

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

Order Instituting Rulemaking to
Integrate Procurement Policies and
Consider Long-Term Procurement
Plans

Rulemaking 06-02-013
(Filed February 16, 2006)

**COMMENTS OF MIRANT CALIFORNIA, LLC, MIRANT DELTA, LLC
AND MIRANT POTRERO, LLC ON THE NEED FOR
ADDITIONAL POLICIES TO SUPPORT NEW GENERATION
AND LONG-TERM CONTRACTS IN CALIFORNIA**

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March 7, 2006

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I. Introduction and Summary

Pursuant to the Order Instituting Rulemaking (“OIR”) issued by the California Public Utilities Commission (“Commission”) in this proceeding, and the February 23, 2006 Administrative Law Judge’s Ruling Setting Prehearing Conference and Setting Workshop on Review of Policy Proposals to Support New Generation (“Ruling”), as modified at the February 28, 2006 prehearing conference, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC (“Mirant”) submit these comments on the need for additional policies to support new generation and long-term contracts in California.

These comments emphasize two principles that should guide the Commission’s evaluation and potential adoption of any proposal for supporting long-term contracts. First, any policy for supporting long-term contracts should be consistent with the preferred “end state” for California’s generation market, and should not undermine the development and implementation of a centralized capacity market that facilitates the Commission’s resource adequacy program for load-serving entities (“LSEs”). Second, any such policy also should encourage and facilitate brownfield development and the repowering or replacement of existing projects as a matter of first priority over greenfield development, in accordance with the policy preferences articulated in the Commission’s decisions and Assembly Bill (“AB”) 1576. Each of these principles is discussed below.

II. Comments

There is little doubt that California needs new generation development, and needs it soon to ensure that sufficient resources will be available in the coming years. It is also clear that the current investment environment requires a long-term contract with a creditworthy entity to finance new generation. California law and Commission policy allow utilities to enter into long-term commitments with new generation resources, and to obtain protection from any stranded costs that may result from those commitments for at least ten years, and potentially longer under appropriate circumstances.¹ Concerns persist, however, that additional policies may be needed to encourage and facilitate the execution of long-term contracts in a timely manner.

These concerns are reflected in the OIR and the Ruling, which emphasize that the first priority for this proceeding will be to “review additional policies to support new generation and long-term contracts in California, including consideration of transitional 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 or replacement generation in a timely fashion.”² The OIR notes the Commission’s concerns regarding “the progress to date in the area of long-term contracting,”³ and questions “whether existing policies are sufficient to ensure adequate long-term contracting occurs.”⁴ The Ruling emphasizes that the Commission is most interested in understanding what needs to be done on an “urgent” basis to encourage investment in new generation, and asks parties to focus on “policy decisions that urgently need to be decided” before new generation contracting can proceed in a timely fashion.⁵

Mirant agrees that the need for new generation is a high priority issue that should be addressed as quickly as possible. As Mirant explained in its comments submitted on December 12, 2005 in response to the Assigned Commissioner’s Ruling Regarding Next

¹ See D.04-12-048.

² OIR at 8, 11-12; Ruling at 2-3.

³ OIR at 10.

⁴ *Id.* at 12.

⁵ Ruling at 3.

Steps in Procurement Proceeding, ensuring that policies are in place to facilitate investment in new generation is a critical component of what should be the overarching policy goal for this proceeding, namely the establishment of procurement policies that facilitate resource adequacy and ensure that sufficient generation resources are available and under contract to supply consumers' needs.

There are two key principles that should guide the Commission's evaluation and potential adoption of any proposal for supporting new generation and long-term contracts. First, it is critical to ensure that the policies adopted in this proceeding, including any interim policies that may be adopted on an urgent basis, are consistent with and promote achievement of the preferred "end state" for California's generation market. California will be best served by a long-term market structure in which: (1) all LSEs have an obligation to secure sufficient capacity in advance to serve the needs of their customers; and (2) resources clear through a centralized market that allows for capacity to be traded, and that accurately signals the need for new investment. A market structure with these components will ensure fairness for all LSEs and their customers, provide a forum for capacity to be traded among large and small entities, provide a platform that supports long-term investment, and resolve the cost allocation problems that are driving concerns regarding the need for additional policies to support long-term contracts.

