

RELIABILITY TECHNICAL CONFERENCE

Docket No. AD12-1-000

(November 29, 2011)

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INTRODUCTION

The tension between reliability needs and environmental rules has long existed, but the potential for conflict has recently been highlighted by increasingly stringent environmental restrictions and cybersecurity initiatives. As a general matter, there may be ways to resolve the conflict in situations where there is sufficient advance notice. For example, in some cases, a generator may be able to work with the Environmental Protection Agency (“EPA”) and other environmental authorities to adjust permit restrictions so that units known to be needed for reliability can continue operating, or to obtain a consent decree so that the generator operating to preserve reliability is relieved from liability for violations of such restrictions. Any such solution must have a solid legal basis, and there must be adequate time to allow for the process to work. In a true emergency, however, there may not be enough time for a generator to go through the procedural and other steps required to obtain adequate assurances that it will not be subject to significant penalties and liability if it violates environmental restrictions in the course of operating to maintain reliability. Such uncertainty could impede a company’s ability or willingness to operate at the time when reliability is most threatened.

Some have argued that conflicts between reliability needs and environmental rules could ultimately be addressed through Section 202(c) of the Federal Power Act (the “FPA”), which gives the Department of Energy (“DOE”) authority to direct the operation of electric generation plants in order to maintain the reliability of the bulk power system during an emergency. These parties claim that Section 202(c) allows DOE to “override Clean Air Act [(the “CAA”)] control requirements in limited emergency circumstances where there is a finding that an electric emergency exists.”¹ Unfortunately, neither DOE nor any of the relevant environmental authorities has taken the position that authority

¹ *Impacts of EPA Regulations on Electric System Reliability: Hearing Before the U.S. House of Representatives Comm. on Energy and Commerce, Subcomm. on Energy and Power* (Sept. 14, 2011) (Testimony of Susan F. Tierney, Ph.D., Managing Principal, Analysis Group, Boston at 30), *available at* <http://republicans.energycommerce.house.gov/Media/file/Hearings/Energy/091411/Tierney.pdf>. *See also* Paul J. Miller, *Northeast States for Coordinated Air Use Management, A Primer on Pending Environmental Regulations and Their Potential Impacts on Electric System Reliability* at 22 (Sept. 19, 2011) (claiming that DOE “can override [CAA] requirements under section 202(c) of the [FPA] in limited emergency circumstances”), *available at* <http://www.nescaum.org/documents/primer-on-epa-reg-impacts-20110919-update.pdf>; Letter from John R. Norris, Commissioner, Federal Energy Regulatory Commission to Lisa A. Murkowski, United States Senate at 3 (Oct. 7, 2011) (asserting that DOE’s Section 202(c) authority will allow it “to order a plant to continue operating in the unlikely event of a reliability emergency precipitated by compliance with environmental rules”), *available at* http://energy.senate.gov/public/_files/100711CommissionerNorrisResponse.pdf.

under Section 202(c) of the FPA trumps environmental law. Nor is there any express statutory language in the FPA, the CAA or other environmental laws, or judicial precedent, supporting such a position. Indeed, as explained below, two cases – both involving the predecessor to GenOn Energy, Inc. (“GenOn”), Mirant Corporation (“Mirant”) – demonstrate the difficulties that a generator may face when operating to maintain reliability in a true emergency when such operation conflicts with applicable environmental restrictions.

STATUTORY BACKGROUND

Section 202(c) of the FPA gives DOE authority to order the operation of generation facilities for reliability reasons. Specifically, Section 202(c) provides:

During the continuance of any war in which the United States is engaged, or *whenever the Commission determines that an emergency exists* by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, *the Commission shall have authority*, either upon its own motion or upon complaint, with or without notice, hearing, or report, *to require by order* such temporary connections of facilities and *such generation*, delivery, interchange, or transmission *of electric energy as in its judgment will best meet the emergency and serve the public interest*. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.²

² 16 U.S.C. § 824a(c) (2006) (emphasis added). Although the text of Section 202(c) refers to “the Commission,” authority under that provision resides with the Secretary of Energy, rather than the Federal Energy Regulatory Commission (“FERC”). Under Section 301(d) of the Department of Energy Organization Act (the “DOE Act”), 42 U.S.C. § 7151(b) (2006), the powers previously vested in the Federal Power Commission under the FPA (and other statutes) and not expressly reserved to FERC were transferred to, and vested in, the Secretary of Energy. Although the DOE Act reserved to FERC powers to require interconnection of electric facilities under Section 202(b) of the FPA and DOE has since delegated certain other powers, including those provided by Section 202(a), to FERC, Section 202(c) authority remains with the Secretary of Energy.

FERC could potentially order relief similar to that available under Section 202(c) of the FPA by exercising some combination of its authority under Sections 207 and 309 of the FPA. Section 207 provides that, if FERC determines, “upon complaint of a State commission,” that “any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation” 16 U.S.C. § 824f (2006). Section 309 authorizes FERC “to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and

At the same time, various environmental laws impose limitations on a generation facility's operations. For example, Section 109 of the CAA directs EPA to promulgate National Ambient Air Quality Standards ("NAAQS") to protect the public health and welfare.³ Section 110 of the CAA, in turn, requires each state to adopt a State Implementation Plan ("SIP") to achieve the NAAQS within such state.⁴ Upon EPA's approval of a SIP, "its requirements become federal law and are fully enforceable in federal court."⁵ EPA is authorized to enforce its NAAQS through administrative, civil, or criminal actions.⁶ In addition, a state "may enforce its regulations through state proceedings,"⁷ and a citizen has the authority to bring a civil action against any person in violation of emissions standards or limitations.⁸

EXAMPLES OF CONFLICTS

Potrero Power Plant (2001)

In 2001, beginning at the height of the California energy crisis, Mirant's Potrero Power Plant in the San Francisco area was dispatched by the California Independent System Operator (the "CAISO") at a relatively high rate to maintain reliability.⁹ Because the Potrero Power Plant had a relatively low annual operating limit of 877 hours, Mirant became concerned that it would be unable to operate as needed by the CAISO while remaining within its operating limit. In order to ensure that the plant could operate as needed to preserve reliability, Mirant worked to obtain written approvals from local and federal regulators – the Bay Area Air Quality Management District ("BAAQMD") and

regulations as it may find necessary or appropriate to carry out the provisions of [the FPA]." 16 U.S.C. § 825h (2006). To date, orders compelling generation in emergencies have been issued under Section 202(c), not Sections 207 and 309. *Cf. DC Pub. Serv. Comm'n*, 114 FERC ¶ 61,017 at P 2 (2006) (the "FERC Potomac River Order") (order issued under Section 207 of the FPA requiring long-term plan to maintain adequate reliability where DOE had already ordered a facility to operate).

³ See 42 U.S.C. § 7409 (2006).

⁴ See 42 U.S.C. § 7410 (2006).

⁵ *Her Majesty the Queen v. City of Detroit*, 874 F.2d 332, 335 (6th Cir. 1989). See also, e.g., *Union Elec. Co. v. EPA*, 515 F.2d 206, 211 (8th Cir. 1975).

⁶ See 42 U.S.C. § 7413 (2006).

⁷ *Union Elec.*, 515 F.2d at 211. See also, e.g., *Environmental Def. v. Duke Energy Corp.*, 549 U.S. 561, 567 (2007) ("States were obliged to implement and enforce" NAAQS).

⁸ 42 U.S.C. § 7604 (2006).

⁹ DOE exercised its authority under Section 202(c) of the FPA to compel operation of generation facilities during the California energy crisis, ordering certain generators to make energy available to the CAISO for a period of approximately two months. See *Notice of Issuance of Emergency Orders Under Section 202(c) of the Federal Power Act*, 65 Fed. Reg. 82,989 (Dec. 29, 2000).

EPA, respectively – allowing the plant to operate for more than 877 hours.¹⁰ Nonetheless, Mirant was subjected to a citizen lawsuit by the City of San Francisco and environmental groups for exceedance of the 877 hour operating limit,¹¹ and was forced to settle the lawsuit at significant expense.

Potomac River Generating Station

On August 24, 2005, Mirant’s Potomac River Generating Station (the “Potomac River Plant”) was shut down to comply with orders of the Virginia Department of Environmental Quality (the “Virginia DEQ”) in response to modeled, localized NAAQS exceedances. On that same day, the District of Columbia Public Service Commission (the “DC PSC”) filed petitions with DOE under Section 202(c) of the FPA and with FERC under Sections 207 and 309 of the FPA requesting that Mirant be compelled to operate the Potomac River Plant to maintain reliability.

In response, the Virginia DEQ argued to FERC that because “there is no express authority granted to the Commission pursuant to FPA §§ 207 or 309 – or for that matter any other section of the FPA – to issue an order that would contravene the CAA,” the Commission had “no discretion to issue any order with respect to generation of electrical power at the Potomac River Plant unless that order complies with the CAA.”¹² Similarly, the Virginia DEQ objected before DOE that:

Congress has not given the [FPA] primacy over the [CAA]. Nowhere in the [FPA] – § 202(c) or elsewhere – is there language providing that reliability concerns take precedence over federal and state environmental laws. Further, § 201(a) of the [FPA] expressly preserves state jurisdiction over electric generation. The [FPA] also does not preempt Virginia law or the Director’s authority pursuant to Virginia law, because obligations

¹⁰ See Compliance and Mitigation Agreement between Mirant Potrero, LLC and the Bay Area Air Quality Management District at § 2.1 (Mar. 29, 2001) (provided as Attachment A); *Mirant Potrero LLC*, R9-2001-04, Administrative Order on Consent at § IV.4 (Apr. 6, 2001), available at <http://www.epa.gov/region9/energy/generators/r9200104mirant.pdf>.

¹¹ See Rachel Gordon, *Potrero Hill power plant operator sued/S.F., groups seek pollution controls*, San Francisco Chronicle (June 19, 2001), available at http://articles.sfgate.com/2001-06-19/news/17605126_1_mirant-corporation-pollution-clean-air-act; First Amended Complaint for Injunctive and Other Relief and Demand for Jury Trial, *City & County of San Francisco v. Mirant Potrero, LLC*, No. C-01-2356 PJH (N.D. Cal. Aug. 20, 2001) (provided as Attachment B); First Amended Complaint, *Bayview Hunters Point Community Advocates v. Mirant Potrero, LLC*, No. C-01-02348-PJH (N.D. Cal. Aug. 20, 2001) (provided as Attachment C).

¹² Motion of Robert G. Burnley, Director, The Commonwealth of Virginia Department of Environmental Quality to Deny the District of Columbia Public Service Commission’s Petition on the Grounds that the Commission May Not Grant the Requested Relief; or, in the Alternative, to Defer Action Pending Further Analysis of Environmental Impacts of Requested Relief at 6, Docket No. EL05-145-000 (filed Oct. 11, 2005).

arising under the federally approved [SIP] are a matter of both state and federal law.¹³

On December 20, 2005, DOE ordered Mirant to resume operating the Potomac River Plant under Section 202(c) in order to maintain the electric supply to Washington, D.C.¹⁴ The 2005 DOE Order stated that “[o]rdering action that may result in even local exceedances of the NAAQS is not a step to be taken lightly. . . .”¹⁵ DOE did not, however, provide any assurance to Mirant that compliance with the order would not subject it to liability for those exceedances. Instead, the order said only that DOE had “sought to harmonize those interests to the extent reasonable and feasible by ordering Mirant to operate in a manner that provides reasonable electric reliability, but that also minimizes any adverse environmental consequences from operation of the Plant.”¹⁶

After the Potomac River Plant resumed operating in compliance with the DOE order, the EPA issued an Administrative Compliance Order by Consent, which set forth certain operating standards “taking into account the seriousness of the modeled NAAQS exceedances and the concerns of DOE regarding electric reliability in the Central D.C. area,”¹⁷ and required Mirant to operate the Potomac River Plant “as specified by PJM and in accordance with the [2005] DOE Order.”¹⁸ During its operations as directed by DOE, the Potomac River Plant was forced to exceed its 3-hour NAAQS limit on February 23, 2007. Accordingly, in 2007, the Virginia DEQ issued a Notice of Violation¹⁹ and

¹³ Letter from Commonwealth of Virginia Department of Environmental Quality to Kevin Kolevar, Director, Office of Electricity Delivery and Energy Reliability, U.S. Dept. of Energy at 2, Docket No. EO-05-01 (Nov. 23, 2005) (citation omitted), *available at* <http://www.gc.doe.gov/oe/downloads/letter-clarifying-position-director-virginia-department-environmental-quality-regarding>.

