

FINAL TRANSCRIPT

Conference Call Transcript

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PRESENTATION

Operator

Good day everyone and welcome to the Mirant Corporation's third-quarter earnings call. Today's call is being recorded. For opening remarks and introductions, I would like to turn the call over to Ms. Mary Ann Arico, Director of Investor Relations. Please go ahead.

Mary Ann Arico - Mirant Corporation - IR

Good morning and thank you for joining us today for Mirant's third-quarter earnings call. If you do not already have a copy, the press release and second-quarter filings with the SEC are available on our website at Mirant.com. The slide presentation is also available on our website. A replay of our call will be available approximately two hours after we finish.

Speaking today will be Ed Muller, Mirant's Chairman and Chief Executive Officer; and Jim Iaco, Executive VP and Chief Financial Officer. Also in the room and available to answer questions are Bob Edgell, Executive VP and US Region Head; Bill Holden, Senior VP and Treasurer; John O'Neal, Senior VP and Chief Commercial Officer; and Paul Gillespie, Senior VP of Tax.

Moving to slide 1, the Safe Harbor. During the call, we will make forward-looking statements which are subject to risks and uncertainties. Factors that could cause actual results to differ materially from management's projections, forecasts, estimates, and expectations are discussed in the Company's SEC filings. I encourage you to read them.

Our slide presentation and discussion on this call may include certain non-GAAP financial measures. Such measures are reconciled to the most directly comparable GAAP measure and are available on our website or at the end of the slide presentation. Now, I will turn it over to Ed Muller.

Ed Muller - Mirant Corporation - Chairman, CEO

Thanks, Mary Ann, and good morning, everyone. As you can see from the news release, we have a fair amount to discuss today. Let me begin on page 3 of the presentation. I will try and remember to tell you what page we are on, and someone in the room can remind me if I forget to.

First, as we have announced this morning, we have completed a very thorough exploration of strategic alternatives for the Company, which we have been doing since April and looking at ways to enhance the value for our stockholders. As a result of that and having concluded it, we have announced today a plan to return cash to the stockholders.

We are also reinitiating guidance. The guidance for 2007, that is, this year, is \$1 billion even of adjusted EBITDA; and for next year, \$907 million.

Let me pause on the guidance. Jim Iaco later will give you more detail on this, but a couple of comments. Our guidance for both years reflects increases in capacity revenue, offset by decreased plant availability. The decrease in plant availability in 2007, that is, this year, results both from extensions of the spring outage at Unit 1 at Morgantown, and limitations on our ability to run at Potomac River.

The decrease in plant availability in 2008, next, year, is principally because of limitations on our ability to run at Potomac River. We have also had some shifting of revenues, which Jim will go through, from our fuel oil management activities from 2007 to 2008.

Let me address the matters at both Morgantown and Potomac River. At Morgantown, as part of our program of putting in environmental controls, we took a planned and extended spring outage for Unit 1, to tie in, connect, the SCR, selective catalytic reduction, equipment which is designed to reduce emissions of nitrogen oxide.

Because we were taking an extended outage, we also did a variety of other things to improve the performance of the plant, such as upgrading all five of the pulverizers and upgrading of the controls. I'm sorry to say that the various contractors whom we engaged to do this work in a variety of ways let us down. So we were later coming back than we had planned, and we had a variety of issues that arose even when we came back and caused some trips. And that had a negative impact. All of those problems are behind us now.

At Potomac River, as has been the case now for a number of years, we have various opponents of the plant who have been trying through a variety of means to make us go away. For example, the

city of Alexandria a year or two ago brought a case -- or attempted to zone us out of existence. We ultimately took the matter to the Supreme Court of Virginia, and we won.

These efforts have not stopped, and the latest in these efforts is an attempt by the Virginia Air Board to impose restrictions on us that would limit our operations effectively to three units rather than the five units that are at the plant. It is our view, strongly held, that these efforts have no basis either in science or in law. We are in litigation over them as well as discussions with the authorities in Virginia.

We intend (technical difficulty) our legal rights, and we will insist on them. Until, as we expect, we prevail, we are limited to running only three of the five units at Potomac River.

Continuing now on to the next item, as we previously announced we closed the sale of our Caribbean business in August, which completed the divestiture program that we began about one year before. That was to sell our Philippine business, our Caribbean business, and six natural gas-fired power plants in the United States. That program is complete.

Also, as we have previously announced, we made the election under L6 for the treatment of our preemergence NOLs. This had been an issue we had been wrestling with ever since we emerged.

We completed, as we have also announced, the settlement which with Pepco, which put that long-standing set of problems behind us.

Let me move then to page 4. As I said at the beginning here, we have completed a thorough exploration of alternatives for the Company and have concluded that the best alternative at this time is to return excess cash to our stockholders. In our divestiture program, which I just mentioned, we had total proceeds of \$5.1 billion.

Under the credit arrangements for Mirant North America, we are required to take the proceeds from the sale of two of the natural gas-fired plants, Zeeland and Bosque, and use them in the business of Mirant North America, or retire debt. That amounts to about \$0.5 billion.

Subtracting the \$0.5 billion, which we are going to use and are using in the environmental CapEx program in the Mid-Atlantic, leaves us with \$4.6 billion. And that is what we will be returning to stockholders.

We also looked, in sizing that, at the following criteria that are laid out on page 4. That is, to maintain the credit profile of the Company; to maintain adequate liquidity for our expected cash requirements, particularly the Maryland environmental CapEx program; and to retain sufficient liquidity to handle fluctuations and commodities.

Turning to page 5, our method for returning the \$4.6 billion will be as follows. We will do it in stages, beginning today with \$2 billion. \$1 billion in an advanced share purchase program, which means we are delivering \$1 billion to JPMorgan, which we will be handling this for us today; and they will be delivering to us approximately 24 million shares of Mirant stock.

Second, we will commence -- are commencing now open market purchases for another \$1 billion. When we have completed, when JPMorgan has completed the advanced share repurchase program, which will not be longer than six months, we will then determine how we will handle the return of the remaining \$2.6 billion.

Turning to page 6 and our performance in the third quarter and in the first nine months of the year, we have had very nice performance. As you can see for the quarter, we are up 51% over last year in terms of adjusted EBITDA. For the nine months, we are up 62% compared to last

year. This is principally because of the implementation of RPM, the Reliability Pricing Model or capacity market in PJM, which is providing higher capacity revenues to us.

In the marketplace, as we show there, lower on page 6, long-term gas markets, notwithstanding lots of gas in storage, have remained strong at about \$8 an mMBTu. Electricity prices continue to rise, as economics would tell us they should, because of expanded heat rates in our major markets.

Again, referring to the capacity markets, capacity markets are reflecting the fact that there is substantial imbalance and growing imbalance between supply and demand. That is the supply is by and large not growing, and the demand continues to grow. So as basic economics teaches, prices are going to tend to rise (inaudible) as well to the capacity prices.

Further to the point about supply and demand, we have put in on page 7 some charts that show what is happening to reserve margins. You can see in all of the markets in which we do business in the United States reserve margins are falling. They are falling to levels that, in terms of ensuring that we -- the industry, the electricity industry of the United States -- meets our obligations to society to have electricity available, we are reaching a point and are heading to a point that should give all of us concern.

We all live in this country together, and we can debate how we should go about producing electricity, and how much we need and so on. But meanwhile, we are inexorably marching into an area that gives us concern.

In terms of prices, for somebody like us who produces a lot of our electricity with coal, this is a positive. Because we have more and more instances where, with rising heat rates, natural gas is the setting the price in the market; and we are a beneficiary of that. These rising heat rates are also benefiting our intermediate and peaking units. And in general, as I said previously, they are leading to higher capacity prices.

This is particularly the case in the area of Southwest MAAC, which is where our Mid-Atlantic plants are located. There is a significant deficiency of generating capacity in Southwest MAAC. Even if the new transmission projects that are on the planning boards get built, these problems don't go away. New generation is needed.

