



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
 COMMISSION OF THE STATE OF CALIFORNIA
 1516 NINTH STREET, SACRAMENTO, CA 95814
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DOCKET	
08-AFC-3	
DATE	AUG 27 2010
RECD.	AUG 27 2010

**Application for Certification
 for the *MIRANT MARSH LANDING
 GENERATING STATION PROJECT***

Docket No. 08-AFC-3

ERRATA TO THE PRESIDING MEMBER’S PROPOSED DECISION

After reviewing the comments submitted by the parties on or before August 23, 2010, we incorporate the following changes to the July 23, 2010 Presiding Member’s Proposed Decision (PMPD):

INTRODUCTION

Page 2, in the first full paragraph, revise the third sentence as follows:

Based on its analysis, Staff concluded that, with the mitigation measures included in Staff’s proposed Conditions of Certification, the Marsh Landing Project will comply with all applicable LORS and will not result in any significant direct, indirect, or cumulative adverse impacts to the environmental or in any of the technical areas considered in the Energy Commission’s licensing process.

Page 3, add new final paragraph in this section as follows:

A day or two before we adopted this Decision we received letters commenting on the PMPD from two sister agencies and others. To the extent those comments present facts not previously contained in the record, they are improper. (See Cal. Code Regs., tit. 20, §§ 1751, subd. (a), 1754, subd. (b).) Nevertheless, in order to provide the fullest possible explanation of our determinations to the public, some of the discussion here deals with those matters.

PROJECT PURPOSE AND DESCRIPTION

Page 4, after the heading “Project Overview,” in the second paragraph, revise the last sentence as follows:

~~{The California Public Utilities Commission (CPUC) approved/is expected to approve the PPA in on July 29, 2010 in CPUC Decision 10-07-045.}~~

Page 5, after the heading Project Location, in the third paragraph, revise the second sentence as follows:

Mirant Delta is currently cleaning and removing the tanks and ~~this work~~ will complete this work before conveying the project site to Mirant Marsh Landing.

Page 6, add a new fourth paragraph under the heading Project Construction as follows:

The Staff analyzed the worst-case impacts of the site remediation that could be required to prepare the site for the MLGS. That analysis assessed the potential environmental impacts of removing and disposing of up to 11,000 cubic yards of contaminated soil using standard, feasible removal and protective techniques such as those required by the law implemented by DTSC (see Health & Saf. Code, ch. 6.5). Based on that analysis, we conclude that site remediation of up to that magnitude would have no significant impacts in the areas of air emissions (see Revised Staff Assessment, Appendix A to this Decision (“RSA”) pp. 4.1 – 15-16), greenhouse gases (see RSA p. 4.1 – 73), traffic & transportation (see RSA p. 4.10 – 4), waste management (see RSA pp. 4.13 – 5, 17-18, 26), or worker safety (see RSA pp. 4.14 – 14-15). Those are the only environmental resources that could suffer significant impacts as a result of the site remediation necessary for the MLGS. In fact, at the hearing at which we adopted this Decision it was stated, without contradiction, that the actual site remediation would likely require the removal of only 250 – 300 cubic yards of soil, obviously a much lower amount than the removal of 11,000 cubic yards that would still have no adverse impacts through the use of typical remediation practices.

Page 8, after the heading Water Supply, in the first paragraph, revise the first sentence as follows:

The MLGS will use a maximum of 50 acre-feet per year (AFY) of water ~~for~~ to serve process water requirements.

Page 11, add new Finding of Fact 7 as follows and renumber Finding 7 as Finding 8:

7. Site Remediation. The MLGS requires site remediation, which will be carried out under the direction of DTSC. Site remediation involving the removal of up to 11,000 cubic yards of contaminated soil, and using standard remediation techniques under DTSC’s direction, would not cause any significant impacts. Site remediation for MLGS is likely to require removal of only 250 – 300 cubic yards of soil, and will therefore cause no significant adverse environmental impacts.