¹⁴ *See DC Pub. Serv. Comm’n*, DOE Order No. 202-05-3 (Dec. 20, 2005) (the “2005 DOE Order”), *available at* <http://www.gc.doe.gov/oe/downloads/department-energy-order-no-202-05-3>. Orders extending the 2005 DOE Order, as well as other documents relating to the DC PSC’s petition before DOE are available at the DOE website. *See* <http://www.gc.doe.gov/oe/services/electricity-policy-coordination-and-implementation/other-regulatory-efforts/emergency>. *See also* FERC Potomac River Order, 114 FERC ¶ 61,017 at P 28 (2006) (addressing the DC PSC’s petition under Section 207 of the FPA “in light of the immediate nature and short-term relief granted to the DC [PSC] by the Secretary of Energy”).

¹⁵ 2005 DOE Order at 8.

¹⁶ *Id.* at 8-9. *See also id.* at 5 (“In response to the environmental concerns raised, this order seeks to minimize, to the extent reasonable, any adverse environmental impacts. Should EPA issue a compliance order directed to operation of the Plant, DOE will consider whether and how this order should [be] conformed to such order.”).

¹⁷ *See Mirant Potomac River LLC*, Administrative Compliance Order by Consent at 4, Docket No. CAA-03-2006-0163DA (June 1, 2006) (provided as Attachment D).

¹⁸ *Id.* at 14.

¹⁹ *See* Letter from Jeffery A. Steers, Regional Director, Commonwealth of Virginia, Department of Environmental Quality to Michael Stumpf, Group Leader – Plant Operations, Mirant Potomac River Generating Station, Notice of Violation Re: Mirant Potomac River

subsequently fined Mirant for NAAQS exceedances that were a result of Mirant's compliance with the DOE order to run for reliability. Had the Potomac River Plant been required to operate such that it would have violated a plant-specific environmental permit limit, Mirant would have faced significant additional penalties, including claims from citizen lawsuits under the CAA.

SOLUTION

As indicated above, there are various ways in which to resolve conflicts between reliability and environmental concerns. For example, when FERC imposed a "must offer" requirement obligating all non-hydroelectric generators in California to offer their available capacity during all hours,²⁰ it limited the scope of the requirement to make clear that "no generator will be required to run in violation of its certificate or applicable law."²¹ FERC has also approved market rules that exempt generation facilities from must offer requirements to the extent necessary to comply with environmental limitations.²²

Some have suggested that, given enough time, EPA could enter into a court-approved consent agreement that would ensure that a generator required for reliability is protected from liability for any CAA (or other environmental law) violations that may result. There is debate as to whether such an order would protect a generator from potential citizen lawsuit liability. But with enough time it may be possible to thread the needle so that a generator needed for reliability is not subject to environmental penalties or liability.

Generating Station, Facility Registration No. 70228 (Mar. 23, 2007) (provided as Attachment E). *See also* Letter from Michael Stumpf, Mirant Potomac River, LLC to Jeffrey A. Steers, Regional Director, Department of Environmental Quality, Northern Virginia Regional Office, Re: Response to March 23, 2007 Notice of Violation (May 11, 2007) (provided as Attachment F).

²⁰ *See San Diego Gas & Elec. Servs. v. Sellers of Energy & Ancillary Servs.*, 95 FERC ¶ 61,115, 61,355-57 (2001).

²¹ *Id.* at 61,357.

²² For example, PJM Interconnection, L.L.C.'s tariff includes an exception to the capacity market must offer requirement where "[t]he Capacity Market Seller is involved in an ongoing regulatory proceeding (e.g. – regarding potential environmental restrictions) specific to the resource and has received an order, decision, final rule, opinion or other final directive from the regulatory authority that will result in the retirement of the resource." PJM Interconnection, L.L.C., Open Access Transmission Tariff, Attachment DD, § 6.6(g).C. *See also id.*, Attachment M – Appendix, § II.C.4.C (same). While ISO New England Inc.'s tariff allows a generator facing new environmental restrictions that could render a plant inoperable to submit a "Non-Price Retirement Request," that option is available only for "a binding request to retire the entire capacity of a Generating Capacity resource." ISO New England Inc. Transmission, Markets and Services Tariff, § III.13.1.2.3.1.5.1. Unless the generator is prepared to retire the entire facility, therefore, the tariff leaves the generator in the position of having its capacity automatically offered into the Forward Capacity Auction and then operating in violation of environmental restrictions.

In an emergency, however, electricity generators are unfairly forced to weigh the risks and costs of violating environmental permits against the risks and costs of non-compliance with a DOE emergency order to run, creating uncertainty at a time when stability is most needed. It is imperative that there be clear authority within the federal government to direct actions that can balance an emergency reliability need with binding environmental regulations.

Recognizing the need to balance the reliability of the electric grid with the implementation of environmental regulations, a number of Regional Transmission Organizations and Independent System Operators have urged EPA to include in proposed regulations a reliability “safety valve” such that a retiring generator that is needed for reliability would be granted an extension of time to comply with new rules proposed by EPA so that a reliability solution may be put in place.²³ Again, given enough time, EPA may be willing to negotiate a mechanism that would allow a generator to operate for reliability without liability or penalty, but there must be a solid legal basis to prevent the possibility of private citizen lawsuits – such as the one in the case of the Potrero Power Plant, which was brought despite the plant operating with EPA’s and BAAQMD’s express authorization.

A clear way to conclusively ensure that the tools needed to maintain the reliability of the grid are available in the face of conflicting environmental requirements is to amend the FPA to clarify that when a company is under an emergency directive to operate pursuant to Section 202(c) of the FPA by DOE, it will not be deemed in violation of environmental laws or subject to civil or criminal liability as a result of actions to comply with such emergency order. Specifically, Section 202(c) of the FPA should be amended to include something along the lines of the following language:

No action taken to comply with an order [under Section 202(c) of the Federal Power Act] shall be deemed a violation of, or subject a person to regulation or additional regulation or civil or criminal liability under, any federal, state or local environmental laws or regulations. Any such order issued by the Commission shall require action only to the extent necessary to meet the emergency and serve the public interest.

Absent such amendment, without adequate time and even with full cooperation of reliability and environmental regulators, the reliability of the grid could be compromised in critical emergency situations as a result of even relatively minor environmental exceedances. GenOn urges FERC, as an agency that well understands the importance of maintaining grid reliability, to encourage the Congress to adopt such an amendment. To be clear, such an amendment need not – and, indeed, should not – be allowed to delay environmental or cybersecurity initiatives. Rather, reform of Section 202(c) of the FPA

²³ See Joint Comments of the Electric Reliability Council of Texas, the Midwest Independent Transmission System Operator, the New York Independent System Operator, PJM Interconnection, L.L.C., and the Southwest Power Pool, Docket Nos. EPA-HQ-OAR-2009-0234, *et al.* (Oct. 21, 2011), available at <http://pjm.com/~media/documents/other-fed-state/20110804-epa-hq-oar-2009-0234-iso-rto.ashx>.

should be pursued on a parallel track that ensures that the potential conflict between reliability and environmental concerns is resolved before the next emergency requiring DOE to exercise its authority under this provision.

Attachment A

COMPLIANCE AND MITIGATION AGREEMENT

This Compliance and Mitigation Agreement ("Agreement") is dated as of March 29, 2001, for reference purposes only, and is entered into between Mirant Potrero, LLC, formerly known as Southern Energy Potrero, LLC ("Mirant") and the BAY AREA AIR QUALITY MANAGEMENT DISTRICT ("Bay Area AQMD").

This Agreement is made by Mirant and the Bay Area AQMD (collectively, the "Parties") on behalf of, and is binding upon, their respective officers, directors, employees, agents, shareholders, subsidiaries and partners. This Agreement shall become binding and effective upon execution by each of the Parties (the "Effective Date").

ARTICLE 1 RECITALS

1.1 WHEREAS, the Bay Area AQMD is the local agency with primary responsibility for regulating stationary source air pollution in the San Francisco Bay Area Air Basin in the State of California; and

1.2 WHEREAS, Mirant is a Delaware limited liability corporation that owns and operates six non-gaseous fuel fired combustion turbines at Mirant's Potrero Power Plant in San Francisco, California, within the jurisdiction of the Bay Area AQMD. These six combustion turbines are identified by the Bay Area AQMD as Permitted Source Nos. 10, 11, 12, 13, 14, and 15, in Bay Area AQMD Major Facility Permit for Plant No. 26 (the "Permit") and power three generation units commonly known as Potrero Units 4, 5, and 6 (the "Potrero Peaking Turbines"). Each of Potrero Units 4, 5, and 6 has a nameplate capacity of 52 megawatts; and

1.3 WHEREAS, the prior owner and operator of the Potrero Peaking Turbines voluntarily requested and accepted an 877-hour annual operating limit set forth in Permit Condition No. 15816 in the Permit; and

1.4 WHEREAS, Bay Area AQMD Regulation 9, Rule 9, Section 302 ("Regulation 9-9-302"), limits NOx emissions from combustion turbines rated at 4.0 MW or greater and operating less than 877 hours per year to 65 parts per million (volume) ("ppmv") at fifteen percent (15%) O2 (dry basis) when firing with non-gaseous fuel; and

1.5 WHEREAS, the most recent source test for the Potrero Peaking Turbines reflects that NOx emissions were less than or equal to 65 ppmv at 15% O2 dry basis; and

1.6 WHEREAS, Mirant has been and is currently operating the Potrero Peaking Turbines in compliance with Regulation 9-9-302 and Permit Condition No 15816; and

1.7 WHEREAS, Mirant operates the Potrero Peaking Turbines pursuant to the terms of applicable California Independent System Operator ("ISO") tariffs, a Reliability Must Run Agreement ("RMR Agreement") with the ISO, and a Participating Generator

Agreement with the ISO, all of which are on file with the Federal Energy Regulatory Commission ("FERC"). All of these agreements are referred to collectively throughout the remainder of this Agreement as the ISO Generating Agreements; and

1.8 WHEREAS, Mirant supplies electrical energy from the Potrero Peaking Turbines, among other electrical generation facilities owned and operated by Mirant, to the California Department of Water Resources ("DWR") pursuant to the terms of a contract or contracts with the DWR; and

1.9 WHEREAS, due to the electrical energy shortage in the State of California, on January 17, 2001, California Governor Gray Davis declared a State of Emergency; and

1.10 WHEREAS, on February 8, 2001, pursuant to that State of Emergency, California Governor Gray Davis issued Executive Order D-24-01 requiring, in its first ordering paragraph that "local air pollution control and air quality management districts []shall modify emissions limits that limit the hours of operation in air quality permits as necessary to ensure that power generation facilities that provide power under contract to the [California] Department of Water Resources are not restricted in their ability to operate;" and

1.11 WHEREAS, the first ordering paragraph of California Governor Gray Davis' Executive Order D-24-01 further requires that "[t]he districts shall require a mitigation fee for all applicable emissions in excess of the previous limits in the air quality permits;" and

1.12 WHEREAS, on March 7, 2001, pursuant to the State of Emergency, California Governor Gray Davis issued Executive Order D-28-01, the fourth ordering paragraph of which provides "that the authority provided to local air pollution control and air quality management districts (hereinafter "districts") and the Air Resources Board in the first ordering paragraph of Executive Order D-24-01 shall also apply to any power generating facility, including any previously permitted existing power generating facility that is not currently operating, as necessary to ensure reliability of the grid and delivery of power in the State. No permit modification (or reinstatement and modification) under Executive Order D-24-01 or this Order shall be valid for a period of more than 3 years from the date of this Order. The authority to modify permits for the purposes identified above shall also include the authority to modify other applicable conditions for those purposes. In exercising the powers to modify (or reinstate and modify) permits and other applicable conditions, districts shall not be required to comply with the notice and hearing requirements of Division 26 of the Health and Safety Code;" and

1.13 WHEREAS, the Potrero Peaking Turbines are a crucial electric generation facility within the local San Francisco generation and transmission system which have historically been operated only during periods of peak electrical energy demand and in emergency circumstances to avoid load shedding and provide generation and transmission support to the local San Francisco Bay Area transmission network and for substantially fewer hours per year than the 877-hour operating limit; and