But as we all I think know, getting new generation built is very difficult and will be very expensive. Even these new capacity prices which we are seeing or these rising capacity prices are certainly heading in the right direction. But to get new capacity built, we need first of all to see prices that are at or slightly higher than where they have been, given what the costs of new construction are.

Second, for somebody who, like us and our industry, has to contemplate large capital investments, the returns on which are earned over many years, we need to have a sense of sustainability. Seeing what happens one year or in one auction is not enough to give us all that comfort.

We are looking at this, we continue to look at it, but we all have to recognize that these are not pinpoint decisions. These are decisions that will have an effect for decades in terms of the capital committed.

Page 8, as we have in the past, here you can see our hedge levels. We are heavily hedged in terms of our baseload coal for next year and coming well along in 2009. You should expect that you'll see more hedging from us in the not too distant future.

Turning to page 9, our Mid-Atlantic, again if you look down on the lower left, realized gross margin, you can see that in the third quarter we are up 29% compared to last year. Up 35% for the first nine months, and again principally because of the revenues coming in, in the capacity markets in PJM.

An update on the environmental CapEx program to which I have referred several times already. This is the program that requires us under Maryland law to scrub our plants, to reduce massively the emissions of sulfur dioxide, and to put in controls to limit nitrogen oxide emissions, all of which we have underway. That was the SCR, for example, at Unit 1, which we have now tied in and which is performing extremely well.

That program we have forecast will cost -- result in expenditures of about \$1.6 billion. We remain on schedule. We remain on budget. We have expended through the end of the third quarter \$357 million of our expected expenditures.

I referred earlier to Potomac River. We are operating on three units. We continue to be in litigation and discussions in Virginia. That may continue until -- for some time, until we reach an appropriate resolution as the law and science both dictate.

On page 10, you can see the results which are already public of the capacity markets we cleared in Southwest MAAC. So those are the numbers applicable to us there. You can see the \$237.33 a megawatt day. There are more auctions to come. The schedule is down below.

There are questions raised, understandably, about whether these capacity markets are working. I think in terms -- you can -- there is evidence that they are. The evidence is that the things that can be done on a relatively short-term, because you are not investing gobs of capital as required to add capacity, is that we have seen clear demand response, 900 megawatts in PJM in the last auction. And we have seen the deferral of retirements at existing units, again because of these capacity prices, 3,000 megawatts in PJM in the last auction.

So they are working. The third leg of that stool, which is new capacity, requires, as I said, a sense by us and those situated like us that we have a sustainable environment in a pricing regime that justifies the large expenditures of capital that we would make.

On page 11, you can see the results in the Northeast for us. The key message here is that higher capacity prices in New York and New England offset the revenues that we lost because we shut down Lovett's Units 3 and 4.

I would note that the New York capacity market is looking at again the CONE or the cost of new entrant, to see if in their formula it ought to be adjusted upward to reflect the fact that the cost of new construction is in fact higher than (technical difficulty) well across the country, prices are rising.

In California, nothing particular to report. You can see the numbers there on page 12.

On page 13, as we have said before, (inaudible) emphasize the declining reserve margins that we depicted earlier in this presentation continue to demonstrate the need for new capacity in the markets. An extremely efficient way to do that is to do it at existing sites, whether repowering or through brownfield development. We continue to have a variety of efforts underway to do just that.

We're also looking -- or in connection with that, we're looking at adding new capacity in our -- excuse me, at our California sites. PG&E, Pacific Gas & Electric, is somewhere in the process of putting out a Request for Offers, as is common in our industry. It has been delayed some. So we haven't responded yet, but we are prepared to respond and we will respond.

Page 14, a chart that we have used before but I remind you that we have -- we are located in the United States in major load centers, all with declining reserve margins. All with some -- in many cases with worrisome levels of declining reserve margins. And we have room and the ability to add capacity at those sites.

There is a certain inevitability in my mind to saying that new capacity will be added at those sites; it is a question of when we will do so. We would be pleased to do so. We work on doing so. But we will do so only if it makes financial sense.

With that, turning to page 15, I will turn this over to Jim Iaco.

Jim Iaco - Mirant Corporation - EVP, CFO

Thank you, Ed. Good morning. As Ed mentioned, we had a strong third quarter with a 51% increase in adjusted EBITDA from continuing operations as compared to the third quarter of 2006. In addition, due to the fact that we have completed the exploration of strategic alternatives to enhance stockholder value, we are reinitiating guidance for 2007 and 2008. I will talk more on that in a moment.

As shown on slide 15, net income from continuing operations for the third quarter of 2007 was \$642 million as compared to \$248 million for the 2006 period. The \$394 million improvement is principally driven by four factors.

The first factor is a \$379 million gain related to the Pepco settlement, which is principally comprised of \$341 million representing the fair value of the price risk management liability that was reversed as a result of the rejection of the back-to-back agreement; and \$36 million refunded by Pepco for payments made under the back-to-back agreement for periods subsequent to May 31, 2006.

The second factor is due to 2006 results including impairment losses of \$396 million related to the US natural gas plant assets sold in 2007; and \$120 million related to the construction and development cost for the suspended Bowline combined cycle unit.

The third factor is an increase in realized gross margin of \$89 million, principally due to higher capacity revenues as a result of the implementation of the RPM capacity market in PJM during 2007.

The fourth factor, which partially offsets the first three factors, is a \$215 million decrease in unrealized gross margin as a result of mark-to-market accounting related to our hedging activities. Our hedging activities reduce our exposure to commodity price fluctuations and allow us to achieve more predictable adjusted EBITDA results.

Turning to the nine months ended September 30, 2007, net income from continuing operations was \$426 million as compared to \$778 million for the 2006 period. The \$352 million difference is again due to a number of factors.

The first factor is a \$1.21 billion decrease in unrealized gross margin. The second factor is a \$175 million impairment taken in the second quarter of 2007 related to the Lovett generating facility.

These two factors are partially offset by impairment losses in 2006 totaling \$516 million, comprised of the \$396 million related to the US natural gas plant assets sold in 2007 and, again,

\$120 million related to the construction and development costs associated with the suspended Bowline combined cycle unit.

And finally, a \$273 million increase in realized gross margin due to higher capacity revenues as a result of the implementation of the RPM capacity market; favorable fuel oil management activities; higher electric energy prices; and lower emission allowance cost. I will cover this in more detail on the next slide.

Adjusted net income from continuing operations is net income from continuing operations excluding unrealized gains or losses from our hedging activities. \$362 million of the gain in 2007 related to the Pepco settlement. The \$175 million impairment in 2007 related to the Lovett generating facility. The \$120 million impairment in 2006 related to construction and development costs for the suspended Bowline unit, and other non-recurring items.

Adjusted EBITDA, the best metric for measuring the performance of our business, is adjusted net income or loss excluding interest, taxes, and depreciation and amortization. Additional data is provided in the appendix reconciling for all periods presented net income to adjusted net income and further to adjusted EBITDA.

Adjusted EBITDA from continuing operations for the third quarter of 2007 was \$323 million as compared to \$214 million for the 2006 period; and \$774 million for the nine months ended September 30, 2007, as compared to \$478 million for the 2006 period.

The increase for the quarter was principally due to higher capacity revenues as a result of the implementation of the RPM capacity market. For the year-to-date period, in addition to the higher capacity revenues, this increase was also due to favorable fuel oil management activities; higher electric energy prices; and lower emission allowance costs.

Our average diluted share count is lower in the 2007 period as compared to the 2006 period due to share repurchases during the latter part of 2006, partially offset by an increase in assumed dilutive shares for options and warrants due to additional grants and increases in our stock price.

Finally, our adjusted earnings per share from continuing operations was \$1.14 for the third quarter of 2007 as compared to \$0.44 for the comparable 2006 period; and \$2.17 per share for the nine months ended September 30, 2007, as compared to \$0.72 for the comparable 2006 period.

Now turning to slide 16, this slide displays the components of the Company's realized gross margin from continuing operations for the third quarter and year-to-date periods. Energy, shown as the light blue bar in the graph, represents gross margin from the generation of electricity at market prices, sales and purchases of emission allowances, fuel sales, purchasing and handling of fuel, steam sales, and our proprietary trading and fuel oil management activities.

