



February 10, 2005

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
Office of the Secretary  
888 First Street, NE  
Washington, DC 20426

RE: Docket No. ER05-224-001

Dear Secretary Salas:

On November 16, 2004, the California Independent System Operator Corporation (“CAISO”), submitted for filing a Dynamic Scheduling Agreement for Scheduling Coordinators (“DS Agreement”) between the CAISO and Mirant Americas Energy Marketing, LP (“Mirant”) as a non-conforming agreement. The CAISO received a letter order dated January 11, 2005 (“Letter Order”) from Jamie Simler, Director, Division of Tariffs and Market Development – West, requesting that the CAISO provide additional information described below within 30 days of the date of the Letter Order, i.e. February 10, 2005.

For purposes of clarity, the CAISO will list each comment contained in the Letter Order immediately followed by the CAISO’s response below:

- Whether this agreement would serve as a pro forma agreement for all other comparable dynamic scheduling agreements that transmit electricity through Western Area Power Administration, Desert Southwest Region (WALC) and/or other control areas in the Western Electricity Coordinating Council (WECC).

**ISO Response:** The form of the Mirant DS Agreement would apply for all other comparable dynamic scheduling agreements for transmittal of electricity through WALC or other Control Areas in the WECC until such time as the ISO may seek a tariff amendment from the Commission to conform with the North American Electric Reliability Council’s (“NERC”) recently proposed (and soon to be adopted) Version 0 Reliability Standards on e-tagging requirements for dynamic schedules.

- How and whether permitting waiver of intra-hour e-tagging requirements would cause potential reliability problems.

**ISO Response:** NERC requires e-tagging of all schedules prior to an operating hour, and when the ISO was developing its proposed standards for imports of non-Regulation dynamic schedules the ISO understood NERC Policy 3 to require e-tagging of intra-hour changes in dynamic schedules of a certain magnitude. Consequently, the ISO incorporated into its proposed standards that same requirement. However, NERC has recently proposed (and is soon expected to adopt) Version 0 Reliability Standards which state that e-tagging of intra-hour changes in

dynamic schedules is not currently required. The ISO does not believe that waiver of this intra-hour e-tagging requirement will cause reliability problems and considers the NERC requirements in this regard to be evidence of the absence of anticipated reliability problems. In fact, given NERC requirements, the ISO would ordinarily have made a conforming change in its standards for imports of non-Regulation dynamic schedules and eliminated the need for a waiver. However, because the Commission ordered the ISO to incorporate these standards into the ISO Tariff, the ISO would have to seek a tariff amendment from the Commission in order to make this conforming change. Given all of the higher priorities for ISO Tariff filings and the potential length of the ISO Tariff amendment drafting, filing, and approval process, the ISO will continue to use the vehicle of seeking a waiver of this ISO Tariff requirement for the Mirant DS Agreement and for other individual DS Agreements for the near future.

- Please provide more information concerning the waiver WECC has obtained from the North American Electric Reliability Council (NERC) dynamic scheduling e-tagging requirements. In particular, please explain: (1) the basis of the waiver and (2) the duration of the waiver. If feasible, please provide a copy of this waiver.

**ISO Response:** The WECC waiver was asked of NERC, and granted by the NERC Board of Trustees, because certain members of the WECC were not able to fully conform to the NERC e-tagging requirement due to software constraints of their current systems and the budgeting processes required to negotiate and implement this requirement. The waiver was approved at a NERC Operating Committee Meeting and granted by the NERC Board of Trustees, becoming effective on November 21, 2002. The WECC waiver is included in the proposed NERC Version 0 Reliability Standards (Sections INT-001-0 “Interchange Transaction Tagging” and INT-004-0 “Interchange Transaction Modifications”) and is effective until an applicable Reliability Standard is developed. However, the WECC waiver is no longer relevant to this matter given NERC’s e-tagging requirements described in the response above and the fact that the ISO’s e-tagging requirement, as is currently filed, is more stringent than the NERC requirement. As stated above, the ISO would consider seeking a tariff amendment from the Commission to remove the required intra-hour e-tagging requirement for changes in dynamic schedules to the ISO’s requirement would align with the NERC e-tagging requirement.

- Provide a time estimate for when the CAISO might establish a process to address the issue of dynamic scheduling of exports.

**ISO Response:** As the ISO has indicated in prior filings with the Commission, e.g. Amendment No. 59 filing,<sup>1</sup> the ISO proposed to allow imports from System Resources. System Resources are, by definition, located outside of the ISO Control Area.<sup>2</sup> As such, the ISO did not contemplate the export of Energy and Ancillary Services from the ISO Control Area in the

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<sup>1</sup> California ISO, Amendment No. 59 to the ISO Tariff, FERC Docket No, ER04-793-000 (April 30, 2004) (“Amendment No. 59 filing”).