1.14 WHEREAS, although Mirant was never required to operate any of the Potrero Peaking Turbines in excess of the 877-hour annual operating limit, in December 2000, due to the electrical energy shortage in the State of California, Mirant and the ISO discussed with the Bay Area AQMD possible use of the Potrero Peaking Turbines beyond the 877-hour annual permit limit under limited emergency conditions for the remainder of calendar year 2000 to maintain local San Francisco transmission system reliability and as a system resource to avert and/or reduce the magnitude of firm load shedding. The result of those joint discussions is memorialized in a letter dated December 22, 2000, from Ellen Garvey, Executive Officer of the Bay Area AQMD to Anne Cleary, Chief Executive Officer of Southern Energy Potrero LLC; and

1.15 WHEREAS, due to the electrical energy shortage in the State of California, in calendar year 2001, Mirant has already been required under the ISO Generating Agreements to operate the Potrero Peaking Turbines substantially in excess of their historic operating hours. As of March 29, 2001, at 6:00 a.m. PST, the Potrero Peaking Turbines had the following hours remaining before they reach their 877-hour annual operating limits: Potrero 4: 330.9 hours; Potrero 5: 213 hours; Potrero 6: 198.9 hours; and

1.16 WHEREAS, the ISO has informed Mirant, and Mirant expects, that due to the electrical energy shortage in the State of California and the limited availability of electric generating capacity in the San Francisco Bay Area, the Potrero Peaking Turbines will be required by the ISO to operate for additional hours, which may result in the Potrero Peaking Turbines exceeding the applicable 877-hour per year operating limit set forth in Regulation 9-9-302 and Permit Condition No. 15816; and

1.17 WHEREAS, an immediate circumstance that may require Mirant to operate the Potrero Peaking Turbines in excess of the 877-hour annual operating limit is that the ISO has scheduled an outage beginning on or about March 27, 2001, for Mirant to perform maintenance work deemed necessary by Mirant and the ISO on the utility boiler electrical generating unit at Mirant's Potrero Power Plant. This maintenance outage is expected by Mirant and the ISO to overlap for several days with a scheduled outage at the Hunter's Point Power Plant to perform certain maintenance work on the Hunter's Point utility boiler electrical generating unit and to last for several additional weeks. Due to the nature of the local San Francisco electrical transmitting and generating system, Mirant and the ISO believe that the Potrero Peaking Turbines will be required by the ISO to generate electricity beyond their historic peaking generation usage; and

1.18 WHEREAS, the United States Environmental Protection Agency is expected to issue an Administrative Order in accordance with the federal Clean Air Act (42 U.S.C. § 7413) to Mirant regarding operation of the Potrero Peaking Turbines in excess of the 877-hour annual operating limit; and

1.19 WHEREAS, Mirant is entering into this Agreement for the purpose of obtaining additional operating hours for the Potrero Peaking Turbines to meet expected operating demand from the ISO, DWR, and other California Load Serving Entities (as defined in

Attachment A to this Agreement) pursuant to Executive Orders D-24-01 and D-28-01; and

1.20 WHEREAS, the Bay Area AQMD is entering into this Agreement to execute Executive Orders D-24-01 and D-28-01 as ordered by California Governor Gray Davis to provide Mirant additional operating hours for the Potrero Peaking Turbines and to require Mirant to pay a mitigation fee to the local air quality management district for all excess emissions from such operations;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mirant and the Bay Area AQMD do hereby agree as follows:

ARTICLE 2 POTRERO PEAKING TURBINE OPERATION

2.1 In accordance with Executive Orders D-24-01 and D-28-01 identified in paragraphs 1.10 and 1.12, above, Mirant may operate each of the Potrero Peaking Turbines for more than 877 hours per calendar year for the term of this Agreement and remains subject to the 65 ppmv NO_x emission limit in Rule 9-9-302, subject to the terms and conditions of this Agreement.

2.2 Operation of the Potrero Peaking Turbines beyond the 877-hour annual operating limit in accordance with the terms of this Agreement shall be allowed only until the earlier of (1) unless amended by further written agreement in accordance with paragraph 4.13, below, a period of one year from the Effective Date of this agreement; or (2) a declaration by the Governor of California rescinding or otherwise terminating the declaration of a State of Emergency due to the energy shortage in the State of California made by California Governor Gray Davis on January 17, 2001. Either of these occurrences is referred to in the remainder of this Agreement as the "Terminating Event." Unless by the date of the Terminating Event, Mirant has sought and obtained a modification to the Major Facility Review Permit for Plant No. 26 to allow operations of the Potrero Peaking Turbines for more than 877 hours per year, operation of the Potrero Peaking Turbines shall revert to operations under the 877-hour per year operating limit. If, at the time of the Terminating Event, any of the Potrero Peaking Turbines have already operated for more than 877 hours in the then-current calendar year, Mirant shall immediately cease operations of that Potrero Peaking Turbine until the next January 1st. All operations in excess of the 877-hour operating limit in the same calendar year as the Terminating Event shall be deemed to have occurred under the terms of this Agreement.

2.3 The Potrero Peaking Turbines shall be operated by Mirant only under the terms and conditions set forth in Attachment A to this Agreement ("Operating Criteria for the Utilization of Combustion Turbines at Potrero Power Plant"). The Bay Area AQMD understands that the ISO has committed to dispatch the Potrero Peaking Turbines only under the conditions set forth in Attachment A and to provide corroborating evidence of

such dispatch to Mirant and the Bay Area AQMD. Failure of the ISO to comply with the operating criteria in Attachment A or to satisfy any other requirement, duty, or obligation under this Agreement shall not constitute a breach of the Agreement by Mirant or the Bay Area AQMD. Mirant shall provide to the Bay Area AQMD any information or reports specified in this Agreement. If Mirant does not have such information, Mirant shall undertake all reasonable efforts to obtain such information and to provide such information promptly to the Bay Area AQMD. Mirant shall make all reasonable efforts to obtain the ISO's compliance with the terms of this Agreement.

2.4 Mirant shall complete and provide to the Bay Area AQMD by September 1, 2001, an engineering and cost study of all available retrofit emission controls for reducing NOx emissions from the Potrero Peaking Turbines, including, but not limited to, the options of use of low-sulfur and/or low-nitrogen fuel, combustion modifications, converting to natural gas or dual-fuel firing, and installing low-NOx combustors and selective catalytic reduction.

2.5 Based on the results of the study referenced in paragraph 2.4, above, and in conjunction with the exercise of the Bay Area AQMD's discretion regarding the allocation of Mitigation Fees as set forth in paragraph 3.4, below, Mirant may request, and the Bay Area AQMD may in its sole discretion allocate, a certain portion of the Mitigation Fees set forth in paragraph 3.1, below, to fund installation of retrofit emission controls to reduce NOx emissions from the Potrero Peaking Turbines, pursuant to a Bay Area AQMD Authority to Construct. Upon the commencement of operation of, and demonstration to the satisfaction of the Bay Area AQMD of the actual emission level achieved with, any such retrofit emission controls, the excess NOx emission calculation procedure specified in paragraph 3.1, below, shall be amended to reflect the new NOx emission rate from the affected turbines.

2.6 Execution by Mirant of this Agreement and submission by Mirant to the Bay Area AQMD of the reports and information specified in this Agreement shall, with respect to Condition 15816 and Rule 9-9-302, be deemed to satisfy any and all requirements imposed pursuant to Title V of the Clean Air Act for prompt reporting of deviations from permit conditions.

ARTICLE 3 MITIGATION FEES

3.1 Mitigation Fee Payment. Mirant shall pay a mitigation fee to the Bay Area AQMD of \$20,000.00 per ton or part of a ton of NOx emitted by any one or more of the Potrero Peaking Turbines resulting from operation of such turbine(s) after the 877th hour of operations for such turbine in calendar years 2001 and 2002. Tons of excess NOx emissions shall be calculated in accordance with the following formula:

[Emission Factor (65 ppm converted to pounds per mmbtu)] x [[fuel throughput] x [higher heating value (based on generic BAAQMD conversion factor for higher heating value of oil OR fuel-specific higher heating value data supplied by Mirant)]]

3.2 Mitigation Fee Deposit. Within ten (10) days of the execution of this Agreement, Mirant shall make a lump sum payment to the Bay Area AQMD of four hundred thousand dollars (\$400,000.00) as a deposit on anticipated future mitigation fees. Mitigation fees owed by Mirant in accordance with this Agreement shall first be charged against the Mitigation Fee Deposit described in this paragraph. Incurred mitigation fees in excess of the Mitigation Fee Deposit shall then be made periodically in accordance with paragraph 3.3 of this Agreement, below.

3.3 Mitigation Fee Payments Schedule. Upon depletion of the mitigation fee deposit provided by Mirant pursuant to paragraph 3.2, above, Mirant shall pay the Bay Area AQMD the mitigation fee calculated in accordance with paragraph 3.1 of this Agreement, above, within fifteen (15) business days following the last day of each calendar quarter.

3.4 Mitigation Program. The Bay Area AQMD shall allocate any Mitigation Fees paid by Mirant in the Bay Area AQMD's sole discretion to projects that, in the Bay Area AQMD's sole judgment, will achieve reductions of NOx emissions comparable to the excess NOx emissions resulting from operation of the Potrero Peaking Turbines for which Mirant paid such fees to the Bay Area AQMD. Such NOx emission reduction projects may reduce emissions from mobile, portable, area-wide, or stationary sources.

3.5 Excess NOx Emissions Report. Within ten (10) business days of the end of each month, Mirant shall provide to the Bay Area AQMD a report for each of the Potrero Peaking Turbines, detailing operating hours and fuel usage during the month. Within ten (10) business days of the end of each calendar quarter, Mirant shall provide to the Bay Area AQMD a report in substantially the form set forth in Exhibit B to this Agreement that details operating hours and fuel usage for each of the Potrero Peaking Turbines and a calculation of the excess NOx emissions and of the Mitigation Fee owed to the Bay Area AQMD resulting from operation of such turbine(s) in accordance with paragraph 3.1.

ARTICLE 4 MISCELLANEOUS PROVISIONS

4.1 Scope of Agreement. This Agreement is binding upon Mirant and the Bay Area AQMD only with respect to the matters specifically addressed and does not otherwise bind Mirant and the Bay Area AQMD.

4.2 Notices. All notices required pursuant to this Agreement shall be in writing and shall be served either by personal delivery (including by overnight delivery service), by regular mail, postage prepaid, or facsimile, to Mirant and the Bay Area AQMD at the respective addresses set forth below.

To Mirant:

Ronald M. Kino
Environmental Health & Safety Manager
Mirant California, LLC
1350 Treat Boulevard, Suite 500
Walnut Creek, CA 94596
Telephone: (925) 287-3118
Facsimile: (925) 947-3001

David R. Farabee
Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, CA 94105-2228
Telephone: (415) 983-1000
Facsimile: (415) 983-1200

To the Bay Area AQMD:

William DeBoisblanc
Director of Permit Services
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Telephone: (415) 749-4704
Facsimile: (415) 749-5030

Brian C. Bunger
Senior Assistant District Counsel
939 Ellis Street
San Francisco, CA 94109
Telephone: (415) 749-4920
Facsimile: (415) 749-5103

4.3 Payments. Any and all payments required under this Agreement shall be made to the Bay Area Air Quality Management District, c/o Brian C. Bunger, Senior Assistant District Counsel, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

4.4 Headings. The title headings of the respective articles of this Agreement are inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

4.5 Successors and Assigns. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective predecessors, successors, subsidiaries, partners, limited partners, agents, principals, and assigns.

