

**Comments of  
Mirant California, LLC,  
Mirant Delta, LLC, and  
Mirant Potrero, LLC  
On Draft Final Proposal for a Standard Capacity Product**

<b>Submitted by</b>	<b>Company</b>	<b>Date Submitted</b>
<i>Sean Beatty 925.427.3483</i>	<i>Mirant California, LLC Mirant Delta, LLC Mirant Potrero, LLC</i>	<i>January 14, 2009</i>

On behalf of Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (collectively, Mirant), we offer the following comments on the Draft Final Proposal for a Standard Capacity Product (SCP) dated January 8, 2009.

Based on the Draft Final Proposal’s treatment of the grandfathering issue, Mirant cannot support adoption of the Draft Final Proposal. Mirant supports a delay in the schedule for the adoption of a SCP to further address the grandfathering issue and any other issues that parties may raise.

On the grandfathering issue, the Draft Final Proposal provides that, “Exemptions will be provided to RA contracts for which the contracting parties certify that the availability standards and incentives in their contracts are at least equal to the requirements set forth in the SCP tariff language. This exemption lasts for the life of the contract. The RA capacity in these contracts will not be tradable.”

In its prior comments, Mirant advocated in favor of grandfathering existing RA contracts, regardless of their terms. Instead, the Draft Final Proposal conditions grandfathering on the basis of whether the existing RA contract has availability standards and incentives at least equal to the requirements in the SCP tariff. The Draft Final Proposal’s approach causes concern for several reasons. First, if existing RA contracts do not meet the SCP tariff requirements, then parties will have to re-negotiate their agreements. Mirant opposes any outcome that requires parties to renegotiate. Second, because availability standards under the Draft Final Proposal will be a moving target from year to year, an existing RA contract will have no certainty from year to year whether it will satisfy the “equal requirements” standard. Finally, the “equal requirements” standard is sufficiently ambiguous that it is impossible to certify compliance based on objective knowledge. The best solution to these issues is to exempt existing RA contracts from new SCP requirements regardless of their terms.

Based on the foregoing, Mirant recommends that staff suspend the current SCP schedule and re-open the Draft Final Proposal for further consideration.