The quarter-to-quarter comparison is relatively flat, while on a year-to-date basis energy gross margin is higher by \$124 million due to favorable fuel oil management activities, higher electric energy prices, and lower emissions cost.

Contracted and capacity, the dark blue bar, represents revenue received through reliability must-run contracts and other installed capacity arrangements; revenues from ancillary services; and revenue from the back-to-back agreement which was terminated in August of this year pursuant to the Pepco settlement.

The quarter-to-quarter and year-to-date increases are principally due to increases in capacity revenue in the Mid-Atlantic and the Northeast and to refunds related to the Pepco settlement.

Finally, the incremental realized value of hedges, the yellow bar, reflects the actual incremental margin realized in excess of market prices upon the settlement of our power and fuel hedging contracts.

Turning now to slide 17, let's take a look at our free cash flow from continuing operations for the third quarter of 2007 and the year-to-date period. Taking net cash provided by operating activities and reducing it for bankruptcy payments results in adjusted net cash provided by operating activities of \$312 million for the third quarter of 2007 as compared to \$399 million for the third quarter of 2006; and \$689 million for nine months ended September 30, 2007, as compared to \$781 million for the 2006 period.

Reducing these amounts further for all capital expenditures results in free cash flow of \$105 million for the third quarter of 2006, and \$304 million for the 2007 year-to-date period.

We believe that a more meaningful apples-to-apples comparison is using free cash flow adjusted for extraordinary environmental CapEx, such as the cost of compliance with the Maryland Healthy Air Act. Accordingly, adding back in the non-recurring Maryland Healthy Air Act capital expenditures for all periods presented, results in an adjusted free cash flow of \$283 million or \$1.00 per share for the third quarter of 2007 as compared to \$385 million or \$1.29 per share for the third quarter of 2006; and \$283 million or \$2.05 per share for the nine months ended September 30, 2007, as compared to \$305 million or \$2.39 per share for the 2006 year-to-date period.

Turning to slide 18, this slide presents our debt and liquidity as of September 30, 2007, and December 31, 2006. The \$138 million decrease in debt is principally due to repayments at Mirant North America. After subtracting restricted and reserve cash, our available cash and cash equivalents, including amounts available under the Mirant North America revolver and synthetic letter of credit facility, amounted to \$7.030 billion at September 30, 2007.

Let me take a moment and discuss the cash balances at Mirant North America and Mirant Mid-Atlantic. Mirant North America's ability to pay dividends is restricted under the terms of its debt agreements. At September 30, 2007, Mirant North America had distributed to its parent all available cash that was permitted to be distributed under the terms of its debt agreements, leaving approximately \$946 million at Mirant North America and its subsidiaries.

Approximately \$251 million of such amount was held by Mirant Mid-Atlantic, which has as of September 30, 2007, met the ratio test under the leveraged lease documents for distribution to its parent, Mirant North America.

After taking into account the financial results of Mirant North America for the nine months ended September 30, 2007, we expect Mirant North America will be able to distribute to its parent approximately \$166 million in November.

Turning to slide 19, as I indicated earlier we are reinitiating our guidance for 2007 and 2008. Our 2007 adjusted EBITDA guidance for continuing operations has been updated to \$1 billion. Our 2008 adjusted EBITDA guidance has been updated to \$907 million. I will address the changes from our previous guidance and changes in realized gross margin in the coming slides.

Deducting projected net interest expenditures and income taxes, and factoring in projected changes in working capital, cash flow from operations is \$984 million and \$769 million for 2007 and 2008, respectively. Reducing cash flow from operations by projected total capital expenditures of \$711 million and \$913 million for 2007 and 2008, respectively, derives free cash flow of \$273 million for 2007 and a free cash flow deficit of \$144 million for 2008.

Adding back in the Maryland Healthy Air Act CapEx for 2007 and 2008 results in an adjusted free cash flow of \$730 million for 2007 and \$509 million for 2008.

Our hedged gross margin for 2007 is \$1.523 billion or 91% of our projected realized gross margin. For 2008, our hedged gross margin is \$1.181 billion or 74% of our projected realized gross margin.

Hedged gross margin is defined as hedged merchant generation and other contracted capacity, which would include reliability, must-run agreements and other installed capacity arrangements.

Finally, hedged adjusted EBITDA, which is defined as hedged gross margin reduced by our projected operating expenses for a full calendar year, is \$847 million or 85% of our projected adjusted EBITDA for 2007, and \$488 million or 54% of our projected adjusted EBITDA for 2008.

Turning now to slide 20, this slide presents the components of projected realized gross margin included in our guidance for 2007 and 2008. Realized gross margin is projected to decrease from \$1.676 billion in 2007 to an even \$1.6 billion in 2008. The \$76 million decrease is comprised of a \$273 million decrease in the incremental realized value of hedges, partially offset by a \$120 million increase in contracted and capacity realized gross margins, and a \$77 million increase in energy realized gross margins.

The increase in contracted and capacity realized gross margins is due to a full year of RPM capacity revenues for 2008 as compared to seven months for 2007, as well as higher prices for the RPM plan year '08-'09 as compared to the RPM plan year '07-'08.

The \$77 million increase in energy realized gross margins is due to higher prices and an increase in plant availability, partially offset by a decrease in anticipated revenues from fuel oil management activities.

Turning now to slide 21, this slide presents a comparison of our current and previous adjusted EBITDA guidance. Our previous adjusted EBITDA guidance given on March 5, 2007, was \$1.089 billion for 2007 and \$914 million for 2008. The decline in adjusted EBITDA guidance for both years is due to a decrease in plant availability including Potomac River, and unfavorable energy market price movements, partially offset by higher capacity prices, lower operating expenses, and the termination of the Pepco back-to-back agreement. In addition, due to oil price increases, 2007 revenues from fuel oil management activities were lower, while 2008 revenues from such activities were favorably affected by a similar amount.

Turning to slide 22, let's address some of the key sensitivities regarding the guidance for 2007 and 2008 that we are providing today. NYMEX strip prices utilized in our guidance are as of October 16 and are \$7.65 per MMBtu for the balance of 2007 and \$8.12 per MMBtu for 2008.

Based upon our unhedged adjusted EBITDA for 2007 and 2008, a \$1 price move in natural gas will result in a change in adjusted EBITDA of approximately \$2 million for the balance of '07, and \$30 million for all of 2008.

Power price changes due to heat rate movements of 500 BTUs per kilowatt-hour will result in a change in adjusted EBITDA of approximately \$2 million for the balance of '07 and \$37 million for all of 2008. The heat rates shown are 7x24 Pepco Forward Implied Market Heat Rates. Again to emphasize, these sensitivities are based upon our current unhedged adjusted EBITDA.

Turning to slide 23, this slide presents a breakdown of our projected capital expenditures for 2007 through 2010. Our normalized maintenance CapEx, which approximates about \$90 million a year, is expected to be higher in the earlier years of our Maryland environmental CapEx

program due to upgrades that will be timed in conjunction with our environmental retrofits. As Ed mentioned earlier, the total estimated cost for compliance with the Maryland Healthy Air Act remains at approximately \$1.6 billion. We have expended \$357 million through September 30, 2007.

As I mentioned earlier, at September 30, 2007, Mirant North America had distributed all available cash that was permitted to be distributed under the terms of its debt agreements, leaving approximately \$946 million at Mirant North America and its subsidiaries. After the anticipated \$166 million distribution in November, Mirant North America and its subsidiaries will have approximately \$780 million of cash and cash equivalents which will be available for future expenditures for the cost of compliance with the Maryland Healthy Air Act.

Turning to slide 24, upon the filing of our 2006 federal tax return on September 15, 2007, we elected section 382(1)(6) treatment for our preemergence NOLs. The election of treatment under section 382(1)(6), as compared to section 382(1)(5), preserves \$1.1 billion of NOLs that would have been lost under a section 382(1)(5) election and avoids the potential forfeiture of the unused NOLs under section 382(1)(5) if we were to have a change of ownership prior to January 4, 2008. However, the election under section 382(1)(6) subjects preemergence NOLs to an annual use limitation.

