

II. THE FRAMEWORK REPORT CORRECTLY CONCLUDES THAT NEW GAS-FIRED PLANTS WILL LEAD TO SYSTEM-WIDE REDUCTIONS IN GHG EMISSIONS.

With respect to the addition of new, gas-fired power plants, the Framework Report states at pages 7-8 that, “Net GHG emissions for the integrated electric system *will decline* under the following scenarios . . .” (emphasis in original). The three scenarios specified are:

- 1) New plants constructed to support the increase of renewable generation to meet the 33% renewables target;
- 2) New plants that improve the overall efficiency of the electric system; and
- 3) New plants that serve load growth or capacity requirements more efficiently than the existing fleet.

Mirant has previously contended that the addition of new, gas-fired power plants will result in a reduction of system-wide GHG emissions. See Comments of Mirant California, LLC (December 12, 2008) in Docket No. 08-GHG OII-1. The Framework Report confirms this contention, consistent with input supplied not just by Mirant, but by a wide range of other parties. See, e.g., Comments of Independent Energy Producers Association (November 7, 2008); Comments of Pacific Gas & Electric Company, San Diego Gas & Electric, and Southern California Edison (November 10, 2008); Comments of Downey, Brand, LLP (November 11, 2008) in Docket No. 08-GHG OII-1. Accordingly, Mirant supports the finding in the Framework Report that the construction of new, gas-fired power plants can actually help reduce GHG emissions on a system-wide basis.

Although the Framework Report does not explicitly take this next step, the fact is that in today’s environment, and certainly prior to the implementation of AB 32 regulations on January 1, 2012, new, gas-fired power plants will only be built if they satisfy one of the three scenarios identified in the Framework Report. There is simply no place in today’s wholesale market for the construction of power plants that are less efficient than the existing fleet. New, inefficient plants do not receive contracts from utilities, and without long-term contracts, power plants do not get built.¹ Consistent with statements made by PG&E’s representative at the June 23, 2009 workshop, the Commission can conclude with a high degree of certainty that any new, gas-fired power plant seeking certification prior to the implementation of AB 32 regulations will satisfy at least one, if not all three, of the scenarios identified in the Framework Report. On that basis,

¹ The presence of market mitigations and the absence of a forward capacity market are significant factors in the reliance on utility contracts for new construction of power plants.

the Commission should conclude for purposes of its CEQA analysis that new, gas-fired power plants will lead to a reduction in GHG emissions.

III. WITH RESPECT TO GHG EMISSIONS, NO FURTHER ANALYSIS IS REQUIRED UNDER CEQA.

Under CEQA, a “Significant effect on the environment” is “a substantial, or potentially substantial, **adverse** change in any of the physical conditions within the area affected by the project . . .” CEQA Guidelines § 15382 (emphasis added). Only if a project has a significant effect on the environment must an agency undertake an environmental impact report. CEQA Guidelines § 15064(a). If a project has no significant effect on the environment, then the reviewing agency shall adopt a negative declaration without any further requirements associated with that particular environmental component of the project. *See* CEQA Guidelines § 15070(a).

Under CEQA, the absence of adverse change means that no significant effect exists. Therefore, projects that result in less GHG emissions on a system-wide basis cannot be deemed to have a significant effect on the environment. Based on the Framework Report, the Commission has substantial evidence to conclude that new, gas-fired power plants will result in the emission of fewer GHGs. It follows, then, that new, gas-fired power plants do not result in a significant effect on the environment from a GHG perspective. On that basis, CEQA does not require the Commission to take any further action to address GHG emissions through the siting process.