PROJECT ALTERNATIVES

Page 15, in Finding of Fact 7, revise the third sentence as follows:

Staff concluded that the no project alternative is not superior to the Marsh Landing Project because: (1) under the no project scenario, the region would not benefit from the local and efficient source of 760 MW of new peaking capacity that the MLGS will provide; (2) the local community would not benefit from the jobs that will be created in support of project construction and operation; and (3) the no project scenario could lead to increased operation of existing plants (and reliance on older technology) or development of new plants on undeveloped (greenfield) sites.

TRANSMISSION SYSTEM ENGINEERING

Page 27, revise the first full paragraph as follows:

The CAISO ~~is preparing~~ prepared a Phase II Interconnection Study for the Transition Cluster projects that ~~is scheduled for~~ was released in on July 30, 2010 and docketed in this proceeding on August 10, 2010. The Phase II Interconnection Study does not identify upgrades that are required specifically for the MLGS. The Phase II Interconnection Study instead determines that the addition of all six Transition Cluster projects collectively would require upgrades to the transmission system that are consistent with expectations discussed in the Revised Staff Assessment and during the evidentiary hearing. As confirmed at the hearing, the need for the upgrades identified in the Phase II Interconnection Study remains speculative until all Transition Cluster LGIAs are executed. (7/1/10 RT 28-29.) Once Now that the Phase II Interconnection Study is complete, MLGS will progress through the LGIP and will not be allowed to interconnect with the CAISO transmission system without an executed Large Generator Interconnection Agreement (LGIA). In its capacity as the operator of the transmission system, the CAISO will not approve the MLGS interconnection or execute the LGIA until it has determined that the MLGS will comply with all applicable LORS in the area of transmission system engineering and that all potential impacts to the transmission system are adequately mitigated such that interconnection of the MLGS complies with all applicable reliability standards. The LGIA Process and the requirement for an executed LGIA thus ensures that interconnection of the MLGS will comply with all applicable reliability standards and transmission system engineering LORS.

Page 28, revise Finding of Fact 3 as follows:

3. Phase II Interconnection Study. The CAISO ~~is completing~~ has completed its Phase II interconnection study (Phase II Study) for the Transition Cluster. The Phase II Study ~~will~~ analyzes the

potential reliability impacts associated with the remaining 6 projects in the Transition Cluster and **will assesses** a total of 1,159 MW of new capacity (rather than 4,707 MW), including 100 MW of new capacity for the MLGS (rather than 1,087 MW). (Exhibit 300, pp. 5.5- 10; **Phase II Study, pp. 1-2.**) Staff concluded that the Phase II Study will provide a much better forecast of the reliability impacts of the MLGS and the other Transition Cluster projects than the Phase I Study. (*Id.*, p. 5.5-9.) Staff **expects expected** that the reliability impacts of 1,159 MW **will would** be significantly smaller than the impacts of the 4,707 MW that were studied in the Phase I Study. (*Id.*, p. 5.5-10.) **The Phase II Study results are consistent with the Revised Staff Assessment and testimony provided at the evidentiary hearing.** Staff also expects that the MLGS will conform to reliability LORS after completion of the Phase II Study and execution of the LGIA. (*Id.*) We find that the MLGS will conform to all applicable transmission and reliability LORS upon completion of the LGIP.

GREENHOUSE GAS EMISSIONS

Page 36, revise the last sentence that carries over to page 37 as follows:

Staff found that the addition of the MLGS to the electricity system is likely to displace other less efficient, slower starting, and less flexible plants, and will facilitate the integration of renewable resources, all of which will contribute to a ~~reduction in a~~ net reduction in total GHG emissions.

Page 38, in Finding of Fact 6, revise the second sentence as follows:

Staff noted that the MLGS will have a net **worse worst** case heat rate of approximately 11,124 Btu/kWh.

Page 40, in Finding of Fact 10, revise the first sentence as follows:

Staff concluded that the MLGS is likely **to** displace capacity and energy currently provided by aging power plants that utilize once-through cooling technology.

AIR QUALITY

Page 44, in the first paragraph, revise the second to last sentence as follows:

Staff takes the position that all such emissions (in this case, NO_x, VOC, PM₁₀, PM_{2.5}, SO_x, and NH₃) must be mitigated.

