



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Lisa A. Cottle  
Winston & Strawn LLP

*Attorneys for Mirant Marsh Landing, LLC*

## ATTACHMENT

### Proposed Errata to the PMPD for the Marsh Landing Project

#### INTRODUCTION

On page 2, in the first full paragraph, revise the third sentence as follows:

Based on its analysis, Staff concluded that, with the mitigation measures included in Staff's proposed Conditions of Certification, the Marsh Landing Project will comply with all applicable LORS and will not result in any significant direct, indirect, or cumulative adverse impacts to the environment~~al~~ or in any of the technical areas considered in the Energy Commission's licensing process.

#### PROJECT PURPOSE AND DESCRIPTION

On page 4, after the heading "Project Overview," in the second paragraph, revise the last sentence as follows:

{The California Public Utilities Commission (CPUC) approved/~~is expected to approve~~ the PPA ~~in~~ on July 29, 2010 in CPUC Decision 10-07-045.}

On page 5, after the heading Project Location, in the third paragraph, revise the second sentence as follows:

Mirant Delta is currently cleaning and removing the tanks and ~~this work~~ will complete this work before conveying the project site to Mirant Marsh Landing.

On page 8, after the heading Water Supply, in the first paragraph, revise the first sentence as follows:

The MLGS will use a maximum of 50 acre-feet per year (AFY) of water ~~for~~ to serve process water requirements.

#### PROJECT ALTERNATIVES

On page 15, in Finding of Fact 7, revise the third sentence as follows:

Staff concluded that the no project alternative is not superior to the Marsh Landing Project because: (1) under the no project scenario, the region would not benefit from the local and efficient source of 760 MW of new peaking capacity that the MLGS will provide; (2) the local community would not benefit from the jobs that will be created in support of project construction and operation; and (3) the no project scenario could lead to increased operation of existing plants (and reliance on older technology) or development of new plants on undeveloped (greenfield) sites.

## TRANSMISSION SYSTEM ENGINEERING

On page 27, revise the first full paragraph as follows:

The CAISO is ~~preparing~~ **prepared** a Phase II Interconnection Study for the Transition Cluster projects that is ~~scheduled for~~ **was released in on July 30, 2010 and docketed in this proceeding on August 10, 2010. The Phase II Interconnection Study does not identify upgrades that are required specifically for the MLGS. The Phase II Interconnection Study instead determines that the addition of all six Transition Cluster projects collectively would require upgrades to the transmission system that are consistent with expectations discussed in the Revised Staff Assessment and during the evidentiary hearing. As confirmed at the hearing, the need for the upgrades identified in the Phase II Interconnection Study remains speculative until all Transition Cluster LGIAs are executed. (7/1/10 RT 28-29.)** ~~Once~~ **Now that** the Phase II Interconnection Study is complete, MLGS will progress through the LGIP and will not be allowed to interconnect with the CAISO transmission system without an executed Large Generator Interconnection Agreement (LGIA). In its capacity as the operator of the transmission system, the CAISO will not approve the MLGS interconnection or execute the LGIA until it has determined that the MLGS will comply with all applicable LORS in the area of transmission system engineering and that all potential impacts to the transmission system are adequately mitigated such that interconnection of the MLGS complies with all applicable reliability standards. The LGIA Process and the requirement for an executed LGIA thus ensures that interconnection of the MLGS will comply with all applicable reliability standards and transmission system engineering LORS.

On page 28, revise Finding of Fact 3 as follows:

3. Phase II Interconnection Study. The CAISO is ~~completing~~ **has completed** its Phase II interconnection study (Phase II Study) for the Transition Cluster. The Phase II Study ~~will analyze~~ the potential reliability impacts associated with the remaining 6 projects in the Transition Cluster and ~~will assess~~ a total of 1,159 MW of new capacity (rather than 4,707 MW), including 100 MW of new capacity for the MLGS (rather than 1,087 MW). (Exhibit 300, pp. 5.5- 10; **Phase II Study, pp. 1-2.**) Staff concluded that the Phase II Study will provide a much better forecast of the reliability impacts of the MLGS and the other Transition Cluster projects than the Phase I Study. (*Id.*, p. 5.5-9.) Staff ~~expects~~ **expected** that the reliability impacts of 1,159 MW ~~will~~ **would** be significantly smaller than the impacts of the 4,707 MW that were studied in the Phase I Study. (*Id.*, p. 5.5-10.) **The Phase II Study results are consistent with the Revised Staff Assessment and testimony provided at the evidentiary hearing.** Staff also expects that the MLGS will conform to reliability LORS after completion of the Phase II Study and execution of

the LGIA. (*Id.*) We find that the MLGS will conform to all applicable transmission and reliability LORS upon completion of the LGIP.