Mirant further notes that the Framework Report was prepared to “bridge the gap” prior to the effective date of regulations implementing AB 32. Those regulations are required by statute to take effect on January 1, 2012. *See* Health & Safety Code § 38562(a). Once AB 32 regulations are in place, there will be a coordinated, comprehensive program for addressing GHG emissions that will encompass both existing and new power plants. Given the short period prior to the effective date of AB 32 regulations and the slim likelihood that any plant that receives certification today would be on-line prior to January 1, 2012, it is particularly reasonable for the Commission to rely on the analysis in the Framework Report as the basis for concluding under CEQA that no further analysis of GHG emissions is required.²

² The Final Staff Assessment in the Avenal Energy Project application for certification provides a good example of how the Commission should address GHG emissions in the siting process in light of the findings in the Framework Report. *See* Application for Certification of Avenal Energy Project, Docket No. 08-AFC-01, Final Staff Assessment (June 2, 2009), Air Quality Appendix AIR-1.

Based on the Framework Report's finding that GHG emissions will decline with the construction of new, gas-fired power plants, the Commission need not conduct any further consideration of GHG impacts under the CEQA process triggered by an application for certification.

IV. CEQA IS NOT THE APPROPRIATE VEHICLE THROUGH WHICH TO ESTABLISH A HIERARCHY OF PREFERRED RESOURCES.

During the course of the June 23, 2009 workshop, there was some discussion of what role the Commission should play in influencing the construction of power plants that furthers the State's GHG emission reduction goals. To the extent that this discussion angles towards a Commission-based needs assessment, Mirant opposes any outcome that would place the Commission in the position of picking what plants get built based on climate change concerns. Several factors support this conclusion.

CEQA is not an appropriate vehicle through which to implement procurement policy. As discussed during the GHG/Siting workshop, CEQA is primarily an informational tool for assessing the relative merits of a particular project. Because CEQA does not encompass the whole universe of power plants in California, it would constitute an inefficient tool through which to implement a needs-based assessment of the merits of new construction.

Furthermore, placing the Commission in the position of picking winners and losers also will substantially undermine the workings of the wholesale market, effectively replacing the benefits associated with the market with all the negative consequences associated with the command and control elements of governmental regulation. The wholesale market is already influenced by such mandates as the renewable portfolio standard and the mandate to focus on conservation. To the extent additional gas-fired resources are needed to help implement these goals, and the Framework Report leaves little room to disagree with this assumption, the market is the best tool California has for ensuring California's ratepayers receive the best deal possible for acquiring such resources. Replacing market-based outcomes with the Commission's regulatory mandate is very unlikely to result in the most efficient result possible, thereby driving up the cost of what already promises to be a very costly effort to fight global warming.

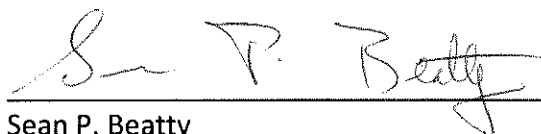
In addition, the long-term procurement process conducted by the California Public Utilities Commission (CPUC) is an adequate vehicle through which to make policy determinations regarding the appropriate resource mix to meet longer term GHG goals. For example, in D.07-12-052 (December 20, 2007), the CPUC's most recent long-term procurement

decision, the CPUC evaluated each utility's proposed procurement levels in light of climate change goals and specifically stated that, "... the utilities will be required to reflect in the design of their requests for offers (RFO) compliance with the preferred resource loading order and with GHG reductions goals and demonstrate how each application for fossil generation comports with these goals." See D.07-12-052 (December 20, 2007), mimeo, pp. 3-4. The Commission can and does participate in the CPUC's long-term procurement process; to the extent the Commission has concerns regarding the nature of resources being procured, it can voice those concerns in the long-term procurement docket. Nonetheless, as Dr. Ryan explained at the June 23, 2009 workshop, the procurement process works best when the load serving entities have a pool of projects from which to choose; putting the Commission in the position of picking the projects that receive a green light will circumvent the market and the efficient outcomes the market is intended to generate.

V. CONCLUSION.

Based on the foregoing, the Commission should rely on the findings in the Framework Report to determine that site-specific analysis of GHG emissions in the siting process is not necessary.

Dated this 30th day of June, 2009, at Pittsburg, CA.

A handwritten signature in black ink, appearing to read "Sean P. Beatty", written over a horizontal line.

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