The Commission has made significant progress in developing effective resource adequacy requirements for LSEs, and additional work to complete and refine the program is ongoing in R.05-12-013. The Commission also has signaled its intent to address the capacity market component by focusing on proposals for implementing a centralized capacity market in the second phase of R.05-12-013. California therefore should be on track to implement programs that achieve the preferred end state market structure.

The ultimate solution to new generation and cost allocation issues is an LSE-based resource adequacy program that clears through a centralized capacity market. To the extent that the Commission determines that it should adopt additional policies to support long-term contracts on an "urgent" basis, the Commission should ensure that those policies are consistent with, and do not undermine or discourage, development of this end state market structure. It is particularly important to ensure that such policies do

not interfere with implementation of the capacity market construct that is being discussed in R.05-12-013. As Mirant has explained, a well-designed capacity market mechanism can provide substantial benefit in solving many of the challenges that the Commission faces in maintaining a stable resource adequacy program. Compromising end state capacity market functionality to satisfy an interim cost allocation mechanism would be contrary to the best interests of California consumers and should thus be avoided.

The Ruling recognizes this issue in Question 7, which asks parties to explain how their proposals will affect “the Commission’s ability to consider capacity markets in R.05-12-013,” and to discuss “steps the Commission can take to ensure that new policies do not foreclose the possibility of capacity markets.” The Commission should evaluate responses to Question 7 carefully to ensure that any interim mechanism does not impede the development of a capacity market. Any interim mechanism should be structured so that it is consistent with a capacity market construct, or so that it can be revised (or eliminated) at a later date to ensure consistency with a capacity market construct.

As a second guiding principle, the Commission also should ensure that the policies adopted in this proceeding, including any policies adopted specifically to support new generation and long-term contracts, are consistent with existing policy and law that place a priority on brownfield development and the repowering or replacement of existing facilities. The Commission has established a preference for developing brownfield sites, specifying that, “to the extent that new generation resources are required, the utilities should first consider the overall advantages of repowering at existing plants or of development of brown field sites located close to load rather than development of new green field sites remote from load and requiring substantial transmission and other upgrades to the system.”⁶

The Commission re-emphasized this preference in Decision 04-12-048, stating that “modernization of old, inefficient and dirty plants should be among IOUs’ first choices of resources.” The Commission therefore directed utilities “to consider the use of brownfield sites first and take full advantage of their location before they consider

⁶ D.04-01-050 at 54; cited in D.04-12-048 at 158.

building new generation on greenfield sites,” and ordered that, if utilities “decide not to use brownfield, they must make a showing that justifies their decision.”⁷

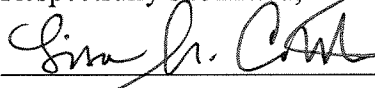
This policy preference for brownfield development and repowering of existing projects over greenfield development also has been codified in AB 1576. AB 1576 emphasizes the importance of encouraging the replacement and repowering of existing generating facilities that are strategically located near load centers, and specifies that, “it is in the best interest of the state to encourage the replacement and repowering” of these existing facilities due to “their strategic location and existing infrastructure.” AB 1576 therefore authorizes cost recovery for long-term contracts that provide for the replacement or repowering of existing generating facilities that meet the statutory criteria.

To ensure consistency with this existing law and policy, the Commission should require that any new policies adopted in this proceeding must facilitate and encourage brownfield development and the repowering and replacement of existing facilities as a matter of priority over greenfield development.

III. Conclusion

Mirant appreciates the opportunity to present these comments and looks forward to discussing the proposals submitted in response to the Ruling at the upcoming workshop.

Respectfully submitted,



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⁷ D.04-12-048 at 158-59.

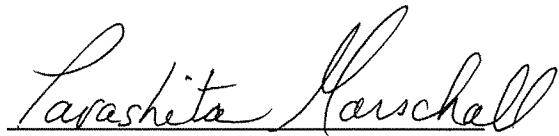
Certificate of Service

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 the Need for Additional Policies to Support New Generation
and Long-Term Contracts in California***

on all known parties to R.06-12-013 and 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 March 7, 2006, at San Francisco, California.



Parashita R. Marschall