

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote
Policy and Program Coordination and
Integration in Electric Utility Resource
Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**COMMENTS OF MIRANT CALIFORNIA, LLC, MIRANT DELTA, LLC AND
MIRANT POTRERO, LLC ON ASSIGNED COMMISSIONER'S RULING
REGARDING NEXT STEPS IN PROCUREMENT PROCEEDING**

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I. Introduction

Pursuant to the December 2, 2005 Assigned Commissioner's Ruling Regarding Next Steps in Procurement Proceeding ("ACR"), Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC ("Mirant") submit these comments on the procurement rulemaking proceeding to be initiated by the California Public Utilities Commission ("Commission") in 2006 ("2006 Procurement Proceeding").

The ACR invites parties to comment on (1) the goals of the 2006 Procurement Proceeding, (2) Commission Staff's draft work plan for the 2006 Procurement Proceeding, which is attached to the ACR as Appendix A ("Work Plan"), and (3) the transmission planning collaboration document attached to the ACR as Appendix B. Mirant's comments focus on items (1) and (2) above. In preparing these comments, Mirant has attempted to be mindful of the ACR's request that parties not argue the merits of issues. These comments focus instead on identifying and prioritizing the issues to be addressed, and on process and timing.

II. Comments

A. Comments on Goals for the 2006 Procurement Proceeding

The ACR proposes four goals for the 2006 Procurement Proceeding, namely:

1. A review of the need for new generation in California, including consideration of temporary and/or permanent mechanisms (e.g., cost allocation and benefit sharing, or some other alternative) which can ensure construction of and investment in new generation in a timely fashion;

2. A review of long-term resource plans, including an integrated resource planning process for all IOU planning areas;
3. Updates to IOU procurement policies and practices, including review and approval of new 10-year procurement plans; and
4. Any procurement policy issues not handled in R.04-04-003 or other procurement related dockets.

While the ACR defines “goals” in terms of the reviews to be conducted, the overarching policy goal of the 2006 Procurement Proceeding should be the establishment of procurement policies that will facilitate resource adequacy and ensure that sufficient generation resources are available and under contract to supply consumers’ needs. This policy focus is consistent with the list of “key actions” in the Energy Action Plan II (“EAP II”), adopted by the Commission and the California Energy Commission (“CEC”), which commits to “complete and refine, as necessary, the current IOU electricity procurement process to provide that it is competitive, transparent, fair, proceeds in a timely fashion, and achieves California’s resource adequacy requirements.”¹ Making resource adequacy a top policy focus for 2006 is also supported by the CEC’s finding in the 2005 Integrated Energy Policy Report (“IEPR”) that “maintaining adequate electricity reserves will be difficult over the next few years.”² The primary focus for 2006 therefore should be the adoption of procurement requirements that will achieve the overarching goal of ensuring the availability of adequate resources.

To this end, in the 2006 Procurement Proceeding the Commission should focus on several key priority issues on a critical path timeline. First, Mirant agrees with Staff’s recommendation in the Work Plan that “the need for new generation” is a high priority issue that should be addressed first, along with the development of mechanisms to ensure timely investment in new resources. There appears to be ample evidence that significant amounts of new generation will be needed in the coming years. The Commission recognized this in EAP II, which states that “significant capital investments are needed to

¹ EAP II at 12.

² IEPR at E-2.

augment existing facilities, replace aging infrastructure, and ensure that California's electrical supplies will meet current and future needs.”³ Further, the CEC's extensive analysis leading up to its IEPR revealed a pronounced need for new generation, leading the CEC to conclude that “development of new energy supplies is not keeping pace with the state's increasing demand,” and to caution that “as the state's demand for electricity increases, California could face severe shortages in the next few years.”⁴ In light of these findings, the initial phase of the 2006 Procurement Proceeding should focus on what needs to be done, and on what can be done in a short time frame, to encourage and support investment in the resources that need to be brought online in an expeditious manner.