- 4.6 Severability. If any provision of this Agreement or the application of this Agreement to either Mirant or the Bay Area AQMD is held by any judicial authority to be invalid, the application of such provision to the other Party and the remainder of this Agreement shall remain in force and shall not be affected thereby, unless such holding materially changes the terms of this Agreement.
- 4.7 Authority to Bind. Each of the undersigned represents and warrants that he or she has read and understands and has full and complete lawful authority to grant, bargain, convey, and undertake the rights and duties contained in this Agreement, and that he or she has full and complete lawful authority to bind any respective principals, predecessors, successors, subsidiaries, partners, limited partners, agents and assigns to this Agreement. Each of the undersigned understands and agrees that this representation and warranty is a material term of this Agreement, without which it would not have been executed.
- 4.8 Understanding of Terms. Mirant and the Bay Area AQMD hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and that they have signed it voluntarily and on the advice of counsel of their own choosing. The Parties have had the opportunity to consult with their attorneys and any other consultant each deemed appropriate prior to executing this Agreement.
- 4.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 4.10 Entire Agreement. The mutual obligations and undertakings of Mirant, on the one hand, and the Bay Area AQMD, on the other hand, expressly set forth in this Agreement are the sole and only consideration of this Agreement and supersede and replace all prior negotiations and proposed agreements between Mirant and the Bay Area AQMD written or oral, on the specific matters addressed in this Agreement. Mirant and the Bay Area AQMD each acknowledges that no other party, nor the agents nor attorneys of any other party, has made any promise, representation or warranty whatsoever (express or implied), not contained herein, to induce the execution of this Agreement. This Agreement constitutes the full, complete and final statement of Mirant and the Bay Area AQMD on the matters addressed by this Agreement.
- 4.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall have the same force and effect as an original, but all of which together shall constitute one and the same instrument.
- 4.12 Jointly Drafted. Mirant and the Bay Area AQMD have jointly prepared this Agreement. This Agreement shall be deemed to have been jointly drafted by the Parties for the purpose of applying any rule of construction to the effect that ambiguities are to be construed against the party drafting the agreement.
- 4.13 Amendments. This Agreement may be amended and supplemented only by a written instrument signed by both Mirant and the Bay Area AQMD or their successors-

in-interest. However, such execution may be in counterparts and, when so executed, shall be deemed to constitute one and the same document.

4.14 Material Breach. Any material breach of this Agreement by either Party shall make the agreement subject to termination upon notice by the non-breaching Party.

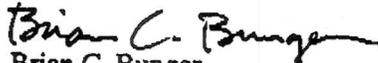
4.15 Waiver. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on March 30, 2001.

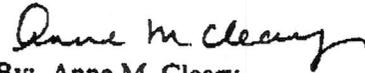
BAY AREA AIR QUALITY MANAGEMENT DISTRICT


By: Ellen Garvey
Title: Executive Officer/Air Pollution Control Officer

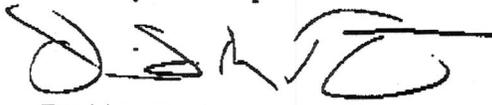
Approved as to form:


Brian C. Bunger
Senior Assistant Counsel

MIRANT POTRERO, LLC


By: Anne M. Cleary
Title: President of Mirant Potrero, LLC

Approved as to form:
Pillsbury Winthrop LLP


David R. Farabee
Counsel for Mirant Potrero, LLC

ATTACHMENT A

Operating Criteria for the Utilization of Combustion Turbines at Potrero Power Plant

Beginning on the Effective Date of this Agreement and terminating on December 31, 2001, then beginning again for each unit at such time as that unit's operating hours in 2002 exceed 877, and terminating on the occurrence of a Terminating Event as described in Paragraph 2.2 of this Agreement, the Potrero Power Plant ("Potrero") Units 4, 5, and 6 ("Potrero Peaking Turbines") may commence operation at any time the requirements specified in Condition 1 (operation to provide local area support), Condition 2 (operation to provide zonal area support) and/or Condition 3 (operation as a system resource) are satisfied.

For purposes of this Agreement, a California Load Serving Entity shall be defined as including the California Independent System Operator (ISO), California Department of Water Resources (DWR) or any California municipal agency, California irrigation district, California water district, California electric cooperative, California investor owned utility, or the Western Area Power Administration ("WAPA"), but only to the extent that the WAPA arranges for sale of the electricity within California.

Condition 1: Local Area Support

The Potrero Peaking Turbines may be used as the last resource committed to satisfy the ISO Operating Procedure for San Francisco under emergency transmission system conditions and to avert firm load shedding in the Greater San Francisco Bay Area ("Bay Area"). The operations of the Potrero Peaking Turbines for local reliability will be limited to conditions associated with the outage of transmission or generation facilities which affect the reliable operations of the transmission network necessary to serve the San Francisco Peninsula area or to avert firm load shedding in the Bay Area. Prior to coming on-line under this Condition, Mirant shall use its best efforts in such conditions to determine that the ISO has implemented the following unit commitment order (unless the action will have an adverse impact on the transmission grid):

1. Hunters Point Unit 4 (utility boiler) and Potrero Unit 3 (utility boiler);
2. Hunters Point Unit 1 (two combustion turbines);
3. Potrero Units 4, 5, and 6 (six combustion turbines).

For purposes of this Agreement, the Greater San Francisco Bay Area consists primarily of the counties of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara, as served primarily by the Vaca-Dixon, Tesla, Metcalf and Tracy 500/230kV substations

Condition 2: Zonal Area Support

The Potrero Peaking Turbines may be used to avert firm load curtailment in the Northern California area caused by a constraint on Western System Coordinating Council ("WSCC") transmission Path 15. This action will only be in response to a request by the ISO, and the Potrero Peaking Turbines will be called upon only after all available utility boilers in the Northern California area are operating at their maximum available output. Under dispatch from the ISO, Mirant will commit the Potrero Peaking Turbines for support of the North of Path 15 ("NP-15") zone subject to an Environmental Dispatch Procedure established by the ISO in conjunction with the California Air Resources Board ("ARB") and the Bay Area AQMD.

Condition 3: System Resource

The Potrero Peaking Turbines may be brought on line as a system resource only under one of the following conditions:

1. For sales to a California Load Serving Entity only after a) a declaration by the ISO that actual operating reserves have fallen below 4% and b) to the extent necessary to maintain system reserves at 4% and c) either firm load shedding is occurring or the ISO has given notice to Mirant of imminent interruption of firm load.
2. To replace some or all of the output of a unit at the Contra Costa, Pittsburg or Potrero Power plants operating under the ISO Participating Generator Agreement and which was committed and scheduled to a California Load Serving Entity, or to replace energy that Mirant had committed to supply from outside California and scheduled to a California Load Serving Entity. This provision may only be used for energy that is pre-scheduled with the ISO pursuant to the Western System Coordinating Council Interchange Scheduling and Accounting Subcommittee calendar or the ISO hour-ahead and real-time markets. Prior to the use of the Potrero Peaking Turbines, all other units at the specified power plants that are available to increase their generation will be employed. Operation of each Potrero Peaking Turbine pursuant to the criteria specified in this paragraph 2 shall not exceed 877 hours per calendar year, including for 2001 any hours a turbine has already operated under the conditions specified in this paragraph prior to the effective date of this Agreement. As of March 27, 2001, at 6:00 a.m. Pacific, the Potrero Peaking Turbines had the following hours remaining available for operation under this Condition: Unit 4: 833 hours; Unit 5: 798 hours; and Unit 6: 798 hours.

General Conditions

Compliance with Operating Conditions. Prior to coming on line under any of the above operating conditions, Mirant shall use its best efforts to determine that all applicable terms of the operating conditions are met. If Mirant determines that the ISO has not followed the operating criteria specified in this Attachment A, Mirant shall refuse subsequent requests by the ISO to operate the Potrero Peaking Turbines, unless a) the ISO commits in writing to Mirant and the Bay Area AQMD to conform to the operating criteria in this Attachment A, or b) at the time of a subsequent ISO request to operate, Mirant independently determines, on the basis of reasonable inquiry, that one or more of the operating conditions specified above are satisfied.

Daily Operation Reports. Operation of the Potrero Peaking Turbines beyond the respective 877-hour annual operating limits shall be reported by Mirant by 12:00 noon Pacific following each operating date (report on the operations of the Potrero Peaking Turbines over the weekend or on a holiday will be made on the first business day following the weekend or holiday) to the Bay Area AQMD.

Monthly Operation Reports. Commencing with the month of April 2001, and regardless of whether the 877-hour annual operating limit has been reached for any of the Potrero Peaking Turbines, Mirant shall provide to the Bay Area AQMD a comprehensive monthly summary of each instance (date, start time, end time, reason (specifying the applicable operating condition, above)) that the Potrero Peaking Turbines were operating on and after the effective date of this agreement. Mirant shall submit these monthly operating summaries within ten (10) business days of the end of any month in which such operations occurred.

Attachment B

1 LOUISE H. RENNE, State Bar #36508
 City Attorney
 2 JOANNE HOEPER, State Bar #114961
 Chief Trial Attorney
 3 THERESA MUELLER, State Bar #172681
 WILLIAM CHAN, State Bar #178407
 4 ROSE-ELLEN HEINZ, State Bar #181257
 Deputy City Attorneys
 5 Fox Plaza
 1390 Market Street, 6th Floor
 6 San Francisco, California 94102-5408
 Telephone: (415) 554-3845
 7 Facsimile: (415) 437-4644
 E-Mail: Rose-Ellen_Heinz@ci.sf.ca.us
 8

9 Attorneys for Plaintiffs
 10 CITY AND COUNTY OF SAN FRANCISCO and
 PEOPLE OF THE STATE OF CALIFORNIA
 11

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

15 CITY AND COUNTY OF SAN
 FRANCISCO, a Municipal Corporation,
 16 and the PEOPLE OF THE STATE OF
 CALIFORNIA, by and through LOUISE
 17 H. RENNE, City Attorney for the CITY
 AND COUNTY OF SAN FRANCISCO,

Case No. C-01-2356 PJH

FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE AND OTHER RELIEF

18 Plaintiffs,

DEMAND FOR JURY TRIAL

19 vs.

20 MIRANT POTRERO, LLC,

21 Defendant.

22
 23
 24 The City and County of San Francisco, a municipal corporation, (the "City") and the
 25 People of the State of California, (the "People") by and through San Francisco City Attorney
 26 Louise H. Renne, (collectively "Plaintiffs") for their Complaint against defendant Mirant
 27 Potrero, LLC, ("Mirant" or "Defendant") hereby allege as set forth below:
 28

INTRODUCTION

1
2 1. Mirant (formerly known as Southern Energy Company) operates a power plant at
3 1201 Illinois Street, in the Potrero neighborhood in the City and County of San Francisco
4 ("Potrero Power Plant"). Mirant operates one boiler unit at the Potrero Power Plant for the
5 purposes of generating electricity. Mirant also operates, in a limited capacity, three 52-megawatt
6 ("MW") peaker units ("Peakers") for the purposes of supplementing the electrical generation
7 capacity of the Potrero Power Plant when necessary. Each Peaker has two diesel-fueled turbine
8 engines, which emit air pollutants.

9 2. Mirant's permit to operate the Peakers, issued pursuant to Federal and State laws,
10 limits the operation of their six diesel turbine engines to 877 hours per year, or approximately
11 one-tenth of the year, because of the amount of air pollutants that they emit. Because of this
12 limitation in the operational hours for these turbine engines, Mirant was not required to install
13 state of the art pollution control equipment that would otherwise have been required under the
14 Clean Air Act ("the Act"), 42 U.S.C. §§ 7401 – 7671q, to reduce the amount of air pollutants
15 emitted by these turbine engines.

16 3. Now, Mirant has obtained an agreement from the Bay Area Air Quality
17 Management District ("BAAQMD") that allows the turbine engines to run without any limits on
18 the hours of operation. Mirant failed to follow the proper procedures that would entitle them to
19 increase their operations in this manner. While the City supports increased electric generation,
20 Mirant has not obtained permits, installed additional pollution control equipment, or satisfied
21 emission offsets, as required by the Act.

22 4. Operation of the Peakers beyond the permitted limit, without additional pollution
23 control equipment and emission offsets, will result in increased emissions of oxides of nitrogen
24 ("NOx"), particulate matter, sulfur dioxide and carbon monoxide, as well as cancer-causing
25 chemicals such as benzene, formaldehyde, dioxin, and hexavalent chromium and other toxins,
26 such as mercury, nickel, and lead. These pollutants cause serious harm to human health.

27 5. Through its agreement with BAAQMD, Mirant circumvented provisions of the
28 Act that protect the health and safety of communities in which power plants are located. Over

1 99,000 residents of San Francisco live within a two-mile radius of the Potrero Power Plant and
2 there are 70 schools within a three-mile radius. Those residents and schoolchildren are already
3 exposed to air in the Bay Area that does not meet the national standards for ozone. Mirant's
4 excess emissions of NOx will further contribute to Bay Area's ozone problem because NOx is an
5 ozone precursor.

