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May 18, 2009

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| DOCKET | |
| 08-AFC-06 | |
| DATE | <u>May 18 2009</u> |
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BY EMAIL AND U.S. MAIL

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Re: Staff Data Requests Set 2 (numbered 58-75) for the Willow Pass Generating Station (Docket No. 08-AFC-6)

Dear Ms. Miller, Presiding Member Douglas, and Associate Member Boyd:

Mirant Willow Pass, LLC ("Mirant Willow Pass") submits this notice pursuant to Section 1716(f) of the regulations of the California Energy Commission ("Commission")¹ regarding Staff Data Requests Set 2, numbered 58-75 ("Data Requests"). Data Requests 58-61 (Biological Resources) ask for additional computer modeling regarding nitrogen deposition resulting from emissions at the proposed Willow Pass Generating Station ("WPGS"). Data Requests 62-63 (Socioeconomics) seek clarification regarding sales and use taxes applicable to the project. Data Requests 64-65 (Soil and Water Resources) request a draft Drainage, Erosion and Sediment Control Plan and additional information regarding flood control measures for the

¹ Title 20 of the California Code of Regulations § 1716(f).

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WPGS site. Data Requests 66-72 (Transmission System Engineering) seek additional data and analyses regarding the results of the Updated System Impact Study (“SIS”) submitted for the WPGS in February 2009, as well as hard copy printouts of information previously provided in electronic format. Finally, Data Requests 73-75 (Waste Management) ask for submission of a workplan, soil vapor sampling, a revised Human Health Risk Assessment (“HHRA”), and an Ecological Risk Screening Assessment (“ERSA”).

The Data Requests were issued on April 28, 2009, which is after the 180-day deadline for discovery specified in Section 1716(e) of the Commission’s regulations. Staff’s cover letter states that Staff does not need the information requested in the Data Requests to prepare the Preliminary Staff Assessment (“PSA”). Mirant Willow Pass therefore understands that issuance of the Data Requests will not delay Staff’s release of the PSA. The PSA previously was due to be released this month, but Staff has stated that it will present a recommendation for a revised schedule in its next status report.

Mirant Willow Pass is working diligently to prepare responses to the Data Requests with the goal of submitting as many responses as possible by May 28, 2009, the 30-day deadline provided for under Section 1716(f). Mirant Willow Pass anticipates, however, that more time will be needed to complete responses to Data Requests 58-61, 70 and 73-75. For Data Requests 58-61, additional time is needed to complete the modeling related to nitrogen deposition. This work is in progress and should be complete no later than the middle of June. For Data Request 70, which requests specific information regarding a transmission line owned by Pacific Gas and Electric Company (“PG&E”), additional time is needed to obtain the requisite information from PG&E. Mirant Willow Pass’s third party transmission consultant has contacted PG&E to make the request and the work is in process by PG&E. Assuming that PG&E provides the necessary information by the end of May, Mirant Willow Pass also should be able to submit its response to Data Request 70 by the middle of June. For Data Requests 73-75, additional time is needed to complete the requested sampling and to prepare the revised HHRA and the ERSA. Due to the scope and complexity of the task, it is not possible to submit responses by the 30-day deadline. Based on current projections, Mirant Willow Pass expects to submit the sampling workplan by the beginning of June. Soil gas sampling as well as data analyses and verification will then be conducted in June and July. The HHRA and ERSA will be finalized and submitted as soon as possible following evaluation of the results.

Data Requests 58-61, 70 and 73-75 are reproduced below, followed by a more detailed explanation of the reasons why additional time is needed to respond.

Data Requests 58-61 (Biological Resources)

Data Requests 58-61 request the following:

58. Please quantify the existing baseline total nitrogen deposition rate in the vicinity of WPGS (encompassing the areas listed in DR #2) in kilograms

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per hectare per year (kg/ha/yr). Provide the complete citation for references used in determining this number.

59. Please provide an analysis of impacts due to total nitrogen deposition from operation of the WPGS. The analysis should specify the amount of total nitrogen deposition in kg/ha/yr at the Sardis Unit and Stamms Unit of the Antioch Dunes National Wildlife Refuge, the freshwater/brackish marsh habitat north of the project area along the San Joaquin River shoreline, and all other "Areas of Concern" (A through O) as illustrated in AFC Figure 7.2-1.
60. Please provide an isopleth graphic over USGS 7.5-minute maps (or equally detailed map) of the direct nitrogen deposition rates caused by the project that graphically depicts the results.
61. Please update the cumulative impact analysis (Tables 57-1 and 57-2) in Responses to Data Request Addendum Set #1A – Data Request #57 with nitrogen deposition values in kg/ha/yr. Provide an isopleth graphic over USGS 7.5-minute maps (or equally detailed map) of the direct nitrogen deposition values in the cumulative analysis.

