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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the Matter of:	Docket No. 09-IEP-1A
Preparation of the 2009 Integrated Energy Policy Report (2009 IEPR).	Draft 2009 IEPR

**MIRANT’S COMMENTS ON
DRAFT 2009 INTEGRATED ENERGY POLICY REPORT**

I. INTRODUCTION

Pursuant to notice issued by the Commission, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (collectively, “Mirant”) hereby provide the following comments on the draft 2009 Integrated Energy Policy Report (“Draft IEPR”). First and foremost, Mirant compliments Commission staff and the assigned Commissioners who marshaled this proceeding, creating an extensive record and delivering a thorough document right on schedule. In an energy environment that becomes increasingly complicated by the day, the IEPR is a valuable process for taking a step back and looking at the policies in place as well as the potential new policies that can help California achieve its energy goals. The Draft IEPR delivers on this promise.

With that said, Mirant is particularly concerned about the Draft IEPR’s recommendation to create a “needs conformance” role for the Commission. The needs conformance proposal is an issue that did not receive direct attention through the course of IEPR workshops, yet constitutes a significant policy recommendation in the Draft IEPR. However, the needs conformance proposal contradicts California’s commitment to a wholesale market as the best tool for meeting California’s energy resource needs. On this basis, the needs conformance proposal should be deleted from the final IEPR. At a minimum, the needs conformance proposal should be modified to focus on whether existing agency authority, instead of new legislative authority, is being used appropriately to encourage procurement decisions

consistent with California's goals. Such a review would show that policies adopted by the California Public Utilities Commission (CPUC), the California Independent System Operator (CAISO), and this Commission are pushing the market in the right direction.

II. A NEW NEEDS CONFORMANCE AUTHORITY IS NOT REQUIRED.

Beginning at Page 207 of the Draft IEPR, there is a discussion of "Creating Need Assessment and Need Conformance." At Page 224 of the Draft IEPR, the document recommends that, "The Energy Commission should seek legislative authority for (1) an explicit need conformance process for the power plants it licenses directly . . ." As alluded to above, the idea of a new needs conformance authority was not directly addressed in a workshop dedicated to this topic. However, during the course of the June 23, 2009 IEPR workshop on greenhouse gas (GHG) siting issues, 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. As it stated in comments filed after the GHG siting workshop, Mirant opposes any outcome that would place the Commission in the position of picking what plants get built through a need conformance analysis.

Placing the Commission in the position of picking winners and losers 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 existing studies leave little room to disagree with this assumption,¹ 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 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

¹ See, e.g., *33% RPS Implementation Analysis Preliminary Results*, California Public Utilities Commission (June 2009), Table 9, p. 30.

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. Nancy Ryan, the CPUC’s Deputy Executive Director for Policy and External Relations, 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. Considered in this light, the Commission’s proper role in the siting process is to ensure that each individual project satisfies environmental requirements and not whether a particular project should be built. 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.

III. CONCLUSION.

Based on these comments, Mirant recommends that the Commission update the Draft IEPR to delete the proposal to seek legislative authority to create a need conformance requirement in the siting process. Instead, the IEPR should commit to working with other jurisdictional agencies to further California’s energy goals using existing authority.

Dated this 28th day of October, 2009, at Pittsburg, CA.

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