6 6. While the existence of an energy crisis in California may justify extraordinary
7 measures such as temporarily modifying operational limits for power plants such as those
8 contained in the permit for Mirant's Peakers, such modifications must be made consistent with
9 the law and in a manner that protects the health of the residents of the Potrero community. The
10 Agreement between Mirant and BAAQMD provides Mirant a financial incentive to operate its
11 most polluting turbine engines and fails to mitigate the harm to the Potrero community.

12 7. Plaintiffs seek a declaration from the Court that Mirant is in violation of the Act
13 and California Business and Professions Code for failing to obtain the required permits allowing
14 it to operate the six turbine engines in excess of 877 hours in the calendar year 2001, for
15 exceeding an emission standard or limitation under the Act, and that the agreement with
16 BAAQMD does not excuse such violations. Plaintiffs also seek injunctive relief to require
17 Mirant to obtain the required permits that would allow it to operate the turbine engines beyond
18 the 877-hour permit limitation. Finally, Plaintiffs seek civil penalties.

19 JURISDICTION

20 8. This Court has jurisdiction over the subject matter of this action pursuant to
21 Section 304 of the Clean Air Act ("the Act"), 42 U.S.C. § 7604, and 28 U.S.C. §§ 1331 (federal
22 question), 1367 (supplemental jurisdiction), 2201 (declaratory relief), 2202 (injunctive relief).

23 9. Section 304(a)(1) of the Act, 42 U.S.C. § 7604(a)(1), authorizes citizen suits
24 against "any person . . . who is alleged to have violated (if there is evidence that the alleged
25 violation has been repeated) or to be in violation of . . . an emission standard or limitation under
26 [the Act.]"

27 10. On June 19, 2001, Plaintiffs gave notice to Mirant, BAAQMD, EPA and the State
28 of California of Plaintiffs' intent to file suit against Mirant for violations of emissions standards

1 and limitations under the Act. A copy of the notice of intent to file suit against Mirant is
2 attached hereto as Exhibit A. Copies of the certified mail receipts are attached hereto as Exhibit
3 B.

4 11. More than sixty days have passed since Plaintiffs provided notice of their intent to
5 file suit, and neither the EPA nor the State of California has commenced and is diligently
6 prosecuting a civil action in a court of the United States or a State to require compliance with the
7 emission standards and limitations.

8 12. Section 304(a)(3) of the Act, 42 U.S.C. § 7604(a)(3), authorizes citizen suits
9 against “any person who proposes to construct or constructs any new or modified major emitting
10 facility” without the permits required by the New Source Review and Prevention of Significant
11 Deterioration provisions of the Act.

12 **VENUE**

13 13. Venue is proper in this judicial district pursuant to section 304 of the Act, 42
14 U.S.C. § 7604, and 28 U.S.C. § 1391(b) because a substantial part of the events or omissions
15 giving rise to the claim occurred within this district, and Plaintiffs and Defendant reside in this
16 district.

17 **INTRADISTRICT ASSIGNMENT**

18 14. Assignment of this action to the San Francisco or Oakland Division is proper
19 pursuant to Local Rule 3-2(c) and (d) because a substantial part of the events or omissions giving
20 rise to the claim occurred in the City and County of San Francisco.

21 **PARTIES AND SUBJECT PROPERTY**

22 15. Plaintiff the City and County of San Francisco (“the City”) is a municipal
23 corporation with a population in excess of 750,000 organized and existing under and by virtue of
24 the laws of the State of California. The City is organized to improve the quality of urban life and
25 to meet the needs of its residents. See San Francisco Charter, Preamble.

26 16. Plaintiffs are representatives of the residents of San Francisco who live, work,
27 recreate, and breathe the air into which Mirant emits pollutants. Many citizens live in the
28

1 immediate vicinity of Potrero Power Plant. Interests of the residents of San Francisco have been
2 and continue to be harmed by Mirant's violations of the Act.

3 17. Defendant Mirant is a Delaware limited liability corporation with its principle
4 place of business in Georgia.

5 18. Defendant Mirant owns and operates the Potrero Power Plant, at 1201 Illinois
6 Street, San Francisco, California.

7 19. Plaintiff the City brings this action pursuant to §§ 304(a)(1) and (3) of the Act, 42
8 U.S.C. §§ 7604(a)(1) and (3). Plaintiff People of the State of California ("the People") brings
9 this action pursuant to California Business and Professions Code § 17204.

10 11 GENERAL ALLEGATIONS

12 Harm Caused by Air Pollutants

13 20. Ozone, the principal element of smog, is a secondary pollutant produced when
14 two precursor air pollutants - volatile organic compounds and NO_x - react in sunlight.

15 21. Children, the elderly, and those with respiratory conditions exacerbated by ozone
16 are suffering as a result of exposure to high levels of ozone in the environment. Rates of
17 hospitalization for asthmatics are sky-high in the Bay Area's most populous counties of Santa
18 Clara, Alameda, Contra Costa and San Francisco.

19 22. The human health and associated societal costs from ozone pollution are extreme:

20 A large body of evidence shows that ozone can cause harmful respiratory
21 effects, including chest pain, coughing and shortness of breath, which
22 affect people with compromised respiratory systems most severely. When
23 inhaled, ozone can cause acute respiratory problems; aggravate asthma;
24 cause significant temporary decreases in lung function of 15 to over 20
percent in some healthy adults; cause inflammation of lung tissue, produce
changes in lung tissue and structure; may increase hospital admissions and
emergency room visits; and impair the body's immune system defenses,
making people more susceptible to respiratory illnesses.

25 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001). Moreover, ozone strikes the most vulnerable segments
26 of our population the hardest: children, the elderly, and people with respiratory ailments. Id.
27 Children are at greater risk because their lung capacity is still developing, because they spend
28 significantly more time outdoors than adults – especially in the summertime when ozone levels

1 are the highest, and because they are generally engaged in relatively intense physical activity that
2 causes them to breathe more ozone pollution. Id.

3 23. Ozone has severe impacts on millions of Americans with asthma. See 66 Fed.
4 Reg. at 5012. Moreover, the impacts of ozone on “asthmatics are of special concern particularly
5 in light of the growing asthma problem in the United States and the increased rates of asthma-
6 related mortality and hospitalizations, especially in children in general and black children in
7 particular.” 62 Fed. Reg. 38856, 38864 (July 18, 1997). In fact:

8 [A]sthma is one of the most common and costly diseases in the United
9 States. . . . Today, more than 5 percent of the US population has asthma
10 [and] [o]n average **15 people died every day** from asthma in 1995. . . . In
11 1998, the cost of asthma to the U.S. economy was estimated to be \$11.3
billion, with hospitalizations accounting for the largest single portion of
the costs.

12 66 Fed. Reg. at 5012-5013 (emphasis added). The health and societal costs of asthma are
13 wreaking havoc in California. There are currently 2.2 million Californians suffering from
14 asthma. See *California Department of Health Services, California County Asthma*
15 *Hospitalization Chart Book*, 1 August 2000. In 1997 alone, nearly 56,413 residents, including
16 16,705 children, required hospitalization because their asthma attacks were so severe. Asthma is
17 now the leading cause of hospital admissions of young children in California. Id. In addition to
18 very real human suffering, asthma hospitalizations impose a huge financial drain upon the State's
19 and the City's health care system. The most recent data indicate that the statewide financial cost
20 of these hospitalizations was nearly \$350,000,000, with nearly a third of the bill paid by the State
21 Medi-Cal program. Id. at 4.

22 24. In the Bay Area, African-American children pay the highest price for ozone
23 pollution. Whereas the statewide asthma hospital discharge rate is an unacceptably high 216 per
24 100,000 children, the rates for African-American children in the four most populous counties –
25 Santa Clara, Alameda, Contra Costa, and San Francisco counties – soar almost ten-fold to 2036,
26 1578, 1099 and 361, respectively.

1 25. While asthmatics, children, the elderly, and persons with respiratory illnesses are
2 particularly vulnerable, even healthy adults who exercise or work vigorously outdoors are
3 susceptible to adverse health effects from ozone exposure.

4 26. Carbon monoxide ("CO") is a colorless, odorless, poisonous gas. If inhaled, CO
5 enters the bloodstream and reduces oxygen delivery to the body's organs and tissues. The health
6 threat from CO is most serious to those who suffer from cardiovascular disease. At high levels
7 of exposure, healthy individuals are also affected.

8 27. Particulate matter less than 10 microns ("PM₁₀") could cause negative effects on
9 respiratory systems, aggravation of existing respiratory and cardiovascular disease, alteration of
10 the body's defense systems against foreign materials, damage to lung tissue, carcinogenesis and
11 premature death. The elderly, children, and people with chronic obstructive pulmonary or
12 cardiovascular disease, influenza or asthma are especially sensitive to the effects of PM₁₀. It
13 could also serve as a carrier for a variety of toxic metals and compounds.

14 28. Exposure to high concentrations of sulfur dioxide ("SO₂") could adversely affect
15 breathing and respiratory and cardiovascular systems. Major subgroups of the population that
16 are most sensitive to SO₂ include asthmatics and individuals with cardiovascular disease or
17 chronic lung disease as well as children and the elderly.

18 Operations at Potrero Power Plant

19 29. On September 14, 1998, Mirant's predecessor, Southern Energy California,
20 obtained a Major Facility Review Permit ("Permit") to operate the Potrero Power Plant pursuant
21 to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661f.

22 30. As part of the permit process, Southern Energy requested and received Condition
23 #15816 of the Permit, which limits the hours of operation of the six turbine engines of the
24 Peakers to no more than 877 hours per year. Because of Condition #15816, the turbine engines
25 are allowed to operate without state-of-the-art pollution control equipment and without
26 provisions for emission offsets.

1 31. On December 12, 2000, the California Independent System Operator issued a
2 letter to Mirant requesting it to apply for a "variance" to its permit regarding the restriction on
3 the operation of its Peakers.

4 32. Instead of applying for such a modification to its permit, on March 30, 2001,
5 Mirant entered into a Compliance and Mitigation Agreement ("Agreement") with BAAQMD.
6 The Agreement allows Mirant to operate the six turbine engines in excess of 877 hours per year
7 without installing state-of-the-art pollution control equipment or providing for emission offsets.
8 The Agreement does not specify a maximum number of hours that Mirant may run these turbine
9 engines.

10 33. Under the Agreement, Mirant is required to pay a "Mitigation Fee Payment"
11 based on the amount of NOx emissions. But the Agreement does not require that the payment be
12 used for mitigation of the harm caused to local residents. Moreover, the penalty provision of the
13 Agreement is arbitrary and bears no relation to Mirant's costs or revenues from operating the
14 Peakers. Thus, Mirant has a financial incentive to operate the Peakers without limit and pollute
15 the air.

16 34. Mirant and BAAQMD entered into the Agreement without any notice to or
17 participation or input from residents of the Potrero neighborhood or the citizens or officials of
18 San Francisco.

19 35. Mirant exceeded the 877-hour limit for Potrero Turbine Engine 5A, Source No.
20 26-12, on: May 31, 2001, June 2, 2001, and June 10, 2001.

21 36. Mirant exceeded the 877-hour limit for Potrero Turbine Engine 5B, Source No.
22 26-13, on: May 19, 2001, May 20, 2001, May 21, 2001, May 22, 2001, May 23, 2001, May 25,
23 2001, May 26, 2001, May 27, 2001, May 28, 2001, May 30, 2001, May 31, 2001, June 2, 2001,
24 and June 10, 2001.

25 37. Mirant exceeded the 877-hour limit for Potrero Turbine Engine 6A, Source No.
26 26-14, on: May 10, 2001, May 11, 2001, May 14, 2001, May 15, 2001, May 16, 2001, May 19,
27 2001, May 20, 2001, May 21, 2001, May 22, 2001, May 23, 2001, May 25, 2001, May 26, 2001,
28 May 30, 2001, May 31, 2001, and June 2, 2001.

1 38. Mirant exceeded the 877-hour limit for Potrero Turbine Engine 6B, Source No.
2 26-15, on: May 20, 2001, May 21, 2001, May 22, 2001, May 23, 2001, May 25, 2001, May 26,
3 2001, May 30, 2001, May 31, 2001, and June 2, 2001.

4 39. As of July 31, 2001, Mirant has operated the Peakers for 313.3 hours in excess of
5 their permitted limits, resulting in the emission of approximately 13 tons of NOx into the
6 environment.