As a result of finalizing our 2006 federal tax return, our estimated NOL balance at September 30, 2007, is \$3.4 billion for preemergence NOLs and \$150 million for postemergence NOLs. Finally, our balance sheet does not reflect the potential value of our NOLs because they are fully reserved under Generally Accepted Accounting Principles.

With that, I will turn it back to Ed, who wrap up and open up the presentation for questions. Ed?

Ed Muller - Mirant Corporation - Chairman, CEO

Thanks, Jim. Appreciate it. Turning to page 25 to summarize, as said earlier we have completed a very thorough exploration of strategic alternatives and decided that the best thing to do at this time is to return \$4.6 billion of cash to our stockholders. We will do so in stages, with the first stage being a \$1 billion advance share repurchase program commencing today; and a \$1 billion open market purchase program commencing today.

We have reinitiated guidance. Jim has just gone through it.

Adjusted EBITDA for the third quarter was up sharply, 51%, principally because of the implementation of the capacity markets in PJM. We have completed the divestiture program as promised and on the schedule we promised.

As Jim just described, we collected L6 treatment for our NOLs which we think enhances the (inaudible) position tax-wise.

Our operations remain located in US markets with significantly declining reserve margins. This provides for the Company earnings growth for the future, because of those market conditions. It also societally raises profound concerns about reliability in the system.

Because of all that we look forward, when it makes financial sense for the Company, to adding brownfield capacity and repowering and redeveloping our existing assets which are located in urban centers with these declining reserve margins and where we have ample room to add.

So with that, Mary Ann, I think we are ready for questions.

Mary Ann Arico - Mirant Corporation - IR

Steve, we will turn it over to you to manage the Q&A.

QUESTION AND ANSWER

Paul Patterson - Glenrock Associates - Analyst

Good morning. Can you hear me?

Ed Muller - Mirant Corporation - Chairman, CEO

Absolutely. Good morning, Paul. How are you?

Paul Patterson - Glenrock Associates - Analyst

All right. I wanted to sort of get a clarification on the bifurcation of the open market purchase and the accelerated repurchase; and when we might think those things might conclude; and when you might be looking at the \$2.5 billion that is sort of left over there.

Is there any potential that the \$2.5 billion might go into investments, because you are saying that you're seeing all these reserve margin decreases and what have you, versus actually coming back to shareholders? Just anything you could elaborate on that.

Ed Muller - Mirant Corporation - Chairman, CEO

Sure. First as to the timing, the advance share repurchase program will be completed within six months. Once it is completed, we will address the next phase.

Second, while the needs to which I referred are great and they are profound, and we would look forward to meeting those needs, the reality is that until we have a societal sense that we know where we are going as a society in meeting the need for new capacity, I don't see -- and I think it is unfortunate -- the ability to move rapidly forward.

So while I think it would be great to report to our investors that we are able to deploy in a way that is financially prudent some of this capital into new capacity or revised capacity, I don't think it is realistic in this time frame. So I would expect and we are planning to return the remainder of the \$4.6 billion and to talk about how we will move forward on the remaining \$2.6 billion after we have completed this first advance share repurchase.

Paul Patterson - Glenrock Associates - Analyst

Okay, and those two repurchases are happening concurrently, it sounds like? I mean the open market will be happening at the same time as the accelerated repurchases?

Ed Muller - Mirant Corporation - Chairman, CEO

That is exactly correct.

Andrew Levi - Brencourt Advisors - Analyst

Hey, Ed. How are you? I just want to get to your thinking on why you guys didn't do a Dutch auction versus an open market. You know, stock is getting pretty badly hurt right now. So I think most shareholders were expecting a Dutch auction, so just kind of want to see what your thinking is on that.

Ed Muller - Mirant Corporation - Chairman, CEO

Well, our thinking in looking at all of the various means for returning cash is to find -- to move forward in a way that is most efficient for the value that will remain for the long-term holders of the stock. So we have weighed all of the various possibilities with that in mind; and we think the method we have chosen is most likely to enhance the value for those who will be long-term holders of the stock.

Andrew Levi - Brencourt Advisors - Analyst

Why is that?

Ed Muller - Mirant Corporation - Chairman, CEO

I'm not going to go beyond that.

Andrew Levi - Brencourt Advisors - Analyst

Well, you should be. I mean, I am a shareholder of the stock, so are many people on the call. I mean, I would want to know what your thinking is on the decision process.

I mean, it is \$6 billion or \$5 billion, whatever it is. You know, it doesn't seem that the market is reacting favorably to your decision. So I think it is important that you explain yourself on why you decided this versus another method.

Ed Muller - Mirant Corporation - Chairman, CEO

I appreciate that.

Andrew Levi - Brencourt Advisors - Analyst

So you are not going to answer it? Okay, thank you.

Reza Hatefi - Polygon Investments - Analyst

Thank you. If I look at slide 27, where you have your generation, expected generation guidance, it looks like the baseload coal guidance for 2008 is about 17 terawatt-hours, which is consistent with the slide from Q4 2006, where you guys initiated '08 guidance.

It looks like I guess gas and oil are down about 4 terawatt-hours, because the total expected generation is 20 versus 24. Is that decline in 4 terawatt-hours on the gas-oil side causing the offset to the increased heat rates as well as the capacity upside that we sort of expected?

Ed Muller - Mirant Corporation - Chairman, CEO

John, do you want to take this?

John O'Neal - Mirant Corporation - SVP, CCO

Sure. The drop in expected generation in 2008 really is a function of the changing gas-oil spread for our generation assets in the Northeastern part of the United States, where we have a significant amount of oil-fired generation.

So given the current gas-oil spread, where oil prices have moved up, or resid prices -- which is in fact what we burn -- since they have moved up quite considerably, we see less expected generation in 2008 than we did previously. However, that does not affect our expected capacity revenue. Because as you know, you get paid for capacity on your installed capacity, so we will continue to earn capacity payments from those units, although we do forecast and include in our guidance a slightly lower energy revenue for next year because of that changing gas-oil spread.

Reza Hatefi - Polygon Investments - Analyst

But I guess is it fair to assume that this decline or this -- what you just mentioned is basically offsetting any upside to capacity that you could have had, or that you have had through the auctions, as well as a heat rate upside?

I mean, looking at slide 22, the calendar '08 heat rate is now 8100; and looking at the same slide from the fourth quarter it was 7500, with a sensitivity of every 500 causing \$95 million improvement in EBITDA.

So going from 7500 to 8100 I would have thought that would be about 90 or \$100 million EBITDA improvement, in addition to capacity EBITDA improvement. So is that drop in oil, gas generation totally offsetting that? Is that the right way to think about it?

John O'Neal - Mirant Corporation - SVP, CCO

Well, partly. Again, the capacity revenues don't change by our changing forecast of how much we expect to generate. Because again you're getting paid on the capacity based on the installed capacity, not in fact how much it in fact generates.

On the heat rate upside, the heat rates we give to you on this page are with respect to the Mid-Atlantic. So to the extent we are unhedged, there has been substantial increase in the value of the portfolio as heat rates have expanded.

In markets where we are not hedged -- and particularly in the Northeast -- you would expect heat rate expansion to generally benefit our portfolio; and it generally does. However, if we see in the case of the oil units, oil prices rise higher than heat rates have moved up, you would expect some deterioration. In fact, that is what we have seen in 2008 for our oil units.

Reza Hatefi - Polygon Investments - Analyst

Thank you. Just finally, the Potomac issues, how much EBITDA detriment is that causing in '08 versus your previous guidance?

Ed Muller - Mirant Corporation - Chairman, CEO

We do not break it out by plant, so I'm afraid we won't answer that question.

Reza Hatefi - Polygon Investments - Analyst

Thank you very much.