Second, in considering how to encourage investment in new resources, the Commission also should consider the need for policies that will address the role of existing generation resources. The IEPR recognizes that continued operation of the state's existing fleet of generation resources is critical to support resource adequacy in the short-term, and to support local reliability needs.⁵ Unfortunately, current energy markets do not provide sufficient revenues to support the continued operation of existing generation, which raises concerns regarding the extent to which those resources will be able to continue operating for as long as they are needed. The Commission also should consider the need for policies for encouraging repowering and replacement of existing facilities, and the development of brownfield sites, which the Commission and the CEC have said are important priorities.⁶ Thus, to meet the overarching goal of ensuring resource adequacy, in the first phase of the 2006 Procurement Proceeding the Commission also should consider the need for policies that address the role of existing generation.

³ EAP II at 10.

⁴ See IEPR at E-1, E-2, 37

⁵ *Id.* at 61.

⁶ See IEPR at 61; D.04-12-048 at 159 (“we direct the IOUs to consider the use of brownfield sites first and take full advantage of their location before they consider building new generation on greenfield sites; if IOUs decide not to use brownfield, they must make a showing that justifies their decision”).

Third, the Commission should consider whether some capacity market mechanism could be implemented in a timely manner to support resource adequacy, including as a substitute for an interim cost allocation or benefit sharing mechanism. As Mirant has explained in its comments on Staff's Capacity Markets White Paper, the establishment of a capacity market is an important part of the solution for encouraging investment in generation in California. The Commission also has recognized that compensation for capacity is lacking in existing markets, and must be addressed to support the investment needed for resource adequacy.⁷ The ACR acknowledges that the development of a capacity market is contemplated, but suggests that a capacity market cannot be implemented in time to address the immediate need for new investment. Because a capacity market is an excellent mechanism for cost and benefit allocation, the Commission should consider whether a capacity market mechanism could be developed on a more expedited time frame, or whether there are components of a centralized capacity market that could be implemented more quickly.

Finally, to ensure resource adequacy, particularly in the near term, there is also a need to revisit the utility procurement process, and to simplify and expedite the process for executing medium-term and longer-term resource commitments. The current utility contracting process is cumbersome and difficult to navigate, a problem that is exacerbated by the current requirement that any procurement contract longer than 5 years in duration must be pre-approved through the application process.⁸ Such a protracted review process may be appropriate for long-term commitments involving new resources that present significant risk to utility ratepayers, but the Commission should consider whether it presents an unreasonably burdensome and potentially unnecessary level of review for many medium-term deals, particularly those involving existing plants already in operation that pose little or no risk regarding commercial completion. The burden of the process, coupled with the utilities' general reluctance to make long-term commitments until cost allocation issues are resolved, makes it difficult to execute

⁷ See D.05-10-042 at 8-9.

⁸ See D.04-12-048 at 108, Ordering Paragraph 14.

contracts that could be beneficial for ensuring the availability of needed generation. These issues also should be addressed in the first phase of the 2006 Procurement Proceeding.

B. Comments on Work Plan

1. Focus on Priority Issues

For each of the broad goals identified in the ACR, the Work Plan presents a tentative timeline and list of activities required to accomplish the goal, plus a list of questions to be addressed. Mirant's general reaction to the Work Plan is that it presents a very complicated, and potentially overwhelming, agenda for the 2006 Procurement Proceeding that may be too ambitious given the need for timely action to address California's potential generation shortfalls. In particular, the proposal for undertaking a detailed process for developing integrated resource plans has the potential to involve significant delay that could detract from the focus on the need for new generation and other immediate actions needed to ensure resource adequacy.

Rather than tackling all of the issues outlined in the Work Plan immediately, Mirant suggests that the Commission and Staff establish an initial phase of the 2006 Procurement Proceeding to focus on the priority issues discussed above. In particular, as discussed above, Mirant suggests that the first phase of the proceeding should focus on:

- (1) The need for new generation, including mechanisms to ensure construction of and investment in new generation in a timely fashion. This inquiry should focus on what needs to be done, and what can be done in a short time frame, to encourage and support investment in the resources that need to be brought online in an expeditious manner.
- (2) The need for policies addressing the role of existing generation resources, including policies to support short-term resource adequacy and local reliability, and policies to encourage repowering and replacement of existing facilities, and brownfield development.
- (3) Whether some capacity market mechanism could be implemented in a timely manner to support resource adequacy and provide for cost allocation or benefit sharing.