Preparing responses to Data Requests 58-61 involves additional computer modeling and the preparation of isopleth graphs. This work is currently in progress but will not be complete by the 30-day deadline. Based on current projections, Mirant Willow Pass anticipates submitting its responses to Data Requests 58-61 by the middle of June.

Data Request 70 (Transmission System Engineering)

Data Request 70 references the SIS and requests the following:

70. For the new overload identified on the Dumberton-Newark 115 kV line for category B (L-1 & G-1) contingency, explain the conclusion, "This is an existing problem and is unrelated to the addition of the WPGS project". Provide any identified pre-project overload on this line exacerbated for the addition of the WPGS. Otherwise provide a mitigation plan for the overload.

Data Request 70 requests specific information regarding an existing transmission line owned by PG&E. Mirant Willow Pass's third party transmission consultant has contacted PG&E to request this information and PG&E has verbally agreed to provide it. Once PG&E provides the necessary information, the consultant will need some time to assemble it, analyze it, and prepare a response. Assuming that PG&E provides the necessary information by the end of May, Mirant Willow Pass should be able to submit its response to Data Request 70 by the middle

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of June. This date could be extended if PG&E does not provide the information on time and Mirant Willow Pass will inform Staff accordingly.

Data Requests 73-75 (Waste Management)

Data Requests 73-75 request the following:

73. Please provide the results of soil vapor sampling at the site. Follow all DTSC guidance when collecting and analyzing samples and submit a workplan to the CEC prior to commencing sampling.
74. Please provide a revised HRA that includes the following:
 - A. all COCs found on the WPGS above the Method Detection Limit unless present in <5% of the WPGS site samples analyzed;
 - B. use the UCL as suggested by the U.S. EPA ProUCL program as the exposure point concentration for each COC;
 - C. all appropriate exposure pathways;
 - D. only soil, groundwater, and soil gas data obtained from locations on the WPGS site itself; and
 - E. risks and hazards posed to the following receptors:
 - the trenching and excavation worker during construction,
 - other construction workers,
 - the off-site public during construction,
 - the on-site worker during operations,
 - the off-site worker during operations, and
 - the off-site public during operations.
75. Please provide an Ecological Risk Screening Assessment using site-specific groundwater concentrations compared to SFBRWQCB ESLs (May 2008 Table F-1b. Groundwater Screening Levels: groundwater is not a current or potential drinking water resource).

Preparing responses to Data Requests 73-75 requires the revision of the HHRA that was prepared for the site in 1998 and the preparation of an ERSA. To prepare the revised HHRA, Mirant Willow Pass must collect soil gas samples at the site, which requires preparation of a workplan that Staff has asked to review prior to the commencement of sampling. Additionally, an analysis will be performed to identify whether additional soil and groundwater sampling will be necessary to address data needs for the HHRA and ERSA. This work is

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currently in progress, but due to the scope and complexity of the task and the request for Staff review of the sampling workplan, it is not possible to submit responses by the 30-day deadline. Based on current projections, Mirant Willow Pass expects to submit a sampling workplan for Staff review by the beginning of June. Assuming that Staff completes review of the workplan within a week after receiving it, Mirant Willow Pass expects to be able to conduct soil gas sampling, as well as data analyses and verification, in June and July. The HHRA and ERSA will be finalized and submitted as soon as possible following evaluation of the results.

* * * *

We appreciate your consideration of this response. Mirant Willow Pass looks forward to continuing to work with Staff and the Committee to provide the information needed to complete the Final Staff Assessment and achieve certification of the WPGS.

Respectfully submitted,



Lisa A. Cottle
Winston & Strawn LLP

Attorneys for Mirant Willow Pass, LLC

Cc: Docket Office (08-AFC-6)
Proof of Service List

**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

DECLARATION OF SERVICE

I, Lisa A. Cottle, declare that on May 18, 2009, I served and filed copies of the attached *Notice Regarding Staff Data Requests Set 2 (numbered 58-75) for the Willow Pass Generating Station (Docket No. 08-AFC-6)*. 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/willowpass/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 above to those addresses **NOT** marked as "email preferred."

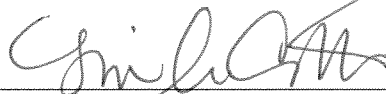
AND

- 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-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
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
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **WILLOW PASS**
GENERATING STATION

Docket No. 08-AFC-6

PROOF OF SERVICE
(Revised 4/14/2009)

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