7 Background and Purpose of the Clean Air Act

8 40. In 1970, Congress enacted the Act, 42 U.S.C. §§ 7401-7671q, requiring that the
9 health-threatening smog afflicting our major metropolitan areas be cleaned up by 1975. Today,
10 30 years later, unsafe levels of ozone, or smog, persist in the Bay Area.

11 41. The Act establishes a comprehensive program to “protect and enhance the quality
12 of the Nation’s air resources so as to promote the public health and welfare and the productive
13 capacity of its population.” 42 U.S.C. § 7401(b)(1). This program is founded on shared federal
14 and state responsibility.

15 42. Sections 108 and 109 of the Act require the United States Environmental
16 Protection Agency (“EPA”) to establish, review, and revise nationally applicable standards for
17 air pollutants having an adverse impact on public health or welfare, called the National Ambient
18 Air Quality Standards (“NAAQS”). 42 U.S.C. §§ 7408, 7409. The NAAQS establish
19 permissible concentrations of those pollutants in the “ambient,” or outside, air.

20 43. Section 110 of the Act, 42 U.S.C. § 7410, in turn, requires each state to adopt and
21 submit to EPA for approval, a plan for the implementation, maintenance, and enforcement of the
22 NAAQS in each air quality control region within the state. These plans are known as State
23 Implementation Plans (“SIPs”).

24 44. Among other things, SIPs contain controls on individual sources of air pollution
25 as necessary to attain and maintain the NAAQS. 42 U.S.C. § 7410. SIPs approved by the EPA
26 become federal law. Thus, violations of SIP requirements applicable to state agencies and
27 individual sources of air pollution are subject to enforcement by the United States as well as by
28 citizens in federal court pursuant to the Act.

1 New Source Review ("NSR") Requirements for Nonattainment Areas

2 45. Part D of Title I of the Act requires SIPs to include a permit program for the
3 construction and operation of new or modified major stationary sources of an air pollutant in any
4 area that has not attained the NAAQS for that pollutant ("nonattainment area"). 42 U.S.C.
5 §§ 7410(a)(2)(C); 7502(c)(5). This Part imposes more stringent regulatory requirements for such
6 new or modified sources. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7508.

7 46. The purpose of these NSR provisions is to ensure that air pollution control
8 districts determine, prior to construction or modification, whether such activity will interfere
9 with the attainment of the national standards. 42 U.S.C. §§ 7502(c)(4); 7503(a)(1)(A); 40 C.F.R.
10 § 51.160(a), (b). NSR permits may only be issued, for example, if "the proposed source is
11 required to comply with the lowest achievable emission rate," there are sufficient reductions (or
12 offsets) in emissions from the source or elsewhere to result in a net air quality benefit, and the
13 source is in compliance with all applicable emission limitations and standards. 42 U.S.C.
14 §§ 7502(c)(5), 7503(a).

15 47. One of the NAAQS that EPA sets for protection of public health is the maximum
16 acceptable limits for ozone, a derivative product of NOx emissions. See 40 C.F.R. § 81.305.

17 48. In 1998, EPA re-designated the Bay Area as a nonattainment area for ozone. 63
18 Fed. Reg. 37258 (July 10, 1999); see 40 CFR § 81.305 (1999).

19 49. Because the Bay Area is in a nonattainment area for federal ozone standards, any
20 new significant emission of ozone or one of its precursors requires the source to undergo
21 preconstruction review pursuant to the Bay Area SIP implementing the NSR program. See 64
22 Fed. Reg. 3,850 (Jan. 26, 1999); 40 C.F.R. § 52.220(c)(199)(i)(A)(8).

23 50. BAAQMD's federally approved NSR rules, which are part of the SIP, are
24 contained in Regulation 2, Rule 2 ("Rule 2-2"). Rule 2-2, in addition to containing SIP rules,
25 incorporates by reference 40 C.F.R. § 51.165, federal regulations promulgated by EPA
26 governing requirements for preconstruction review. SIP Rules 2-2-101, 2-2-314.

27 51. Under Rule 2-2, a "major modification" is defined as "[a]ny modification at an
28 existing major facility that the APCO [Air Pollution Control Officer] determines will cause an

1 increase of the facility's emissions by [40 tons of NOx per year]." SIP Rule 2-2-221. Under
2 Rule 1-1, a "modification" is "[a]ny physical change in existing plant or change in the method
3 which results or may result in [] an increase in emission of any air pollutant subject to
4 [BAAQMD] control." This includes an increase in the hours of operation where the hours are
5 limited by permit conditions. SIP Rules 1-1-217, 1-1-217.2; see also, SIP Rule 2-2-223.

6 52. Before a source may make a major modification in the Bay Area, it must submit
7 to BAAQMD an application for and receive authority to construct ("ATC"). SIP Rules 2-1-301
8 and 2-1-402

9 53. Before a source operates equipment the use of which may cause the emission of
10 air contaminants, the source must first apply for and obtain a permit to operate ("PTO"). SIP
11 Rules 2-1-302 and 2-1-402.

12 54. A modified major source is required to apply the Best Available Control
13 Technology ("BACT") if the modification results in an increase of certain air pollutants,
14 including NOx, in excess of 10 pounds per highest day or a cumulative increase since April 5,
15 1991 of 10 pounds per highest day. SIP Rule 2-2-301. The BACT requirement is also triggered
16 if cumulative increases of emissions of certain air pollutants at the facility, including the
17 increases resulting from the modification, since December 1, 1982 exceed certain annual and/or
18 daily amounts. Id. BACT is set to be equivalent to the lowest achievable emission rate
19 ("LAER") required by the Act to be achieved by modified major sources. SIP Rule 2-2-206.

20 55. A modified major source is also required to provide emission offsets for the
21 emission from the modified source. SIP Rule 2-2-302.

22 Prevention of Significant Deterioration ("PSD") Requirements for Attainment Areas

23 56. Part C of Title I of the Act requires a preconstruction permit process for major
24 sources or major modifications resulting in significant emissions of pollutants for which the
25 NAAQS have been attained in the area. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7479.
26 (An area can be in attainment for one or more pollutants for which the NAAQS have been
27 established and in non-attainment for other such pollutants.) The purpose of PSD provisions is
28 to prevent degradation of air that meets the national standards. 42 U.S.C. §§ 7470 and 7475(a).

1 57. A PSD permit, which must be obtained before a major modification, must require
2 application of BACT for pollutants for which the modification would result in a significant net
3 emissions increase. 42 U.S.C. § 7475(a)(4); 40 C.F.R. §§ 52.21(i), 52.21(j)(3).

4 58. For such pollutants, the permit applicant must also perform an analysis of ambient
5 air quality impacts in the area before a PSD permit can be obtained. 42 U.S.C. § 7475(a)(6); 40
6 C.F.R. § 52.21(m).

7 59. BAAQMD is in an area in which the NAAQS for NO_x, CO, PM₁₀ and SO₂ have
8 been deemed attained. 40 C.F.R. § 81.305. Sources within the jurisdiction of BAAQMD
9 therefore must comply with PSD provisions of the Act, as set forth in 40 C.F.R. §§ 52.21(b)-(w);
10 52.270(a), for any major modifications affecting those pollutants.

11 60. A major modification of a major facility includes an increase in production or
12 increased hours of operation where the production and hours are limited by permit conditions,
13 and which will result in an increase in NO_x emissions of 40 tons per year ("tpy") or more; CO
14 emissions of 100 tpy or more; PM₁₀ emissions of 15 tpy or more; and SO₂ emissions of 40 tpy or
15 more. 40 C.F.R. § 52.21(b)(2)(i); SIP Rules 1-1-217.2; 2-2-221; 2-2-223.

16 SIP Requirements, Title V Permit Terms and Conditions

17 61. The operation of a stationary gas turbine is governed by BAAQMD Regulation
18 ("Rule") 9-9, entitled "Nitrogen Oxides from Stationary Gas Turbines." Rule 9-9 was approved
19 by the EPA and incorporated into the SIP in 1997 and is federally enforceable as a SIP
20 requirement. See 63 Fed. Reg. 65,611 (1997); 40 C.F.R. § 52.220(c)(239)(i)(E)(1).

21 62. Pursuant to Rule 9-9, any stationary gas turbine rated at or above 10 MW and that
22 emits between 15 parts per million (volume) ("ppmv") and 65 ppmv of NO_x, corrected to 15
23 percent oxygen (dry basis), when in operation, shall operate less than 877 hours per year. Rules
24 9-9-301.2; 9-9-302. Without the limit on the hours of operation, a stationary gas turbine would
25 be governed by the more stringent limit of 15 ppmv set forth in Rule 9-9-301.2, with limited
26 exceptions not applicable here.

27 63. Each Peaker turbine engine is a stationary gas turbine rated at 26 MW and is
28 therefore governed by Rule 9-9.

1 64. The Peakers cannot achieve the more stringent emission limit of 15 ppmv of NOx
2 without installing additional pollution controls and their operational hours are therefore limited
3 to less than 877 hours per year pursuant to Rule 9-9-302.

4 65. Condition #15816 implements this SIP requirement by limiting the operation of
5 the Peakers to 877 hours per year.

6 66. Condition #15816 is a term and condition set forth in the Potrero Power Plant's
7 Major Facility Review Permit issued by BAAQMD on September 14, 1998, pursuant to
8 Subchapter V of the Act.

9 67. Condition #15816 constitutes an emission standard or limitation within the
10 meaning of Section 304 of the Act because it is an emission standard or limitation or a condition
11 of a permit issued under subchapter V of the Act. 42 U.S.C. § 7604(f)(1), (3), (4).

12 Citizen Suits Provisions

13 68. Section 304(a)(1) of the Act, 42 U.S.C. § 7604(a)(1), authorizes any "person" to
14 sue "any [other] person . . . who is alleged to have violated (if there is evidence that the alleged
15 violation has been repeated) or to be in violation of . . . an emission standard or limitation under
16 [the Act.]"

17 69. Section 304(a)(3) of the Act authorizes any "person" to sue "any [other] person
18 who proposes to construct or constructs any new or modified major emitting facility without a
19 permit required under part C of subchapter I of [the Act] (relating to significant deterioration of
20 air quality) or part D of subchapter I of [the Act] (relating to nonattainment)." 42 U.S.C.

21 7604(a)(3).

22 70. Each Plaintiff is a "person" as defined in section 302(e) of the Act, 42 U.S.C.
23 7602(e) and a "person" within the meaning of section 304(a) of the Act, 42 U.S.C. § 7604(a).

24 71. Mirant is a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e)
25 and a "person" within the meaning of section 304(a) of the Act, 42 U.S.C. § 7604(a).

26 72. The Potrero Power Plant is an existing major facility as defined in section 302(j)
27 of the Act, 42 U.S.C. § 7602(j).

28

1 73. The environmental and economic interests, including the aesthetic interests in the
2 Bay Area environment, as well as health, wellbeing and enjoyment of the residents of San
3 Francisco have been, and continue to be, threatened by Mirant's proposal to operate and
4 operation of its Peakers in violation of the Act. The residents of San Francisco are harmed by
5 the increased emissions of air pollutants caused by the operation of the Peakers in excess of
6 permit limits without additional pollution controls. Specifically, San Franciscans are harmed by
7 increased health risks and increased health care costs.

8 74. In addition, because Mirant failed to apply for and obtain the necessary permits
9 under the Clean Air Act, the residents of San Francisco living, working and breathing the air in
10 the Bay Area, as well as the City and County of San Francisco, were denied their right to
11 participate fully and meaningfully in the permitting process for the Peakers. As a direct result of
12 Mirant's failure to comply with the permitting process, Mirant is emitting and will continue to
13 emit pollutants in excess of the allowed levels, without installing pollution control equipment
14 and without providing for required emission offsets.

15 75. The interests Plaintiffs seek to further in this action under the Act, namely, the
16 protection and improvement of air quality, are within the purposes and goals of the City to
17 improve the quality of urban life for its residents. The City brings the Clean Air Act claims in
18 this action on behalf of its residents who would have standing to sue in their own right. Their
19 individual participation, however, is not necessary for a just resolution of this case.

20 76. Should the Court grant the injunctive and declaratory relief requested by Plaintiffs
21 against Mirant in the present action, the harm to Plaintiffs' interests will be redressed because,
22 among other things, Mirant will not be allowed to emit excess pollution without additional
23 pollution controls.

