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DOCKET
04-AFC-1
DATE JAN 27 2006
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State of California
Energy Resources Conservation
and Development Commission

In the matter of	)	Docket No. 04-AFC-1
	)	
	)	
San Francisco Electric Reliability Project	)	
Power Plant Licensing Case	)	**Motion to Compel Applicant to respond**
	)	**to data request Number 6. Cumulative Impact analysis**

1-27-06

DATE

On June 24 2005 Intevenor Sarvey filed data request number 6 requesting a cumulative impact analysis which included the Mirant power plant and other reasonably foreseeable projects.

Data Request
1-6. Please provide a Cumulative Air Quality Impact analysis including the impacts from the Illinois Street Bridge project, the Muni Maintenance Center, the pending Potrero Power Plant Project (00-AFC-4) suspended till November 15, 2005 along with other reasonably foreseeable development projects. Please discuss the Environmental Justice implications of these developments on air quality in the project area.

Applicant filed its response to the data request stating that the city believes the Mirant Potrero Power Plant is not a reasonably foreseeable project.

Response: As noted in the City's objections filed on July 5, 2005, the City believes it is inappropriate to evaluate the Mirant Potrero Power Project as the construction and operation of that project is not reasonably foreseeable.
Applicant's responses RE: Sarvey Data Requests, Set 1A. Posted: July 26, 2005

On November 15, 2005 the applicant Mirant filed for a request for suspension of the proceedings to November 15, 2006. The applicant Mirant explained in its request for extension.

"Mirant has made substantial progress in its bankruptcy proceedings and expects to emerge from Chapter 11 in early 2006. Mirant will be in a much better position to evaluate the merits of its suspended projects once it emerges from chapter 11 in 2006 and intends to determine the appropriate course of action with regard to the project by year end 2006."
Applicant's Request for Suspension of Proceedings to November 15, 2006

As Mirant has again petitioned for a suspension of the proceedings for the Potrero Project the project remains reasonably foreseeable unless the Commission denies Mirant's request. Accordingly Intervenor Sarvey files a motion to compel the applicant to respond to data request 6 filed by Intevenor on June 24, 2005 and perform a cumulative impact analysis which includes the Mirant Potrero Project and all other reasonably foreseeable projects. As long as the Mirant application is pending it remains a reasonably foreseeable project that the Commission must evaluate under the California Environmental Quality Act. CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but "cumulatively considerable." (Pub. Resources Code, §21083(b); Cal. Code Regs., tit. 14, §15065.) "'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection

with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Cal. Code Regs., tit. 14, §15065, emphasis added.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must determine whether or not a project will result in a significant cumulative impact. The analysis must include other past, present and probable future projects regardless of whether such projects are within the control of the lead agency. (Cal. Code Regs., tit. 14, §15130, subds. (a)(1) & (b)(1).

Respectfully Submitted

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Robert Sarvey