Elizabeth Parrella - Merrill Lynch - Analyst

Yes, thank you. You are now, I think, showing that some of the Maryland expenditures sort of extend into 2010. Just wondering if you can give us an update on when you see the timing of the outages to put the scrubbers on the three Maryland coal plants.

Ed Muller - Mirant Corporation - Chairman, CEO

We are planning all three of the plants will tie in on their scrubbers in '09. The reason you have expenditures is that even though the program is done, you don't pay out all the contractors and so on as you are finishing (inaudible) completed. Right? You have holdbacks, etc. So it is just how the cash flows. But the program will be done in '09.

Elizabeth Parrella - Merrill Lynch - Analyst

Okay. Similar to Morgantown, are there any kind of SCR any other big outages other than the scrubber outages in '09 coming up over the next couple of years? Other than the limitations at Potomac River (multiple speakers) thinking of.

Ed Muller - Mirant Corporation - Chairman, CEO

No, no, we will be tying in the SCR at Unit 2 of Morgantown it an outage we will take starting in February. Then we will be doing the scrubbers, the three scrubbers in '09.

Elizabeth Parrella - Merrill Lynch - Analyst

Okay. A question for Jim on the guidance. If I remember correctly, in the '07 guidance you had a \$140 million -- maybe I will call it a hedging gain related to fuel oil management activities, that I think was intended to be a positive versus '06.

I'm just wondering; how much of that has been realized so far in the first nine months? Is that still a good number for this year? Is that sort of a natural decline in '08? Could you just walk us through that again?

Ed Muller - Mirant Corporation - Chairman, CEO

John, why don't you? You've got that number?

John O'Neal - Mirant Corporation - SVP, CCO

Yes, in general the way I think about it is essentially at the time we forecast it, earlier in the year, we had an expectation given where oil prices were, how much of that would realize in this year versus how much would realize in 2008.

As the shape of the curve has changed over the year, the realized earnings have moved also. In fact we will see less realized earnings this year from that activity and an increase in realized earnings for next year.

So in total I expect that in 2007 it will be roughly around \$80 million, which is about what we expected. Which is lower than what we originally forecast, but almost all of that reduction has been offset by increases in 2008.

Elizabeth Parrella - Merrill Lynch - Analyst

So we should think about it as that roughly \$60 million pickup in '08 related to this? You just basically realize it over the two years. Is that the right way to think about it?

John O'Neal - Mirant Corporation - SVP, CCO

Yes, I think that is correct.

Elizabeth Parrella - Merrill Lynch - Analyst

Okay. Then just one other question in terms of how you treated the Pepco settlement. I think it was a \$362 million impact on EBITDA, which I think you kind of removed from adjusted EBITDA.

Jim Iaco - Mirant Corporation - EVP, CFO

Yes.

Elizabeth Parrella - Merrill Lynch - Analyst

How much of that is for the -- I think you mentioned at the outset a number related to the reimbursement by Pepco back to May '06. How much of it is in total? Does any of that relate to '07 that we might want to sort of treat as recurring in this particular year?

Jim Iaco - Mirant Corporation - EVP, CFO

Yes, Elizabeth, the total that was refunded for payments subsequent to May 31, 2006, was \$36 million. \$19 million of that referred -- applied to payments made from May 31, 2006, to the end of the year of 2006. \$17 million were payments made in 2007.

Elizabeth Parrella - Merrill Lynch - Analyst

Okay, thanks very much.

Brian Russo - Ladenburg Thalmann - Analyst

Could you give us a sense of the timing on the Potomac River litigation? Any calendar of events we can watch for?

Ed Muller - Mirant Corporation - Chairman, CEO

You know, we have I think currently pending four pieces of litigation. The process of litigation doesn't lend itself to being able to lay full out that kind of timeline. I would like it all to move forward as rapidly as possible, and we will seek to do so, but litigation takes its own course.

Brian Russo - Ladenburg Thalmann - Analyst

So it is quite possible that the litigation could push out into 2009?

Ed Muller - Mirant Corporation - Chairman, CEO

I would doubt it. It's possible. But I would doubt it.

Brian Russo - Ladenburg Thalmann - Analyst

Okay. My last question is, can you tell us how much capacity you submitted to the latest 2009-2010 capacity auction at PJM?

Ed Muller - Mirant Corporation - Chairman, CEO

Yes, we do not disclose that number for competitive (inaudible).

Brian Russo - Ladenburg Thalmann - Analyst

Okay, thank you.

Robert Howard - Prospector Partners - Analyst

Good morning. Just wanted to ask a little bit about the NOLs on the slide here. You talked about the postemergence NOLs was about \$150 million. Last quarter when you were talking about the Pepco settlement, you talked about a \$600 million tax deduction.

I just was kind of wondering, can I look at that \$600 million from before as sort of creating \$600 million of NOLs? If that is the case, sort of how did we move from that \$600 million to this \$150 million?

Ed Muller - Mirant Corporation - Chairman, CEO

Paul, do you want to take that, please?

Paul Gillespie - Mirant Corporation - SVP Tax

Okay, the \$150 million basically represents the net operating loss for tax purposes for 2006 for the Company. The Pepco transaction arose in 2007; and it has generated for us a \$700 million tax deduction that will happen in 2007. That will not necessarily result in an equivalent net operating loss, because we also have taxable income in 2007, which we will use the deduction to offset.

Robert Howard - Prospector Partners - Analyst

Okay, all right, so that is another piece of value against it that is impacting the taxes that hasn't been reflected in this slide?

Paul Gillespie - Mirant Corporation - SVP Tax

Yes, that's correct.

Robert Howard - Prospector Partners - Analyst

Okay, great. Another thing, you were talking about the Pepco creating a gain and the benefit for income for the quarter. But then at the same time, we are also talking about this tax deduction. That just seems a little counterintuitive.

I was just wondering if you could explain how you could have a gain but then also get a tax benefit.

Paul Gillespie - Mirant Corporation - SVP Tax

Okay, for book purposes the contracts, which were the subject of the Pepco settlement, were booked as a liability. So the gain resulted from the relief of that liability.

For tax purposes, those contracts were treated as executory, meaning that we did not create a liability. So the effect of the settlement for tax purposes was essentially to accelerate all of our future obligations into 2007. Those obligations are deductible, so the accelerated amount is deductible.

Robert Howard - Prospector Partners - Analyst

Okay, all right. Then lastly, in the last guidance that you guys had given earlier in the year, just looking at the CapEx, I think you had about \$800 million or so for '08. Right now you are talking about a CapEx estimate for '08 of about \$913 million. So I was just wondering what is driving the increase there.

Ed Muller - Mirant Corporation - Chairman, CEO

Jim?

Jim Iaco - Mirant Corporation - EVP, CFO

Yes, it is basically just a shift in the timing of the expenditures, predominantly related to the Maryland Healthy Air Act. There is really no overall increase, it is just a timing shift.

Robert Howard - Prospector Partners - Analyst

Was the timing moving '07 stuff back or moving like '09 stuff forward?

Jim Iaco - Mirant Corporation - EVP, CFO

A little of both. Some of the '07 expenditures moved into '08; and it is just a combination of a lot of factors.

Robert Howard - Prospector Partners - Analyst

Okay, great. Thanks.

Jeff Coviello - Duquesne Capital - Analyst

Good morning. I was going to ask the same question, I guess, about Potomac River. Just I guess to recap, maybe you could recap what happened at the Air Board. I believe that was a board composed of citizens that ruled on the operating order and kind of tweaked it a bit, that made it hard to operate more than three units.

If you could elaborate on I guess what the most -- if there is a most -- important course of recourse against that Board, where that is, and what your argument is.

Ed Muller - Mirant Corporation - Chairman, CEO

Well, we have as you -- in the world of litigation, which is a world I prefer not to be in, but we are not going to have our rights ignored. As you can imagine, there are a variety of arguments; and I don't think it useful or appropriate in the course of the litigation to be laying out here how we are thinking about the litigation. Other than to tell you we are litigating and intend to until we get what is the appropriate result.