- (4) The need to revisit the utility procurement process, and to simplify and expedite the process for executing medium- and longer-term resource commitments needed to support resource adequacy.

The Commission should focus on addressing these issues and issuing an interim decision that will direct the utilities and other load serving entities to take actions to implement the priority objectives. This may include initiation of a request for offer process to solicit contracts for new and existing generation resources. Attention then could turn to developing an integrated resource planning process, as suggested in the Work Plan. While Staff may not feel this is the ideal order for proceeding, it is critical that the Commission focus first on ensuring the availability of adequate resources to avoid a potential supply crisis.

2. Questions to be Addressed

In considering the priority issues outlined above, it seems appropriate to address the questions presented in Section III, parts 1(a) and (b) of the Work Plan under the heading “Review the Need for New Generation.” Mirant suggests that this phase of the Commission’s review also address the following questions:

- What policies and requirements are needed to ensure that existing generation resources will continue to operate and be available to serve California’s electricity needs, particularly during the interim period while new resources are being constructed?
- What policies and requirements are needed to encourage the repowering and replacement of existing facilities, and to support brownfield development? Are the existing procurement policies appropriate for encouraging brownfield development and repowering, or is there a need to develop a separate process that reflects the value of existing sites?
- Given the 20 percent renewable standard, what type of traditional generation resources are required in the balance of utility portfolios? For example, is there an increased need for load following resources that support the renewable policy?
- What are appropriate considerations and policies for the replacement of aging plants?
- What capacity market components can be implemented in a timely manner to simplify cost allocation mechanisms, and to provide an interim cost allocation or benefit sharing mechanism?

- Should a capacity market be considered a first priority issue given its benefit in implementing local capacity requirements and addressing cost responsibility for new generation and reliability resources?
- How can the utility contracting process be simplified and expedited to facilitate the timely execution of longer-term commitments that are needed to support resource adequacy? Does it make sense that contracts for existing resources and new resources have the same approval process?

3. Proposed Activities

In addressing the need for new generation, Mirant agrees with Staff that an initial set of workshops may be helpful to identify the extent to which facts already available demonstrate and support the need for new generation. It is unlikely that testimony or hearings would be needed to establish this factual record. The CEC has devoted considerable time, effort and resources to assessing the need for new generation resources in its IEPR, and the Commission should not attempt to repeat the CEC's factual inquiries and assessments. Indeed, in D.04-12-048, the Commission looked ahead to the 2006 Procurement Proceeding and concluded that it "would not relitigate" the IEPR results, except as necessary to address new information.⁹

Mirant also supports an expedited briefing schedule for addressing investment support mechanisms, as outlined in the Work Plan, and Staff's proposal for issuance of a Commission decision addressing these issues by April 2006, which Staff believes would allow utilities to move forward with any new generation request for offers in an expeditious manner. The Commission also should address the need to include existing generation in any resource solicitation process.

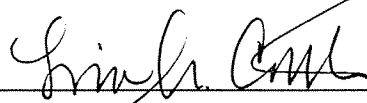
The additional issues that Mirant recommends for priority consideration also could be addressed through an expedited briefing schedule. Thus, in commenting on investment support mechanisms, parties should be invited to comment on the feasibility of implementing a capacity market mechanism in a more expeditious time frame, and on proposals for expediting the utility contracting process.

⁹ D.04-12-048 at 166.

III. Conclusion

Mirant appreciates the opportunity to present these comments and looks forward to working with the Commission and interested parties in the 2006 Procurement Proceeding.

Respectfully submitted,



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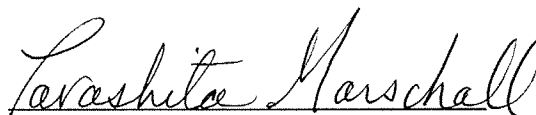
Certificate of Service

I hereby certify that I have this day served a copy of the

Comments of Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC on Assigned Commissioner's Ruling Regarding Next Steps in Procurement Proceeding.

on all known parties to R.04-04-003 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on December 12, 2005, at San Francisco, California.


Parashita Marschall