### **GREENHOUSE GAS EMISSIONS**

On page 36, revise the last sentence that carries over to page 37 as follows:

Staff found that the addition of the MLGS to the electricity system is likely to displace other less efficient, slower starting, and less flexible plants, and will facilitate the integration of renewable resources, all of which will contribute to a ~~reduction in a~~ net reduction in total GHG emissions.

On page 38, in Finding of Fact 6, revise the second sentence as follows:

Staff noted that the MLGS will have a net ~~worse~~ **worst** case heat rate of approximately 11,124 Btu/kWh.

On page 40, in Finding of Fact 10, revise the first sentence as follows:

Staff concluded that the MLGS is likely **to** displace capacity and energy currently provided by aging power plants that utilize once-through cooling technology.

### **AIR QUALITY**

On page 44, in the first paragraph, revise the second to last sentence as follows:

Staff takes the position that all such emissions (in this case, NO<sub>x</sub>, VOC, PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>x</sub>, and NH<sub>3</sub>) must be mitigated.

On page 44, in the first full paragraph, revise the second and third sentences as follows:

The BAAQMD released its FDOC on ~~{June 25, 2010}~~ confirming that the Marsh Landing Project will comply with all BAAQMD rules and regulations. (Exhibit 301). ~~{Staff's expert witness, who is the author of the Air Quality section of the Revised Staff Assessment, confirmed that all permit conditions in the FDOC are reflected in the Conditions of Certification specified in the Revised Staff Assessment.~~

On page 48, in Finding of Fact 8, revise the fourth sentence as follows:

Staff concluded that the Marsh Landing Project will comply with BAAQMD's NO<sub>x</sub> and VOC offset requirements and will provide overall total ERCs for ~~the~~ its ozone precursor emissions at an offset ratio of at least one-to-one.

On page 50, in Finding of Fact 12, revise the first sentence as follows:

~~{On June 25, 2010, the BAAQMD issued an FDOC finding that the Marsh Landing Project will comply with all applicable BAAQMD rules for operation.}~~

## **PUBLIC HEALTH**

On page 54, in Finding of Fact 6, revise the last sentence that carries over to page 55 as follows:

Staff concluded that these health risk values are significantly below levels of significance as established ed by Staff and the BAAQMD.

## **WASTE MANAGEMENT**

On page 68, in Finding of Fact 7, revise the first sentence as follows:

Staff also reviewed the capacity available at off-site treatment and disposal sites to determines whether the Marsh Landing Project's waste will have a significant impact on the volume of waste a facility is permitted to accept.

## **SOIL AND WATER RESOURCES**

On page 79, in Finding of Fact 4, revise the second to last sentence as follows:

We find that all potential adverse impacts to soil and water resources from contamination at the MLGS site will be adequately mitigated through the Waste Management Conditions of ~~the~~ Certification that are adopted in this Decision.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA**

Application for Certification for the  
Mirant Marsh Landing Generating Station Project

Docket No. 08-AFC-3

**DECLARATION OF SERVICE**

I, Lisa A. Cottle, declare that on August 16, 2010, I served and filed copies of the attached *Comments of Mirant Marsh Landing, LLC on the Presiding Member's Proposed Decision (Docket No. 08-AFC-3)*. The original document filed with the Docket Unit is accompanied by a copy of the most recent Proof of Service list, located at the web page for this project at <http://www.energy.ca.gov/sitingcases/marshlanding/index.html>. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

- For service to all other parties: Sent electronically to all email addresses on the Proof of Service list; and by depositing in the United States mail at San Francisco, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked as "email preferred."

**AND**

- For filing with the Energy Commission: Sent an original paper copy and one electronic copy, mailed and emailed respectively, to the address below:

**CALIFORNIA ENERGY COMMISSION**

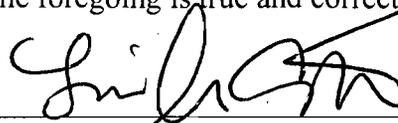
Attn: Docket No. 08-AFC-3

1516 Ninth Street, MS-4

Sacramento, CA 95814-5512

[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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



\_\_\_\_\_  
Lisa A. Cottle



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
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**APPLICATION FOR CERTIFICATION  
FOR THE MARSH LANDING  
GENERATING STATION**

**Docket No. 08-AFC-3**

**PROOF OF SERVICE**  
*(Revised 7/14/2010)*

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**INTERESTED AGENCIES**

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