Jeff Coviello - Duquesne Capital - Analyst

Can you talk about what the capacity factor was on the plant year-to-date, '07 Potomac River?

Ed Muller - Mirant Corporation - Chairman, CEO

I don't think we lay that out. So I think the way to think about it in general, as I said before, is that the Potomac River has five units, and the restrictions that have been placed on us at the plant limit us effectively to running three units.

Jeff Coviello - Duquesne Capital - Analyst

I guess my final question, just going forward, looking at strategic opportunities and the brownfield sites, California is pretty clear there is an RFP. As far as the Northeast and Mid-Atlantic go, what should we be watching for? What should we be waiting for, to know when the time might be right to explore some of those opportunities?

Are there some one-off stuff that is almost able to be explored now? Or are you still waiting for the market to mature and the political will to emerge?

Ed Muller - Mirant Corporation - Chairman, CEO

Yes, I think there are two factors, Jeff. The biggest one is what you just referred to, which is the political will; or I think of it more as society coming to a conclusion on what it is prepared to do and willing to do.

Another factor is we have a variety of technical things we are looking at, but it's premature to know whether they would work, where we can (inaudible) things and so on.

Jeff Coviello - Duquesne Capital - Analyst

I guess just finally on the (technical difficulty) are there any -- was there like an operational review that took place during the strategic review? Is there going to be as a -- moving forward as a stand-alone entity, will there be an operational review just in terms of optimizing the value and the operations of the assets going forward?

Ed Muller - Mirant Corporation - Chairman, CEO

You know, the operations and how we operate were not part of the strategic evaluation that we did. But we do what you just described all the time; that is a continuous process for us. It was before April of this year, and it will be after today, and it is the nature of being in this activity.

Jeff Coviello - Duquesne Capital - Analyst

Okay, thank you very much.

Clark Orsky - KDP Investment Advisors - Analyst

Hi, just had a quick question, Jim, on the \$0.5 billion of required reinvestment or debt repurchase at Mirant North America, what your plans are there.

Jim Iaco - Mirant Corporation - EVP, CFO

Well, the \$0.5 million -- I think you are referring to the cash from the asset sales proceeds that was tied to the Zeeland and Bosque sale. That cash, again, is dedicated to Mirant North America operations.

But I think the more relevant number is the cash balances that are there today. Again as I had mentioned during the webcast at 9/30/07 there's two -- \$946 million at Mirant North America and the subs, and we anticipate doing a distribution of \$166 million in November.

So what is left is approximately about \$780 million. As I mentioned on a webcast, that cash is restricted to Mirant North America, and it's available for the future expenditures for the cost of compliance with the Maryland Healthy Air Act.

Clark Orsky - KDP Investment Advisors - Analyst

Okay, so it is not just sitting sort of at MNA, or you can downstream it to Maryland, to the (multiple speakers)?

Jim Iaco - Mirant Corporation - EVP, CFO

That's correct.

Clark Orsky - KDP Investment Advisors - Analyst

Okay, thank you.

Christopher Taylor - Evergreen Investment - Analyst

Thanks. Something doesn't connect to me. You've got expanding heat rates. You've got a forward gas curve which has actually improved slightly. You've got in PJM very good capacity payments. Yet your EBITDA guidance is down.

Is this hedge related? Or can you, leaving aside the hedges, just your pure gross margin before any hedging impact, what is the trend there? Or why is your gross margin guidance down with all these favorable factors?

Ed Muller - Mirant Corporation - Chairman, CEO

Well, I can probably take that. I mean the guidance is down as I indicated on the gross -- when you say on the gross margin, it was down about \$76 million for '07 compared to '08. But pull out the hedging activities and it is really up. Because both the energy component, which is up, and the contracted and capacity revenue component is up. The energy component is up \$77 million and the contracting and capacity component is up \$120 million.

So what is driving it down is predominantly this incremental margin on our hedging activities. The reason that is down is the hedges that we realized in 2007 were set at market prices that were higher than the market prices at the date of settlement. For 2008, obviously, that factor is not as prevalent. Also we have lower hedge volume in 2008 than we had in 2007.

Christopher Taylor - Evergreen Investment - Analyst

So what should we look for in 2009 when the PJM capacity payments fully kick in? Should we be looking for a big increase?

Ed Muller - Mirant Corporation - Chairman, CEO

We're not giving any guidance for 2009 at this point.

Christopher Taylor - Evergreen Investment - Analyst

Well, then the second question I wanted to ask was in terms of -- where do you guys go from here? If you had strategic buyers look at you with all these favorable trends, restricted capacity issues, heat rate expansion, blah blah blah; but yet a strategic buyer was not willing to pay a 10 times multiple, why should we as public investors have faith if strategic buyers didn't have faith? It is like, what is this Company's future?

Ed Muller - Mirant Corporation - Chairman, CEO

Well, first, you have assumed what occurred during this process; and I don't want to leave the notion that your description is accurate or inaccurate. I don't intend and we don't intend to comment further than to say we did a very thorough evaluation and concluded that returning the cash at this time was the best way forward.

The Company is healthy, is viable, and is well positioned. We intend to run it and maximize its value and look to the future.

Christopher Taylor - Evergreen Investment - Analyst

Well, I misphrased my question then. I wasn't implying that a specific strategic buyer (inaudible). But in general, you were on the market for six months. So presumably any strategic buyer at least gave a quick glance and they decided to take a pass.

So post this \$4 billion, where is the value in this Company? What is your long-term future? You have sent a very strong message that being independent is not part of your future; and now you have changed course. I'm just confused where this Company will be in three years.

Ed Muller - Mirant Corporation - Chairman, CEO

Well, first of all, again, your question assumes what occurred during this evaluation; and I'm not going to comment further on it.

Second, you referred to \$4 billion. We are going to return \$4.6 billion. I don't want to ignore the \$600 million.

Christopher Taylor - Evergreen Investment - Analyst

Fair enough.

Ed Muller - Mirant Corporation - Chairman, CEO

Third, we sent a message that we are focused on delivering value to our owners, and there are different paths to do that. There is not just one.

We have evaluated a variety of ways to do that. At this time, we see the return of cash as the best path forward.

Where will be in three years will be -- depends on a variety of things, but certainly can include running a business in a market that has rising demand and needs more capacity, where prices should be rising. That is a nice business to be in.

Christopher Taylor - Evergreen Investment - Analyst

But then if it is a nice business to be in, how come all the buyers out there took a pass? I guess that is what I'm trying to understand.

Ed Muller - Mirant Corporation - Chairman, CEO

As I said, I am not going to comment on what went on during this process. We are -- we have told you what we are going to do, and I think on that probably enough said.

Vikas Dwivedi - Morgan Stanley - Analyst

Good morning. Just wanted to make sure I understood the resid to gas spread drivers. You know, I guess resid is up strong on the back of crude. But it seems like the resid to crude relationship itself has gotten even stronger. When I look at the low-por or the high-por, low sulfur resid it is in the \$13 per MMBtu range.

What kind of spread -- I mean, I guess, in you all's modeling, how do you look at that? Does crude have to come back into the 55 or 60 range if gas is static on the forward curve? Or is this a driver that is going to be potentially, if crude stays where it is, just not going to come back your way for quite some time?

Ed Muller - Mirant Corporation - Chairman, CEO

John, do want you take that it?

John O'Neal - Mirant Corporation - VP, President-Mirant Mid-Atlantic

Sure.

Ed Muller - Mirant Corporation - Chairman, CEO

I'm sorry. I didn't mean to cut you off. Hang on, John.

Vikas Dwivedi - Morgan Stanley - Analyst

No, no, that was I guess the question. Can you guys see -- first of all, I would be curious, who is buying resid? Is it the freight market that has got it bid up even versus its normal relationship to crude?

John O'Neal - Mirant Corporation - SVP, CCO

This is John O'Neal. I won't comment on the broader market question about who's in the market and what they're up to. With respect to how it affects Mirant, in our Canal station those units burn primarily resid, although one of the units does have some dual-fuel capability to burn natural gas. So primarily those units are resid units.