24 77. An assessment of civil penalties for Mirant's Clean Air Act violations alleged in
25 this complaint will also redress the harms to Plaintiffs' interests by deterring Mirant, and others,
26 from future violations of the Act.

27 ///

28 ///

1 85. Mirant failed to obtain a permit pursuant to PSD rules prior to constructing the
2 major modification of its facility.

3 86. Mirant does not meet the BACT requirements and has not been subject to an air
4 quality impact analysis.

5 87. Unless enjoined by this Court, Mirant will continue to violate Part C of
6 subchapter I of the Act by proposing to modify and modifying its existing major facility without
7 applying for and obtaining a PSD permit, which permit process would require, among other
8 things, application of BACT at the Peakers, and each of them, and an air quality impact analysis.

9 **THIRD CLAIM**
10 **FAILURE TO OBTAIN PERMIT REQUIRED BY PREVENTION OF**
11 **SIGNIFICANT DETERIORATION PROVISIONS BEFORE MODIFYING**
12 **FACILITY TO SIGNIFICANTLY INCREASE CO EMISSIONS**
13 **(42 U.S.C. §§7470-7479)**

14 88. Plaintiff hereby incorporates by reference paragraphs 1 through 77 as though fully
15 set forth herein.

16 89. Allowing Mirant to modify sources by operating the Peakers without any
17 limitation on the hours of operation is a major modification within the meaning of the PSD
18 provisions, Part C of subchapter I of the Act, because such operation will result in a major
19 modification with a net emissions increase at a major existing facility of at least 100 tons of CO
20 per year.

21 90. Mirant failed to obtain a permit pursuant to PSD rules prior to constructing the
22 major modification of its facility.

23 91. Mirant does not meet the BACT requirements and has not been subject to an air
24 quality impact analysis.

25 92. Unless enjoined by this Court, Mirant will continue to violate Part C of
26 subchapter I of the Act by proposing to modify and modifying its existing major facility without
27 applying for and obtaining a PSD permit, which permit process would require, among other
28 things, application of BACT at the Peakers, and each of them, and an air quality impact analysis.

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1 100. Mirant failed to obtain a permit pursuant to PSD rules prior to constructing the
2 major modification of its facility.

3 101. Mirant does not meet the BACT requirements and has not been subject to an air
4 quality impact analysis.

5 102. Unless enjoined by this Court, Mirant will continue to violate Part C of
6 subchapter I of the Act by proposing to modify and modifying its existing major facility without
7 applying for and obtaining a PSD permit, which permit process would require, among other
8 things, application of BACT at the Peakers, and each of them, and an air quality impact analysis.

9
10 **SIXTH CLAIM**
11 **EXCEEDING EMISSION STANDARD OR LIMITATION FOR POTRERO**
12 **TURBINE ENGINE 5A, SOURCE NO. 26-12**
13 **(42 U.S.C. §§7401-7431; 7661-7661f)**

14 103. Plaintiff hereby incorporates by reference paragraphs 1 through 77 as though fully
15 set forth herein.

16 104. Mirant operated Potrero Turbine Engine 5A, Source No. 26-12, in excess of the
17 877-hour limit on at least three days.

18 105. Each time Mirant operates Engine 5A in excess of 877 hours Mirant exceeds an
19 emission standard or limitation under the Act because such operation violates a condition of its
20 permit issued under subchapter V of the Act and the requirements of Rule 9-9.

21 106. Unless enjoined by this Court, Mirant will continue to violate Condition #15816
22 of the Permit by operating Potrero Turbine Engine 5A in excess of the 877-hour limit.

23 **SEVENTH CLAIM**
24 **EXCEEDING EMISSION STANDARD OR LIMITATION FOR POTRERO**
25 **TURBINE ENGINE 5B, SOURCE NO. 26-13**
26 **(42 U.S.C. §§7401-7431; 7661-7661f)**

27 107. Plaintiff hereby incorporates by reference paragraphs 1 through 77 as though fully
28 set forth herein.

108. Mirant operated Potrero Turbine Engine 5B, Source No. 26-13, in excess of the
877-hour limit on at least thirteen days.

1 118. Unless enjoined by this Court, Mirant will continue to violate Condition #15816
2 of the Permit by operating Potrero Turbine Engine 6B in excess of the 877-hour limit.

3
4 **TENTH CLAIM**
5 **UNFAIR BUSINESS PRACTICES BROUGHT BY PLAINTIFF THE PEOPLE OF**
6 **CALIFORNIA AGAINST DEFENDANT MIRANT**
7 **(BUSINESS AND PROFESSIONS CODE SECTIONS 17200-17210)**

8 119. Plaintiff hereby incorporates by reference paragraphs 1 through 118 as though
9 fully set forth herein.

10 120. Plaintiff brings this cause of action in the public interest in the name of the People
11 of the State of California, pursuant to Business and Professions Code Sections 17200-17210, in
12 order to protect the health and safety of the community, from the unlawful and unfair business
13 practices committed by Defendant Mirant in the commercial use of the Property and operation of
14 the Potrero Power Plant in violation of the Act, as set forth in the first through ninth claims.

15 121. Defendant transacts business within the City and County of San Francisco, State
16 of California, and is profiting from operating the Potrero Power Plant in violation of the Act.
17 Each violation of the Act constitutes an unfair and unlawful business practice.

18 122. As the operator of the Potrero Power Plant, Defendant is required to comply with
19 the Act. Defendant has failed to comply with the Act.

20 123. Defendant has further maintained and operated the Potrero Power Plant in
21 violation of: (1) the NSR provisions of the Act by increasing the hours of operation of the
22 Peakers which will cause an increase in NOx emissions, a precursor to ozone formation, in
23 excess of 40 tpy without applying for the necessary permit and without applying the necessary
24 control measures and emission offsets to reduce the amount of NOx emitted by such change; (2)
25 the PSD provisions of the Act by increasing the hours of operation of the Peakers which will
26 cause an increase in NOx emission in excess of 40 tpy without applying for the necessary permit
27 and without applying the necessary control measures to reduce the amount and effects of NOx
28 emitted by such change; (3) the PSD provisions of the Act by increasing the hours of operation
of the Peakers which will cause an increase in CO emission in excess of 100 tpy without
applying for the necessary permit and without applying the necessary control measures to reduce

1 the amount and affects of CO emitted by such change; (4) the PSD provisions of the Act by
2 increasing the hours of operation of the Peakers which will cause an increase in PM₁₀ emission in
3 excess of 15 tpy without applying for the necessary permit and without applying the necessary
4 control measures to reduce the amount and affects of PM₁₀ emitted by such change; (5) the PSD
5 provisions of the Act by increasing the hours of operation of the Peakers which will cause an
6 increase in SO₂ emission in excess of 40 tpy without applying for the necessary permit and
7 without applying the necessary control measures to reduce the amount and affects of SO₂ emitted
8 by such change; and (6) the emissions standards and limitations of the Act by operating the
9 Peakers in excess of 877 hours. These actions constitute unfair business practices and unfair
10 competition as prohibited by Business and Professions Code Section 17200-17210.

11 124. Defendant is engaged in a pattern and practice of conduct constituting an unfair
12 business practice and unfair competition in violation of Business and Professions Code Section
13 17200.

14 125. The manner in which Defendant conducts its business is an unfair and unlawful
15 business practice because profits are derived from a commercial establishment that unlawfully
16 emits pollutants in excess of permitted levels. The actions and conduct of Defendant in
17 sustaining this unlawful and unfair business practice violate the laws and public policies of the
18 City and County of San Francisco, the State of California, and the United States and is inimical
19 to the rights, interest and general welfare of the public.

20 126. Defendant's unfair business practices subject Defendant to civil penalties in the
21 amount of \$2,500 per violation as authorized by Business and Professions Code Section 17206.

22 127. Defendant's unfair business practices that are perpetrated against senior citizens or
23 disabled persons subject Defendant to civil penalties in the amount of \$2,500 per violation as
24 authorized by Business and Professions Code Section 17206.1.

25 128. Unless Defendant is restrained by an order from this Court, it will continue to use,
26 occupy, maintain, allow the use, occupation and maintenance of the Potrero Power Plant for the
27 unlawful activities alleged in the complaint and in violation of the Business and Professions
28 Code Section 17200.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. that the Court declare that Defendant violated the Clean Air Act by failing to obtain permits pursuant to Parts C and D of subchapter I of the Clean Air Act prior to operating the Peakers in excess of 877 hours for the year 2001, and that the Agreement with BAAQMD does not excuse these violations;
2. that the Court declare that Defendant has violated the Clean Air Act by violating Condition #15816 of the Permit issued under subchapter V of the Act.
3. that the Court declare that Defendant violated Business and Professions Code §17200 by failing to obtain permits pursuant to Parts C and D of subchapter I of the Clean Air Act prior to operating the Peakers in excess of 877 hours for the year 2001;
4. that the Court declare that Defendant violated Business and Professions Code §17200 by operating Potrero Turbine Engine 5A in excess of 877 hours for the year 2001;
5. that the Court declare that Defendant violated Business and Professions Code §17200 by operating Potrero Turbine Engine 5B in excess of 877 hours for the year 2001;
6. that the Court declare that Defendant violated Business and Professions Code §17200 by operating Potrero Turbine Engine 6A in excess of 877 hours for the year 2001;
7. that the Court declare that Defendant violated Business and Professions Code §17200 by operating Potrero Turbine Engine 6B in excess of 877 hours for the year 2001;
8. pursuant to Parts C and D of subchapter I of the Clean Air Act, the Court enter a preliminary and permanent injunction directing Mirant to cease all operation that would cause it to exceed its current permit limits on the hours of operations of the Peakers, until after it applies for and obtains the permits required by the Clean Air Act and comply with the requirements of such permits;
9. pursuant to California Business and Professions Code § 17203, the Court enter a preliminary and permanent injunction directing Mirant to cease all operation that would cause it to exceed its current permit limits on the hours of operations of the Peakers, until after it applies

1 for and obtains the permits required by the Clean Air Act and comply with the requirements of
2 such permits;

3 10. pursuant to section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), the Court
4 order Mirant to pay appropriate civil penalties up to \$27,500 per day for each violation of the
5 Clean Air Act, and order that up to \$100,000 be used in beneficial mitigation projects which are
6 consistent with the Clean Air Act and enhance the public health or the environment;

7 11. pursuant to Business and Professions Code Section 17206, the Court order
8 Defendant to pay a civil penalty of \$2,500 for each act of unfair competition in violation of
9 Business and Professions Code § 17200;

10 12. pursuant to Business and Professions Code Section 17206.1, the Court order
11 Defendant to pay a civil penalty of \$2,500 for each act of unfair competition in violation of
12 Business and Professions Code § 17200 that is perpetrated against a senior citizen or disabled
13 person;

14 13. that, pursuant to Business and Professions Code Section 17203, Defendant be
15 ordered to disgorge all profits obtained through their unfair and unlawful business practices in
16 violation of Business and Professions Code § 17200;

17 14. that Plaintiffs recover the costs of suit, including attorneys fees, costs of
18 investigation and discovery from Defendant, its successors and assigns, as provided by Section
19 304(d) of the Act, 42 U.S.C. § 7604(d);

20 15. that Plaintiffs recover the costs of suit from Defendant, its successors and assigns,
21 as provided by Code of Civil Procedure Section 1032; and

22 16. that Plaintiffs shall have such further and other relief as the court deems just.

23 ///

24 ///

25 ///

DEMAND FOR JURY TRIAL

1
2 Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of
3 Civil Procedure.

