

**Comments of  
Mirant California, LLC,  
Mirant Delta, LLC, and  
Mirant Potrero, LLC  
On Standard Capacity Product White Paper**

<b>Submitted by</b>	<b>Company</b>	<b>Date Submitted</b>
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On behalf of Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (collectively, Mirant), we offer the following comments on the Standard Capacity Product (SCP) White Paper dated February 6, 2009 (White Paper) that was prepared by CAISO staff. Mirant's primary focus through the stakeholder process has been on the treatment of existing resource adequacy (RA) contracts. The White Paper makes significant progress toward recognizing the principle that new regulation should minimize interference with existing contractual rights by grandfathering RA contracts entered into before January 1, 2009. Mirant appreciates staff's willingness to modify its previous proposals on the grandfathering issue to better protect rights under existing contracts. Grandfathering of RA contracts entered into as of a date certain is a workable solution to the concerns raised in Mirant's previous comments.

However, Mirant remains concerned that the White Paper would modify contractual rights in grandfathered contracts with respect to the term during which those contracts are in effect. Specifically, the White Paper states that "Renewals and evergreen type extensions will not extend the term of the grandfathering." The term of a contract is a major factor for parties when determining the reasonableness of the other provisions in that contract. Accordingly, eliminating renewal provisions in grandfathered RA contracts has the potential to upset the negotiated balance in those contracts and thereby benefit one party over another. The CAISO should tread lightly in its regulation where it has the power to influence economic winners and losers under existing arrangements.

If the CAISO nonetheless feels compelled to modify existing contracts, the scope of that modification must be clearly stated. For example, if a contract includes a unilateral option to extend the term for a relatively short period of time, we do not believe that such an option constitutes a "renewal" under the well-established principles of contract law. The CAISO should confirm this understanding through precise language in its final proposal as well as the tariff language it submits to FERC.