So in the very high-priced environment that you describe those units are certainly, as we see it on a forward basis, less economic now than they have been in the past. So, you're right, it would take some change either in the oil complex or the natural gas complex for us to see those units be as economic in the future as they have been in the past.

However and as I pointed out earlier, those units continue to earn very steady capacity payments because the capacity payments are not at all linked to how economic they are on an energy basis. So that is how I'd see Canal.

With respect to our other large oil-burning units at Chalk Point in Maryland and at Bowline in New York, those units have the benefit of being able to burn either oil or natural gas. So while we have seen they are relatively less economic on oil, they are, when they are called on to run in times of high demand, able to run on natural gas.

So in general, I would say the rise in oil prices relative to gas is a net negative for us on those oil units, but it is offset somewhat by increased gas runs on those units that can burn natural gas.

Vikas Dwivedi - Morgan Stanley - Analyst

Got it, okay. Thank you.

Lee Cooperman - Omega Advisors - Analyst

Thank you very much. You know, this is kind of a strange call in a sense, because you're very forthcoming on all the analytics about the business. Very thorough. Very complimentary. But very vague about the process.

So let me just tell you how I kind of react to the fact. Frankly I think you should be forthcoming, because you don't want to be trading against your shareholders.

So I am assuming basically what happens is that the strategic or financial buyers were not prepared to pay a price that you felt the business was worth. Okay? Then you had to then take your next step.

I am assuming -- and this is a very important question to me, and I hope you will be forthcoming -- that if you felt that you were not creating value for those shareholders that are holding on, you would not be buying back stock but rather just resort to a cash dividend and let the shareholders take their money and what they want with it.

But by virtue of buying back stock you think that you create additional value, assuming you buy it at appropriate prices for those shareholders that intend to hold on. Is that interpretation reasonable?

Ed Muller - Mirant Corporation - Chairman, CEO

Well, Lee, let me answer this way. First, I don't want to by not commenting on it agree with the various assumptions you have made about what has transpired. So please don't take that conclusion.

But as I said, we're going about returning cash in a way that we think will deliver value to the long-term holders of the Company. I think in that sense, the answer to your question is yes.

Lee Cooperman - Omega Advisors - Analyst

Exactly, in other words you would not be buying back shares unless you felt you would be leveraging the return to the investors that are patient enough to hold on.

Because you got a rogues' gallery of shareholders, a bunch of hedge funds -- not there is anything wrong with hedge funds, since I am one of them, but basically we tend to have a longer-term horizon.

If you felt the value was very full and that the shares didn't offer long-term attraction, you would resort to paying us a dividend and say, go on and take that money and do what you like with it. As opposed to saying, well, if you trust us, we think that we can create more value for you by us doing it the way we are doing it. I think you have answered the question.

Ed Muller - Mirant Corporation - Chairman, CEO

Well yes, I have. But I will -- I have to take exception, Lee, to the notion that we have a rogues' gallery of shareholders.

Lee Cooperman - Omega Advisors - Analyst

I was including myself in that rogues' gallery, how's that? Self-depreciation. It's okay; I have a good feeling about myself. I have a good feeling about you, actually. All the best and I think you have answered my question. Thank you and all the best.

Ed Muller - Mirant Corporation - Chairman, CEO

Thank you. You, too.

Gil Nathan - Restoration Capital - Analyst

Yes. Hi guys, can you hear me?

Ed Muller - Mirant Corporation - Chairman, CEO

Absolutely, go ahead, Gil.

Gil Nathan - Restoration Capital - Analyst

You know, on the back of what Leon just said, you didn't want to discuss obviously the process; and we are not asking for that. But I was wondering, with the share buyback, does it have to do with the NOLs? Is that the best use? Or was there a tax implication here? Is that something you can answer for us?

Ed Muller - Mirant Corporation - Chairman, CEO

There is not a tax implication.

Gil Nathan - Restoration Capital - Analyst

So that had nothing to do with it. Okay, so on your guidance for '08, obviously, you have talked a little bit about why it is down, the hedges. Can you attribute how much it is affected by the outages? Or how much it is affected by three of the five plants running at Potomac?

Ed Muller - Mirant Corporation - Chairman, CEO

As I have said before, we are not prepared to start going unit by unit. We obviously described to you the major elements. So when you look at the numbers, you can draw that general conclusion, but I don't want to go beyond that.

Gil Nathan - Restoration Capital - Analyst

Okay. You are slightly free cash flow negative next year because of your CapEx. How much of that cash -- I know you have the restricted cash at North America. How much of that cash is going to be used at Mirant North America?

Ed Muller - Mirant Corporation - Chairman, CEO

Jim or Bill can help me, but the point (inaudible) we haven't done as good a job as we ought on this. But here is our basic point.

We have a \$1.6 billion program. We have expended as of September 30 \$357 million of the \$1.6 billion. Even after the \$166 million dividend that we will be authorized to withdraw from Mirant North America, we will have north of 700 -- north of \$0.75 billion in Mirant North America, and we will use all of those funds for the Maryland Healthy Air Act expenditure.

So if you assumed that it took all of the \$1.6 billion and you subtracted the \$357 million, you would have \$1.25 billion; and we have \$0.75 billion sitting in Mirant North America available; plus we will be generating more cash.

So, in the great scheme of things, we will use all of the cash that is there, we will generate more cash, and to the extent we are short within Mirant North America, we will inject the remaining cash in.

Gil Nathan - Restoration Capital - Analyst

Okay. On the share buyback, I guess I am a little confused about the JPMorgan purchase. Can you explain the workings of that? You guys are giving them the cash today, I suppose; and they're able -- they have their own discretion to buy it over six months? How does it work?

Ed Muller - Mirant Corporation - Chairman, CEO

Bill Holden, why don't you address this question?

Bill Holden - Mirant Corporation - SVP, Treasurer

The way that the ASR will work is we will pay JPMorgan \$1 billion. They will actually borrow Mirant shares in the market. The number of shares that they borrow, we estimate it at 24 million. The actual number that they will borrow and deliver to us will be based on the closing price today. So it will be \$1 billion divided by today's closing price.

The settlement for those shares will be on Tuesday of next week. So we will take delivery of the shares; we will pay JPMorgan \$1 billion.

They will then buy shares in Mirant stock over a period of up to six months to cover their position. Then, at the end of that period, when they have bought all the shares to cover the position, there will be a true-up based on a volume-weighted average price of Mirant shares over the period, minus a set discount that we have agreed with JPMorgan.

Gil Nathan - Restoration Capital - Analyst

Are you prepared to make that discount public?

Bill Holden - Mirant Corporation - SVP, Treasurer

No, we have agreed with them to keep that confidential.

Gil Nathan - Restoration Capital - Analyst

Okay. I guess I am just a little confused as to how this is beneficial to shareholders overall versus a Dutch auction. I mean, with a discount in there it sounds like you're at the beck and call of JPMorgan. So.

Bill Holden - Mirant Corporation - SVP, Treasurer

I think as Ed mentioned --.

Gil Nathan - Restoration Capital - Analyst

As opposed to a \$2 billion share repurchase in the open market by yourself.

Bill Holden - Mirant Corporation - SVP, Treasurer

Again, I would offer a couple things. I think as Ed mentioned, we look at a variety of alternatives and we believe that this, what we have outlined, is the most efficient way to execute the return of capital to shareholders.

The only other point I would note with the ASR, the accelerated share repurchase contract does qualify for equity accounting treatment. So our share count will be reduced immediately upon the delivery of the borrowed shares from JPMorgan to Mirant. And then any subsequent true-up would just be an adjustment to the equity account when the true-up occurred.

Gil Nathan - Restoration Capital - Analyst

Can you guys repurchase warrants in this, also? Because those, if your attempt is to buy shares back cheaper, it would be more accretive, right, if the long-term -- to improve long-term value?

Bill Holden - Mirant Corporation - SVP, Treasurer

The warrants are not part of the accelerated share repurchase.

Gil Nathan - Restoration Capital - Analyst

Okay, thank you very much.