4 Dated:

5 LOUISE H. RENNE
6 City Attorney
7 JOANNE HOEPER
8 Chief Trial Attorney
9 THERESA MUELLER
10 WILLIAM CHAN
11 ROSE-ELLEN HEINZ
12 Deputy City Attorneys

13 By: _____
14 ROSE-ELLEN HEINZ

15 Attorneys for Plaintiffs
16 CITY AND COUNTY OF SAN FRANCISCO and
17 PEOPLE OF THE STATE OF CALIFORNIA
18
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INDEX TO EXHIBITS

Exhibit Description

- A Notice of Intent to File Suit Under the Clean Air Act, dated June 19, 2001
- B Certified Mail Receipts, dated June 19, 2001

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LOUISE H. RENNE
City Attorney

WILLIAM CHAN
Deputy City Attorney

DIRECT DIAL: (415) 554-4691
E-MAIL: william_chan@ci.sf.ca.us

June 19, 2001

**Via CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

Anne M. Cleary, President
Mirant Potrero, LLC
900 Ashwood Parkway, Suite 500
Atlanta, GA 30338

Michael Lyons, Plant Manager
Mirant Potrero, LLC
1201 Illinois Street
San Francisco, CA 94107

Mark A. Gouveia, Production Manager
Mirant Potrero, LLC
1350 Treat Blvd., #500
Walnut Creek, CA 94596

Re: Notice of Intent to File Suit Under the Clean Air Act

Dear Ms. Cleary & Messrs. Lyons and Gouveia:

The Clean Air Act (the "Act") requires that citizens give sixty (60) days' notice of their intent to file suit under section 304(a)(1) of the Act, 42 U.S.C. § 7604(a). Section 304(b)(1) of the Act, 42 U.S.C. § 7604(b)(1). Accordingly, the City and County of San Francisco ("the City") hereby provide notices to the following persons in their capacities identified below:

- Mirant Potrero, LLC, ("Mirant"), as the violator of an emission standard or limitation as used in section 304(a)(1) of the Act, 42 U.S.C. § 7604(a)(1);
- United States Environmental Protection Agency ("EPA"); and
- State of California, as the state in which the violations occurred and will continue to occur.

The City intends to file suit under the Act after expiration of sixty (60) days from the date of this letter. The lawsuit will be filed in the United States District Court for the Northern District of California, against Mirant for its violations of the Act, as more specifically stated below.

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A. Background

Mirant, formerly known as Southern Energy Potrero LLC, owns and operates an electrical generation facility located at 1201 Illinois Street, in the Potrero neighborhood of San Francisco, CA 94107 ("Potrero plant"). On September 14, 1998, the Bay Area Air Quality Management District ("BAAQMD") issued to Mirant a Major Facility Permit ("Title V Permit" or "Permit") for the operation at the Potrero plant.

The Permit, among other things, regulates the operation of three 52-megawatt peakers fired by distillate or fuel oil ("Peakers"), each with two turbine engines (Source Nos. 10 through 15). Permit, pp. 7, 26-28. Condition #15816 of the Permit requires Mirant to operate each Peaker no more than 877 hours per turbine engine in any calendar year. Permit, p. 28. Because of the limit on the hours of operation, the Peakers are each governed by the NOx emission limit set forth in BAAQMD Regulation ("Rule") 9-9-302, of 65 parts per million (volume) ("ppmv") for non-gaseous fuel. Without the limit on the hours of operation, the Peaker Turbines would be governed by the more stringent limit of 15 ppmv set forth in Rule 9-9-301.2, with limited exceptions not applicable here. Mirant cannot achieve the more stringent emission limit without installing additional pollution controls. See Administrative Order on Consent, In re Mirant Potrero LLC Potrero Generating Facility, R9-2001-04 (EPA Region IX), p. 1.

On March 29, 2001, BAAQMD and Mirant entered into a Compliance and Mitigation Agreement ("BAAQMD Agreement"), allowing Mirant to exceed the permitted hours of operation at the Peakers, without installation of additional pollution controls, in return for payment of \$20,000 per ton of excess NOx emissions as "mitigation fees."

Mirant first exceeded the 877-hour limit for the following turbine engine on the hours of operation at its Peakers on the following dates:

Turbine Engine 5A (Source No. 12)	May 30, 2001
Turbine Engine 5B (Source No. 13)	May 19, 2001
Turbine Engine 6A (Source No. 14)	May 10, 2001
Turbine Engine 6B (Source No. 15)	May 20, 2001

See "BAAQMD Gas Turbine Hours Compliance Report" for May 2001, submitted by Mirant to BAAQMD on June 11, 2001. Mirant's violations of the Act have continued each and every day since May 10, 2001, and will continue until Mirant is ordered to comply with the requirements of the Act, including compliance with the applicable emissions standards.

B. Mirant's Violations of an Emission Standard or Limitation

1. Mirant's Violations Arising from Exceedances of Hourly Maximum

The Act authorizes citizen suits against any person who has violated or is in violation of an "emission standard or limitation." 42 U.S.C. § 7604(a)(1). The term "emission standard or limitation" is broadly defined to include an emission limitation; emission standard, "any

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condition or requirement under an applicable implementation plan relating to . . . air quality maintenance plans," any other standard or limitation established under "any applicable State implementation plan" or any permit issued pursuant to subchapter V of this chapter [otherwise known as Title V]," or any term or permit condition. 42 U.S.C. § 7604(f)(1), (3), (4).

Condition #15816 of Mirant's Title V Permit requires Mirant to operate each Peaking Turbine Engine for less than 877 hours in any calendar year. Permit, p. 28. Condition #15816 constitutes an emission standard or limitation within the meaning of section 304 of the Act because it is an emission standard or limitation or a condition of a permit issued under subchapter V of the Act. See 42 U.S.C. § 7604(f)(1), (3), (4). The 877-hour limit is also an emission limitation or standard within the meaning of section 304 of the Act because it was established under Rule 9-9-302, which EPA approved as part of the California State Implementation Plan ("SIP") on December 15, 1997, 62 Fed. Reg. 65,611 (1997). Id. Further, the 877-hour limit is an emission limitation or standard within the meaning of section 304 of the Act because it is a permit term or condition. Id. § 7604(f)(4).¹

Because Mirant has exceeded the 877-hour limit at the Peakers, as set forth in Section A above, Mirant has violated and will continue to violate the Act.

2. Mirant's Violation Arising from its Failure to Comply with Requirements of the Act for a Significant Modified Source in a Major Facility

The citizen suit provision of the Act authorizes suit for violation of an "emission standard or limitation" which is defined to include any condition or requirement of a permit under Part C 7604(f)(3), and "any requirement to obtain a permit as a condition id. § 7604(f)(4), as well as any SIP condition or requirement, id. § 7604(f)(3). Mirant violated the Act by failing to comply with the emission requirements for major modifications at its Potrero plant resulting from operation of the Peakers without any limitation on the hours of operation.

a. NSR Violation for Excess Emissions of NOx

Operating the Peakers without any limitation on the hours of operation will cause an increase of NOx emissions at the Potrero plant of at least 40 tons per year ("tpy"). Such an increase, arising from operational changes, constitutes a "major modification" under the NSR rules applicable to the Potrero plant.

In specific, Rule 2-2-221, which is federally approved and is a SIP rule, defines a "major modification" as "[a]ny modification at an existing major facility that the APCO [Air Pollution Control Officer] determines will cause an increase of the facility's emission by [40 tons of NOx

¹ Alternatively, Mirant is in violation of Rule 9-9-301.2, which would prohibit operation of the Peakers unless NOx emissions from the turbines would not exceed 15 ppmv, with exceptions not applicable here. Rule 9-9-301.2 is a SIP rule and thus an emission standard or limitation. See 62 Fed. Reg. 65,611 (1997); 40 C.F.R. § 52.220(c)(239)(i)(E)(1).

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per year].” A major modification includes any change in the method of operation of a major stationary source that would result in such increases in NO_x emissions. 40 C.F.R. § 51.165(a)(1)(v)(A); Rule 2-2-223; see also, Rule 1-1-217.

A modified major source is required to apply the Best Available Control Technology (“BACT”) if the modification results in an increase of NO_x in excess of 10 pounds per highest day or a cumulative increase since April 5, 1991 of 10 pounds per highest day. Rule 2-2-301. The BACT requirement is also triggered if cumulative increases of emissions of certain air pollutants at the facility, including the increases resulting from the modification, since December 1, 1982 exceeds certain annual and/or daily amounts. Id. BACT is set to be equivalent to the “lowest achievable emission rate” required by the Act to be achieved by modified major sources. Rule 2-2-206. Further, a modified major source is required to provide emission offsets for the emission from the modified source. Rule 2-2-302.

Operation of the Peakers without any limits on the hours of operation will result in an increase of at least 40 tpy of NO_x. Because Mirant has operated and will continue to operate the Peakers in excess of the permitted limits without applying BACT and providing offsets, Mirant has violated and will continue to violate the Act.

b. PSD Violations for Excess Emissions of NO_x, CO, PM₁₀ and SO₂

Operating the Peakers without any limitation on the hours of operation will cause an increase at the Potrero facility of at least 40 tpy of NO_x, 100 tpy of carbon monoxide (“CO”), 15 tpy of particulate matter whose aerodynamic size is less than or equal to 10 microns (“PM₁₀”) and 40 tpy of sulfur dioxide (“SO₂”). Such increases, arising from operational changes, for each such pollutant constitute a “major modification” under the PSD rules applicable to the Potrero facility set forth at 40 C.F.R. §

In particular, the PSD regulations define the term “major modification” to include changes in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i). “Significant” means a rate of emissions that would equal or exceed 100 tpy of CO, 40 tpy of NO_x, 15 tpy of PM₁₀, or 40 tpy of SO₂. Operation of the Peakers without any limits on the hours of operation will result in net emissions increase of at least 100 tpy of CO, 40 tpy of NO_x, 15 tpy of PM₁₀, and 40 tpy of SO₂.

Because Mirant has operated and will continue to operate the Peakers in excess of the permitted limits without applying BACT at the Peakers and without conducting an air quality impact analysis, Mirant has violated and will continue to violate the Act.

C. Potential Resolution of Issues During the Sixty Day Period

The entity giving this notice is the City and County of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA, 94102.

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Legal counsel representing the City and County of San Francisco in this matter are as follows:

For the City and County of San Francisco

Louise H. Renne, City Attorney
Joanne Hooper, Chief Trial Attorney
Theresa Mueller, Deputy City Attorney
William Chan, Deputy City Attorney
Rose-Ellen Heinz, Deputy City Attorney
City Attorney's Office
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102
Telephone: (415) 554-4691
Facsimile: (415) 554-4757

During the sixty (60) day notice period, the City is willing to discuss effective remedies for the violations of the Act at issue in this notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate them within the next 10 days with the City Attorney's Office so that the discussions may be completed before the end of the sixty (60) day notice period. We do not intend to delay the filing of a complaint in federal court if the discussions fail to resolve these matters within the sixty (60) day notice period, and we intend to seek all appropriate relief, including injunctive relief and all costs of litigation, including, but not limited to, attorney's fees, expert witness fees and other costs.

We believe this notice provides information sufficient for you to determine the violations of the Clean Air Act at issue. If, however, you have any questions, please feel free to contact us for clarification.

We look forward to hearing from you.

Very truly yours,

LOUISE H. RENNE
City Attorney

WILLIAM CHAN
Deputy City Attorney

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cc: Corporation Service Company
Registered Agent for Service of Process
for Mirant Potrero, LLC
2730 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
(Certified Mail/Return Receipt Requested)

Christine Todd Whitman, Administrator
1101A
United States Environmental Protection Agency Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(Certified Mail/Return Receipt Requested)

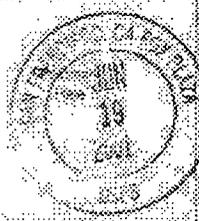
Michael P. Kenny
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814
(Certified Mail/Return Receipt Requested)

Laura Yoshii, Acting Regional Administrator
ORA-1
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
(U.S. Mail)

Hon. Gray Davis
Governor of California
State Capitol Building
Sacramento, CA 95814
(U.S. Mail)

U.S. Postal Service
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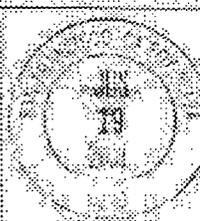
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Certified Fee	1.90	
Return Receipt for Receipts	1.50	
Registered Mail for Collectible Products	1.50	
Total Postage & Fees	\$ 3.95	

Recipient's Name
 Mrs. J. K. [unclear]

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Total Postage & Fees	\$ 3.95	

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 [unclear] to Mrs. J. K. [unclear]

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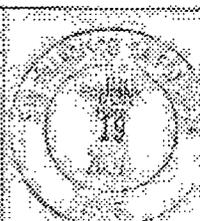
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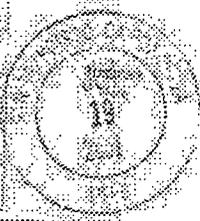
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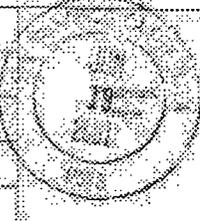
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