

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

Application for Certification for the
Mirant Willow Pass Generating Station
Project

Docket No. 08-AFC-6

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DATE DEC 15 2008

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**RESPONSE OF MIRANT WILLOW PASS, LLC
TO STAFF'S ISSUES IDENTIFICATION REPORT**

December 15, 2008

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In accordance with the Notice of Informational Hearing and Public Site Visit dated November 12, 2008, Mirant Willow Pass, LLC ("Mirant Willow Pass") submits this response to the Issues Identification Report ("Report") prepared by staff of the California Energy Commission ("Commission"). Mirant Willow Pass has applied for certification for the Willow Pass Generating Station ("WPGS"), a 550 megawatt, natural gas-fired electricity generating facility to be located at a site within the existing site of the Pittsburg Power Plant ("PPP") in Pittsburg, California. The Report provides a brief description of the WPGS, a discussion of potentially significant issues that staff has identified to date, and staff's proposed 12-month schedule for key events in this proceeding.

Mirant Willow Pass appreciates staff's work and diligence in reviewing the WPGS Application for Certification ("AFC") and preparing the Report and data requests issued on November 12, 2008 ("Data Requests"). Below Mirant Willow Pass provides a few corrections to the Report's project description, followed by brief comments on staff's summary of potentially significant issues, which were identified in the areas of Biological Resources, Soil and Water Resources, and Waste Management. Mirant Willow Pass has addressed these issues in greater detail in responses to the Data Requests that are being submitted today, and is prepared to discuss them at the workshop on December 19, 2008. Mirant Willow Pass is confident that all of the issues identified by staff can be resolved through the data request, data response and workshop process, and that certification of the WPGS can proceed according to the schedule outlined in the Report.

1. Corrections to the Report's Project Description

The Report states that the northern 2.5 acre portion of the project site is bordered by Suisun Bay, but incorrectly states that this area "would be remediated and used to preserve riparian habitat [sic]." No remediation or land disturbance is proposed or required for this area. The boundary for the WPGS site extends to Suisun Bay to ensure that the new project site will continue to hold whatever riparian water rights are currently associated with the existing PPP site. This was done merely to preserve the legal status quo, as reflected in the AFC's statement that the project site extends to Suisun Bay to

preserve riparian water rights. As the AFC explained, the WPGS will not draw water from or discharge water to Suisun Bay.

The Report also states that “the project would use dry cooling technology and recycled water supplied by the Delta Diablo Sanitation District [“DDSD”] for other cooling purposes and for landscape irrigation.” It is correct that the project will incorporate dry cooling technology. The project will use recycled water for process uses, but no water (recycled or otherwise) will be used for plant cooling. Mirant Willow Pass also has not proposed landscaping or the use of recycled water for landscape irrigation.

2. Comments on Identified Issues

Biological Resources

The Report notes that staff needs additional information regarding the status of biological permits that could be required for installation of the recycled water supply and wastewater discharge pipelines that will connect the WPGS to DDSD’s wastewater facilities. The AFC identified a route for these pipelines (both pipelines would be installed together in the same route) that would cross a creek and drainage channels, and potentially require a federal Clean Water Act Section 404 permit from US Army Corps of Engineers (“USACE”), a Streambed Alteration Agreement from California Department of Fish and Game (“CDFG”), and a Section 401 Water Quality Certification from the Regional Water Quality Control Board (“RWQCB”). The Report notes that staff needs additional information regarding the status of these permits to complete its analysis.

As Mirant Willow Pass has explained in its responses to the Data Requests, the pipeline route proposed in the AFC would cross the creek or drainage channels in five locations. The pipelines can be installed at four of these crossings using a drilling technique that avoids direct impacts and therefore does not require a Section 404 permit or a Section 401 Water Quality Certification. Mirant Willow Pass is consulting with DDSD regarding a possible alternate alignment to avoid the fifth creek crossing altogether. If this alternate route is feasible, then a Section 404 permit and Section 401 Water Quality Certification may not be required for any of the crossings. Mirant Willow Pass also explained in its responses to the Data Requests that a General Permit (for small projects not regulated by the USACE) could still be required by the RWQCB, and committed to continue its correspondence with RWQCB to determine the need for a General Permit and to obtain one if necessary. Mirant Willow Pass also explained that it currently expects to apply for a Streambed Alteration Agreement for creek crossings to comply with CDFG requirements, but is still seeking confirmation from CDFG on this matter.