Page 44, in the first full paragraph, revise the second and third sentences as follows:

The BAAQMD released its FDOC on [June 25, 2010] confirming that the Marsh Landing Project will comply with all BAAQMD rules and regulations.

(Exhibit 301). [Staff's expert witness, who is the author of the Air Quality section of the Revised Staff Assessment, confirmed that all permit conditions in the FDOC are reflected in the Conditions of Certification specified in the Revised Staff Assessment.

Page 44, insert the following paragraphs immediately before the paragraph beginning “Based on the Revised Staff Assessment”:

Our air quality analysis properly determined that a PSD permit was not required. Despite assertions by commenters that the Gateway facility and/or the CCPP are under “common control” with the MLGS, both the BAAQMD and Staff concluded that the MLGS is a separate facility from both Gateway and the CCPP for purposes of PSD permitting. The Gateway and CCPP facilities were appropriately considered in the cumulative Air Quality analysis.

Our analysis did not consider the CCPP and the MLGS as a single source of air contaminants, which the BAAQMD did not determine it to be.

Page 48, in Finding of Fact 8, revise the fourth sentence as follows:

Staff concluded that the Marsh Landing Project will comply with BAAQMD's NO_x and VOC offset requirements and will provide overall total ERCs for ~~the~~ its ozone precursor emissions at an offset ratio of at least one-to-one.

Page 50, in Finding of Fact 12, revise the first sentence as follows:

[On June 25, 2010, the BAAQMD issued an FDOC finding that the Marsh Landing Project will comply with all applicable BAAQMD rules for operation.]

Page 50, in Finding of Fact 11, insert the following material on line 9, between “future projects” and “Staff reviewed”:

The cumulative impacts analysis included the nearby proposed Oakley powerplant. (See RSA pp. 4.1 – 35, 4.2 – 18, 4.3 – 15-16, 4.6 – 14, 4.8 – 8-9, 4.13 – 18, 4.14 – 13.)

PUBLIC HEALTH

Page 54, in Finding of Fact 6, revise the last sentence that carries over to page 55 as follows:

Staff concluded that these health risk values are significantly below levels of significance as established ed by Staff and the BAAQMD.

WASTE MANAGEMENT

Page 68, in Finding of Fact 7, revise the first sentence as follows:

Staff also reviewed the capacity available at off-site treatment and disposal sites to determine whether the Marsh Landing Project's waste will have a significant impact on the volume of waste a facility is permitted to accept.

BIOLOGICAL RESOURCES

Page 71, second full paragraph, revise as follows:

Mirant Marsh Landing nevertheless has agreed voluntarily to accept a Condition of Certification that requires an annual payment in support of weed mitigation efforts at the Antioch Dunes NWR. This is reflected in Staff's proposed Condition of Certification **BIO 8**. Staff confirmed that implementation of this Condition of Certification will mitigate any potential adverse impacts to biological resources at the Antioch Dunes NWR to levels that are less than significant. **In response to a PMPD comment from the United States Fish and Wildlife Service (USFWS) alleging the annual payment required by Condition BIO-8 was inadequate mitigation, Mirant Marsh Landing agreed to add \$20,000.00 to the \$2,693 annual payment recommended by Staff as its proportionate share of the costs of weed mitigation. The condition as adopted below, contains additional requirements that the moneys be specifically directed to the removal of noxious weeds and that a report on the use of the funds be provided to Staff.**

Page 71, replace the first sentence of the third paragraph (beginning with "Given the parties' agreement"), and the first word ("We") of the second sentence of that paragraph, with the following:

The applicant's voluntary acceptance of the mitigation described in Condition BIO-8 means that the project now includes those actions. The project as thus constituted will, therefore, have no significant adverse impacts on biological resources. Moreover, the project would not (either individually or cumulatively) cause an impermissible "take" of a protected species under section 9 of the federal Endangered Species Act ("ESA"). This is because the definition of "harm" under the regulations implementing the ESA is not met here. (We also note that section 7 of the ESA does not apply here, because that section applies only to activities directly carried out by federal agencies, but not to activities simply approved by state agencies, as we approve MLGS here.) In sum, we

Page 75, in Finding of Fact 14, replace the last two sentences with the following:

The project as approved here, which includes the applicant's acceptance of the actions described in Condition BIO-8, will cause no significant adverse impacts on biological resources, and will not cause a "take" of endangered species under the federal ESA, at the Antioch Dunes NWR.

