

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mirant Delta, LLC) **Docket No. ER03-215-000**
Mirant Potrero, LLC

**PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND
PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.211, and the Commission's November 27, 2002 Notice of Filing, the California Independent System Operator Corporation ("ISO") and Pacific Gas and Electric Company ("PG&E") hereby submit a protest in the above-captioned proceeding. The ISO and PG&E request the Commission (i) accept the rates filed in this docket by Mirant Delta, LLC and Mirant Potrero, LLC (collectively "Mirant"), subject to hearing and subject refund; (ii) establish a refund date of January 1, 2003; (iii) require Mirant to adequately justify its filing as set forth in this protest; and (iv) afford the parties thirty days after the provision by Mirant of additional information so they may attempt to resolve their differences in this matter. In support thereof, the ISO and PG&E state as follows:

I. BACKGROUND

On November 22, 2002, Mirant tendered for filing pursuant to Section 205 of the Federal Power Act ("FPA") certain revised tariff sheets to three Must-Run Service Agreements: two between Mirant Delta, LLC and the ISO (one each for

the Pittsburg power plant and the Contra Costa power plant); and one between Mirant Potrero, LLC and the ISO (for the Potrero power plant) ("RMR Agreements"). The filing ("Mirant Filing") intends to undertake annual updates in accordance with the RMR Agreements and to incorporate, where applicable, the rates and terms of the Offer of Settlement between Mirant, the ISO and PG&E, submitted on November 22, 2002, in Docket Nos. ER02-64-000 and ER02-198-000.

The Mirant Filing:

- Revises Schedules A and B of the RMR Agreements to specify, for the calendar year beginning January 1, 2003: (i) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, and (iii) Capital Item Charges and Penalty Rates for the RMR Units;
- Revises Table B-5 of the RMR Agreements to specify, for the calendar year beginning January 1, 2003: (i) Other Outage Hours, (ii) anticipated Long-Term Planned Outages Hours and (iii) the resulting Target Available Hours for the RMR Units; and
- Revises the Number of Prepaid Start-ups, the Prepaid Start-up Cost and the Prepaid Start-up Charge for certain of the RMR Units for the calendar year beginning January 1, 2003, in accordance with the provisions of Schedule D of the RMR Agreements.

On November 27, 2002, the Commission issued a "Notice of Filing" setting December 13, 2002, as the final date for interventions and protests.

II. PROTEST

Because they have not been shown to be just and reasonable, the ISO and PG&E protest the Mirant Filing's data in Schedule B, Tables B-2 and B-4, relating Capital Items, including 1) in Table B-2, the values set forth for the Annual Capital Item Cost, and the Hourly Capital Item Charges and 2) in Table B-4, the Hourly Capital Item Rate and the Hourly Surcharge Penalty Rates.

Pursuant to the RMR Agreements, the Annual Capital Item Cost is the amount recoverable by an RMR Owner under the RMR Agreement in the Contract Year for a Capital Item approved pursuant to Section 7.4 or 7.6 of the RMR Agreements. See Schedule B at 4. Under Section 7.4, Owners must submit Capital Items for approval by the ISO. The ISO must approve a Capital Item and its cost. If, after the ISO approves a Capital Item and its cost, the Owner submits costs that are in excess of what the ISO approved, the ISO may initiate ADR to determine whether the unapproved excess costs were reasonable. Under section 7.6, an Owner must submit to the ISO for its acceptance or objection Capital Items that the Owner determines to be necessary that were not already approved by the ISO under section 7.4. As under section 7.6, if, after the ISO approves a Capital Item and its cost, the Owner submits costs that are in excess of what the ISO approved, the ISO may initiate ADR to determine whether the unapproved excess costs were reasonable. The RMR Agreements includes a Schedule L-1 that Owners are to use to request ISO approval for Capital Items under sections 7.4, 7.5 and 7.6 and a Schedule L-2 for Owners to apprise the ISO of any changes to Capital Items approved by the ISO, including changes to the in-service date, and the cost of the Capital Item.

Mirant has included in Table B-2 Capital Items for which it has not adequately documented ISO approval, actual costs and actual in-service dates. Without this supporting information, the values in Table B-2 cannot be shown to be just and reasonable. The values in Table B-4 are derived in part from values

in Table B-2. Because of the problems associated with the values in Table B-2, the values in Table B-4, also cannot be shown to be just and reasonable. Moreover, the difficulties of assessing the propriety of the values in Table B-4 are exacerbated because certain of the Capital Items and their associated values in Table B-4 are inappropriately grouped.

The Commission should require Mirant to provide, within 10 days of its order, supporting documentation for the Capital Items included in Table B-2, and their associated the Annual Capital Item Cost, and the Hourly Capital Item Charges, including at a minimum, a spreadsheet which describes the calculation of the values in Table B-2, the date each Capital Item was placed in service, the actual Capital Item cost and the Surcharge Payment Factor used and its basis. The Commission should also require Mirant to provide a revised Table B-4 that separates each Capital Item and its related value. The Commission should also give the parties thirty days after receipt of this additional information from Mirant to attempt to resolve the outstanding issues associated with the Mirant Filing. In the meantime, the Commission should accept the rates in the Mirant Filing, subject to hearing and subject to refund, and should establish January 1, 2003, as the refund date.

Last, PG&E and the ISO note that Mirant labeled the third column in its Table B-4 as "Hourly Capital Item Charge" when it should be labeled "Hourly Capital Item Rate". The Commission should require Mirant to file revised Rate Sheets correcting this error.

III. CONCLUSION

For the foregoing reasons, PG&E and the ISO respectfully request that the Commission accept the rates set forth in the Mirant filing, subject to hearing and subject refund; establish a refund date of January 1, 2003; require Mirant to adequately justify its filing as set forth in this protest; and afford the parties thirty days from receipt of additional information by Mirant to attempt to resolve their differences in this matter. In addition, the Commission should require Mirant to file revised Rate Sheets correcting the mislabeling error in Table B-4.

Respectfully submitted,

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Company**

Date: December 13, 2002



December 13, 2002

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Mirant Delta, LLC and Mirant Potrero, LLC**
Docket No. ER03-215-000

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Protest of the California Independent System Operator Corporation and Pacific Gas and Electric Company. Thank you for your attention to this filing.

Respectfully submitted,

Jeanne M. Solé
Counsel for the California Independent
System Operator Corporation

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 Folsom, CA, on this 13th day of December, 2002.

Jeanne M. Solé