Mirant Willow Pass will confirm the extent to which each of these permits will be needed once the route for the pipelines is finalized, and will pursue and obtain all necessary permits in time for construction to commence. Mirant Willow Pass will work with staff and relevant federal and state agencies to evaluate permit requirements, initiate

the permit application process as needed, and obtain agency input to ensure that staff has all information necessary to evaluate the project. Mirant Willow Pass is confident that these issues can be addressed and resolved on a timely basis.

Soil and Water Resources

The Report states that staff does not have sufficient information to determine if there is adequate recycled water supply or operating flexibility built into the WPGS design to ensure that recycled water will be available in sufficient quantities to support plant operations. Mirant Willow Pass has addressed this in its responses to the Data Requests, explaining that DDS D will have sufficient recycled water to serve the WPGS needs, and describing project storage capabilities and measures that could be taken in the event of unexpected shortages. Mirant Willow Pass does not expect this to be a significant issue.

Staff also expresses concern that DDS D could be required to obtain a new or revised discharge permit “for the increased effluent that would be discharged to New York Slough.” As explained in Mirant Willow Pass’s responses to the Data Requests, the WPGS will not result in increased discharges via DDS D’s outfall. Due to water losses inherent in the power generation process, approximately 40 percent of the recycled water supplied to WPGS will be returned to DDS D. DDS D’s discharge to New York Slough thus will be reduced (not increased) due to use of recycled water at WPGS. In addition, the quality of the discharge will comply with the requirements set forth in DDS D’s NPDES discharge permit. No new or revised NPDES permit will be required.

Finally, the Report asks for expected time frames or schedules for revision or amendment to the 100-year floodplain map to remove the WPGS site. In its responses to the Data Requests, Mirant Willow Pass described the Federal Emergency Management Agency process for revising the floodplain map and explained that the application must include as-built conditions. This process will occur after construction is complete and should not affect the certification process.

Waste Management

The Report notes that the Phase I Environmental Site Assessment (“ESA”) for the WPGS site identified nine Recognized Environmental Conditions (“RECs”). The Report also notes that a Phase II ESA was conducted in 1998, but states that staff needs the results of Phase II ESAs for all RECs “in order to properly assess the impacts on worker and public health posed by hazardous wastes present on this site and all linear facilities.” In its responses to the Data Requests, Mirant Willow Pass has explained that the Phase II ESA provides extensive data regarding soils and groundwater at the project site. The Phase II ESA characterizes six of the ten RECs identified in the most recent Phase I ESA. For the other four RECs, sufficient information exists to address the need for additional investigation prior to construction or as part of the demolition process, and to prepare plans for protecting workers and the environment. In addition, three of these four RECs

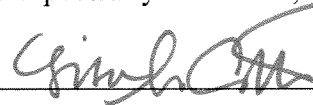
are under structures in locations that make it impracticable to conduct additional investigation prior to demolition. Mirant Willow Pass expects to work with staff to develop plans that address staff's concerns in this area and does not expect this to be a significant issue.

3. Conclusion

As noted above, Mirant Willow Pass is confident that all issues identified in the Report can be addressed and resolved through the data request, data response and issues resolution process. Mirant Willow Pass looks forward to working with staff and the Committee to proceed to a final decision in the time frame outlined in the Report.

December 15, 2008

Respectfully submitted,



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PROOF OF SERVICE

I, Lisa A. Cottle, declare that on December 15, 2008; I served the attached *Response of Mirant Willow Pass, LLC to Staff's Issues Identification Report* via electronic mail and first class mail postage prepaid to all parties on the attached service list.

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



Lisa A. Cottle

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