Page 76, in Finding of Fact 15, revise the entire finding as follows:

Cumulative Impacts. Staff analyzed potential cumulative impacts to biological resources. Staff's cumulative impacts analysis focuses on other sources of emissions that could contribute to nitrogen deposition at Antioch Dunes NWR. (Exhibit 300, pp. 4.2-17 – 4.2-18.) The annual payment Mirant Marsh Landing has agreed to make pursuant to Condition of Certification BIO-8 **(\$2,693.00, adjusted for inflation, plus an additional \$20,000.00 annually)** will **more than** adequately mitigate impacts resulting from MLGS nitrogen deposition at the Antioch Dunes NWR, thereby eliminating any contribution to cumulatively considerable effects. (Id.) We find that any potential adverse cumulative impacts from the Marsh Landing Project will be mitigated to levels that are less than significant.

Page, 76, Conclusion of Law 4, revise as follows:

4. We adopt the Conditions of Certification that are specified in the Biological Resources section of the Revised Staff Assessment and identified as BIO 1 through BIO **7 and BIO 8 modified as follows:**

BIO-8 The project owner shall provide an annual payment to Friends of San Pablo Bay to assist in noxious weed management at the Antioch Dunes National Wildlife Refuge. The first annual payment shall be at least equal to \$2,693.00.

Each subsequent annual payment **as calculated above** shall be adjusted for inflation in accordance with the Employment Cost Index – West or its successor, as reported by the U.S. Department of Labor's Bureau of Labor Statistics. Payment shall be made annually for the duration of project operation.

The project owner has voluntarily offered to contribute additional annual funding for weed management efforts at the Antioch Dunes National Wildlife Refuge in an amount equal to \$20,000 per year and has agreed to include that additional payment as a requirement in this condition of certification. The additional annual payment shall be made at the same time as the annual payment specified above and shall be made for the duration of project operation, but shall not be adjusted for inflation.

Verification: No later than 30 days following the start of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that the first-annual payment was made to the Friends of San Pablo Bay in accordance with this condition of certification. **The project owner shall provide evidence that it has specified that its annual payment to Friends of San Pablo Bay can be used only to assist in noxious weed management at the Antioch Dunes National Wildlife Refuge.**

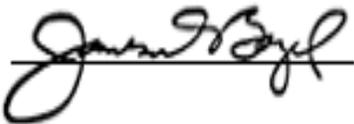
Thereafter, within 30 days after each anniversary date of the commencement of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that payment has been made to the Friends of San Pablo Bay in accordance with this condition of certification. This verification shall be provided annually for the operating life of the project. **The project owner also shall request an annual report from the Friends of San Pablo Bay documenting how each annual payment required hereunder was used and applied to assist in noxious weed management at the Antioch Dunes National Wildlife Refuge. The project owner shall provide copies of such reports to the CPM within thirty (30) days after receipt.**

SOIL AND WATER RESOURCES

Page 79, in Finding of Fact 4, revise the second to last sentence as follows:

We find that all potential adverse impacts to soil and water resources from contamination at the MLGS site will be adequately mitigated through the Waste Management Conditions of ~~the~~ Certification that are adopted in this Decision.

Dated: August 25, 2010, at Sacramento, California.



JAMES D. BOYD
Vice Chair and Presiding Member
Marsh Landing AFC Committee



KAREN DOUGLAS
Chairman and Associate Member
Marsh Landing AFC Committee



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**APPLICATION FOR CERTIFICATION
FOR THE MARSH LANDING
GENERATING STATION**

Docket No. 08-AFC-3

**PROOF OF SERVICE
(Revised 7/14/2010)**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on August 27, 2010, I served and filed copies of the attached Errata to the Presiding Member's Proposed Decision, dated August 25, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/marshlanding/index.html>].

The documents have 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:

(Check all that Apply)

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by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

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depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-3

1516 Ninth Street, MS-4

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by: _____

Maggie Read

Hearing Adviser's Office