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FEDERAL ENERGY REGULATORY COMMISSION
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December 17, 2001

VIA MESSENGER

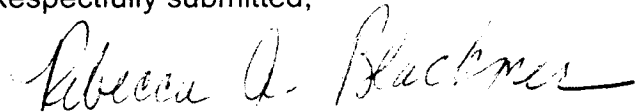
Linwood A. Watson, Jr.
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Pacific Gas and Electric Company**
Docket Nos. ER98-495-000, et al.

Dear Secretary Watson:

Enclosed for filing in the above-captioned proceeding are an original and fourteen copies of the joint *Answer to Motion to Hold Proceeding in Abeyance* of the California Public Utilities Commission, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison and the California Independent System Operator Corporation. Two additional copies of the filing are also enclosed to be date-stamped and returned to the messenger.

Respectfully submitted,



J. Phillip Jordan
Rebecca A. Blackmer
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company)	Docket Nos. ER98-495-000
)	ER98-1614-000
)	ER98-2145-000
)	and ER99-3603-000

**ANSWER TO MOTION TO HOLD
PROCEEDING IN ABEYANCE**

Pursuant to 18 C.F.R. § 385.213, the California Independent System Operator Corporation (the “ISO”), the California Public Utilities Commission (the “CPUC”), the California Electricity Oversight Board (the “EOB”), Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), and Southern California Edison Company (“Edison”) (together, “Consumer Coalition”) hereby respond to the motion by Mirant Americas Energy Marketing, L.P., Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (jointly, “Mirant”) that the above-numbered proceedings be held in abeyance. That motion was submitted in the instant proceedings and in Docket No. EL02-15-000 on November 30, 2001.¹

In the Motion and Protest, Mirant raises a number of objections to the relief sought by the Joint Motion in Docket No. EL02-15-000 even though Mirant’s units are not at

¹ The request is Part VII of a pleading entitled “Motion to Intervene, Protest to Joint Complaint, and Motion to Hold Proceeding in Docket Nos. ER98-495, et al., in Abeyance” (the “Motion and Protest”).

issue in that proceeding.² It also undertakes to argue, yet again, the supposed defects of the “net incremental cost” method adopted by the Presiding Judge in Docket No. ER98-495-000. We do not address those objections here other than to note they are an impermissible supplement to Mirant’s brief on exceptions. Mirant further argues, however, that, because the services provided under the Reliability Must Run contracts are interwoven with the substance of market redesign in California -- particularly congestion management -- the Commission should defer ruling on the pending exceptions in the instant proceeding until it has resolved the market redesign issues.³

Mirant’s argument entirely misstates what is pending before the Commission in this case. The issue to be resolved is a narrow one, *i.e.*, the level of Fixed Option Payments payable to Mirant for the period beginning June 1, 1999, under the RMR contracts that have been in effect since June 1, 1999. If Mirant believes that, as part of California market redesign, the terms of the generic RMR contract other than the Fixed Option Payment should be revised, it can seek such relief in the “related proceedings” it cites or in some other procedural context.⁴ Unless and until such revision occurs, however, the issue before the Commission in Docket No. ER98-495-000, *i.e.*, the proper method for determining the Fixed Option Payment in the context of the currently effective RMR contract, is fully ripe for resolution.

² The Joint Complaint seeks adjustment of the currently effective Fixed Option Payments payable under the RMR contracts between the ISO and, respectively, Duke Energy South Bay, LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, Geysers Power Company, LLC, and Williams Energy Marketing and Trading Company. Each of those companies reached a settlement with other parties as to the level of the Fixed Option Payment for the period from June 1, 1999 through December 31, 2001. Mirant did not do so, leading to the litigation and initial decision pending before the Commission in these dockets.

³ Motion and Protest at 15-18, 29.

⁴ See Motion and Protest at 10.

Mirant further asserts that intervening changes in the California market design have rendered the record in this case “stale.”⁵ At issue, however, are the rates to be charged not just prospectively but for the period going back to June 1, 1999, prior to the changes cited by Mirant. The rates for that period will have to be decided in any event, and Mirant has not filed for any subsequent general increase in its Fixed Option Payments.⁶ The already considerable length of time between the time the record was made and the time the Commission decides the case cannot now justify further delay.

Indeed, far from being justified, delay in ruling on the initial decision in this proceeding can only frustrate the public interest. As pointed out by the above-named parties in their letter of September 14, 2000, in Docket No. ER98-495-000, the Fixed Option Payments under the RMR contracts for Mirant’s units are currently set at 50 percent or more of the units’ stipulated fixed costs (“Annual Fixed Revenue Requirements”) and have a significant impact on PG&E’s customers. While refunds, with interest, will relate back to June 1, 1999, the burden of the currently effective payments on ratepayers is substantial. For that reason alone, the Commission should rule on the pending exceptions sooner rather than later.

As pointed out by the Joint Complaint in Docket No. EL02-15-000, a prompt ruling will also provide guidance as to the appropriate method for determining the Fixed Option Payments payable effective January 1, 2002 under other RMR contracts, which is the subject of the Joint Complaint. Accordingly, such a ruling would also enhance the likelihood that the

⁵ *Id.* at 27-28.

⁶ Mirant did file twice seeking the same limited increase in its Fixed Option Payments, based on the ISO’s change in RMR dispatch timing. The Commission rejected both filings. *Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C.*, 92 FERC ¶ 61,099 and 93 FERC ¶ 61,265 (2000).

issues raised by the Joint Complaint will be resolved by settlement, which should be in the interest of all concerned.

CONCLUSION

For the foregoing reasons, Mirant’s request that Docket No. ER98-495-000 be held in abeyance should be denied.

Respectfully submitted,

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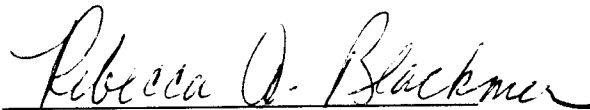
Attorneys for Southern California
Edison Company

December 17, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, on this 17th day of December, 2001.



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