Brian Chin - Citigroup - Analyst

Hi, this is Brian Chin. Quick question for you. Do you guys have any opinions against a Dutch tender for the remaining portion of the buyback on the tail end?

Ed Muller - Mirant Corporation - Chairman, CEO

Brian, it is Ed. How we will go about, how we will proceed after the advance share repurchase is completed, we will announce when we are ready to announce it.

Brian Chin - Citigroup - Analyst

So you don't have any opposition to a tender on the tail end?

Ed Muller - Mirant Corporation - Chairman, CEO

All of the various means for returning cash including that would be things that we will evaluate at the time.

Brian Chin - Citigroup - Analyst

Thank you.

Lasan Johong - RBC Capital Markets - Analyst

Yes, good morning. Wanted to kind of get your thoughts on why 2010 has power hedged out but no fuel associated with it. In general, kind of how you approach the hedging in terms of a philosophical approach.

Do you look at it as opportunistically trying to lock in what you feel is good prices? Or is this kind of [varying] it as over time kind of on a scheduled basis, where regardless of price you are going to lock in some amount of power and fuel?

Ed Muller - Mirant Corporation - Chairman, CEO

Well, it is this. I think we have to step back and ask what we're seeking to do in terms of a philosophy. That is, we seek to have stability and smooth out the vagaries of the market so that we can run the business, including knowing how much cash we need.

That said, when we choose to make each decision, we assess based on what we -- our experience in the market. We are active in these markets daily, hourly. So, we don't have necessarily all of the decisions made on each element at the same time.

Lasan Johong - RBC Capital Markets - Analyst

So, are you going to be opportunistically hedging based on what you think is an appropriate price?

Ed Muller - Mirant Corporation - Chairman, CEO

Yes, sure.

Lasan Johong - RBC Capital Markets - Analyst

Okay. Then in 2010, why the 20% baseload coal hedge on the power side but no accompanying fuel? Are you assuming that some of the fuel from '08 and '09 are going to be passed down to 2010?

Ed Muller - Mirant Corporation - Chairman, CEO

John, why don't you address this?

John O'Neal - Mirant Corporation - SVP, CCO

In general, we are, as Ed described, we -- opportunity to look -- we look at the market and time our hedges when we think it makes the most sense.

We look at our coal hedges slightly differently. We are in the market quite frankly conducting RFPs and making other market purchases to secure our coal on a longer-term basis. Oftentimes, those things don't line up exactly. But in general, we would seek to hedge out our coal consistent with our power hedge.

Your assumption is correct, the way we look at it. While we are somewhat unhedged in 2010, we are overhedged relative to our power sales in '08 and '09. So we look at that as a relatively flat position.

But in general we are in the coal markets looking to lay off our coal hedges two, three, four years out.

Lasan Johong - RBC Capital Markets - Analyst

Okay, so it is not like you're taking a negative position and making a bet on power price in 2010?

John O'Neal - Mirant Corporation - SVP, CCO

That's correct.

Lasan Johong - RBC Capital Markets - Analyst

Okay, I understand. Thank you very much.

Alex Mazier - Sandell Asset Management - Analyst

Hi, it's Alex Mazier from Sandell. Two questions. One, what was your availability assumption back in April when you first issued guidance, and what is it now?

The second question is, could you give us your point of view with respect to any development in capacity markets for California? What sort of framework could be possible in that time frame?

Ed Muller - Mirant Corporation - Chairman, CEO

Jim, why don't you address the first?

Jim Iaco - Mirant Corporation - EVP, CFO

On the availability, I don't think we are breaking it down in a percentage what our commercial availability is. So I can't answer that second, and I think on the third regarding California, it is probably --

Ed Muller - Mirant Corporation - Chairman, CEO

I will take it. It is early stage. We obviously spend a lot of time given the assets we have there on the subject, but it is premature to have views. There are lots of very sophisticated parties and entities addressing this subject. It will evolve.

But our internal views, I don't think, are worth that much for you right now, other than that they are ours. Nor do we want to be laying them out as we are a participant in how this market will evolve.

Steve Moyer - Tennenbaum Capital Partners - Analyst

Hi guys, thanks. Two sort of cleanup things, perhaps. One, on the large NOL, what would be the circumstances that would allow the reserve to be looked at, so it would be recognized on the balance sheet? What other GAAP implications would there be from that?

Ed Muller - Mirant Corporation - Chairman, CEO

Paul, or Jim, how do you want to do that?

Paul Gillespie - Mirant Corporation - SVP Tax

Well, quarterly we reviewed the issue of whether or not the valuation reserve will be removed. The reason it has not been removed to date is our lack of history of net income. Now obviously as we move out over time, our history becomes better in that respect.

Now if the valuation allowance is removed, there will be a substantial non-cash increase in our net income.

Steve Moyer - Tennenbaum Capital Partners - Analyst

Second issue, there appears to have been some developments in Maryland on the proposed system for allocating emission allowances going forward. Could you comment on the possible impact to your business from those?

Ed Muller - Mirant Corporation - Chairman, CEO

Sure, let me try. To make sure we are all on the same page, you are referring to RGGI, the Regional Greenhouse Gas Initiative. I take it you are referring to whether and to what degree any of the emissions credits would be allocated rather than auctioned.

Steve Moyer - Tennenbaum Capital Partners - Analyst

Am I correct that the current proposal at least is to auction 100%?

Ed Muller - Mirant Corporation - Chairman, CEO

That is our understanding of the proposal. I think -- and of course, this is still all very much in flux, recognizing that Maryland is dealing with a variety of questions and issues and trying to think through how to address electricity in policy. But, I think a couple of things are worth noting.

To the extent that, as is the case, coal sets price on the margin in Maryland about half the time, to the extent that the coal units are in Maryland and therefore have borne the costs for this -- however the cost is calculated -- you would expect to see it in prices. And that is the way the world works.

To the extent gas sets the price, and it is gas in Maryland, then the cost borne by the gas-fired generation you would expect to see in the price.

For that it is important to recognize what the carbon dioxide content per unit of electricity generated by gas is, compared to that generated by coal. The answer is somewhere around 60%.

That is, gas like any other hydrocarbon will cause when it's burned the release of carbon dioxide. It is 60% to two-thirds of the carbon dioxide comes out by generating with gas compared to coal.

So there would be some cost impact on someone like us, because we wouldn't have a full inclusion in the pricing there. But the notion that all of this somehow ends up sitting at the generator's table is incorrect.

Now, to the extent that price is set at a very low-priced time by power coming from non RGGI states transmitted into the zone, then you would have the situation where they would not have those costs and how their pricing would not include those costs.

So you could imagine in their pricing and their thinking about how they are bidding to come into the market their recognition that the native load -- the native generating capacity, rather -- in Maryland has to bear this cost. So how much of it can they get?

So the question in thinking about this -- and I think it's important not just for investors thinking about it and us thinking about, but it's also very important for policymakers thinking about it -- is there is no free lunch.

For us, when we think about the costs, and we would expect there to be some cost based on how we are seeing this evolve, we are thinking about it in terms of the net cost. Because there will be a cost; and there will be a headline number; and it will blast around somewhere on the headline

in the press and what have you. But then there will be the question of how much of that cost ends up going to the ultimate consumer.

I mean, the reality is, as I think is probably fairly evident, a cap-and-trade program -- which is what this is, if you go forward, if they go forward with RGGI -- is an indirect tax.

The question is, where does the tax, the incidence of taxation, land? The one thing that is clear as we think about it is 100% of it does not land on the generator. So now that --from there you come to a net number.

I think as people go forward on all this, policymakers will have to think about the impact of that. The voters ultimately are going to bear the overwhelming bulk of this cost.

Steve Moyer - Tennenbaum Capital Partners - Analyst

Got it. Thank you for the insight.

Mary Ann Arico - Mirant Corporation - IR

Thank you. Steve Himes and I will be available this afternoon to answer any further questions you have. Steve, on the conference call, thank you.

Operator

Thank you for this does conclude today's conference. Thank you all for your participation. You may now disconnect.