<sup>2</sup> The ISO Tariff defines System Resource as “[a] group of resources located outside of the ISO Control Area capable of providing Energy and/or Ancillary Services to the ISO Controlled Grid.”

Amendment No. 59 filing. The ISO stated that it focused its efforts on developing standards for imports due to the short time frame it had within which to make its dynamic scheduling filing.<sup>3</sup> The ISO also explained that while there had been some informal inquiries from Market Participants regarding dynamically scheduling exports, exports would require different standards than those required for imports “due to different operational and business relationship of the ISO to resources within the ISO Control Area in contrast to imports from other Control Areas...[and] the ISO has far more limited experience with the dynamic scheduling of exports.”<sup>4</sup> As the ISO previously explained in Amendment No. 59, it is aware of the need to explore the issue of the dynamic scheduling of exports. However, this issue deserves a great deal of consideration and thorough assessment as to the functionality of dynamic scheduling of exports, including pilot programs similar to the case of dynamic scheduling of imports.

While the ISO is not obligated under the NERC, WECC, or Commission’s requirements under Order No. 888 to implement dynamic transfers, the ISO understands that Market Participants are concerned about the dynamic scheduling of exports and will continue to take the necessary steps to explore the possible implementation of this functionality. However, to require the ISO to implement a functionality that it is neither obligated, nor currently equipped, to provide would be unfounded and operationally burdensome – even if it were in any way relevant to this proceeding.

The ISO has not yet been approached by SMUD or another Market Participant requesting the commencement of negotiations regarding the implementation of a specific pilot for dynamic exports from a particular resource in the ISO Control Area. Once such a specific request to commence negotiations is received, the ISO anticipates that it will require at least two months of negotiations to reach agreement on the terms of the pilot and several more months to implement that functionality in the ISO’s and the neighboring Control Area’s systems.

- Your filing does not contain designations as required by Order No. 614, nor identification and numbering of tariffs and rate schedules (including service agreement) as required under 18 C.F.R. ' 35.9. Specifically, Order No. 614 requires that all rate schedules sheets (*i.e.*, tariff sheets, rate schedules, and service agreements) submitted to the Commission after June 1, 2000, be designated. Please provide designations as required by Order No. 614 and 18 C.F.R. 35.9.

**ISO Response:** The ISO complied with Order No. 614 by designating the filed agreement as ISO Service Agreement No. 580, and filed the agreement with the appropriate cover sheet containing that designation. There is no other designation requirement.

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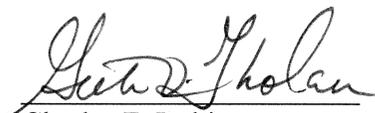
<sup>3</sup> Supra note 1 at footnote 7.

<sup>4</sup> Id.

**Conclusion**

As directed by the Letter Order, the CAISO is resubmitting its filing of November 16 (Attachment A), 2004, as well as filing six copies of this response and a form of notice suitable for publication in the Federal Register, with the Commission and will also provide a copy to Sonya Sampson in the Office of Markets, Tariffs and Rates. A Notice of Filing is attached as Attachment B. The CAISO has also served its response and accompanying documents to all parties on the service list in this proceeding, the California Public Utilities Commission, and the California Electricity Oversight Board.

Respectfully submitted,



Charles F. Robinson  
Anthony J. Ivancovich  
Geeta O. Tholan  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 608-7296

CC: Jamie L. Simler, Director – Division of Tariffs and Market Development – West  
Sonya Sampson, Office of Markets, Tariffs and Rates

**ATTACHMENT A**

**ER05-224-001**  
**February 10, 2005**



November 16, 2004

The Honorable Magalie Roman Salas  
Secretary  
888 First Street, N.E.  
Washington, DC 20426

**Re: California Independent System Operator Corporation  
Docket No. ER05- -000**

**Non-Conforming Service Agreement No. 580**

Dear Secretary Salas,

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, the California Independent System Operator Corporation (“California ISO”)<sup>1</sup> submits for filing the Dynamic Scheduling Agreement for Scheduling Coordinators (“DS Agreement”) between the California ISO and Mirant Americas Energy Marketing, LP (“Mirant”) as a “non-conforming” agreement. The California ISO requests a waiver of the 60-day prior notice requirement in order to make the agreement effective as of one day after the date of the filing, or November 17, 2004.

## **I. Purpose of the DS Agreement**

The DS Agreement is applicable to Scheduling Coordinators representing resources outside the California ISO Control Area from which they wish to schedule dynamic imports of Energy, Supplemental Energy, and Energy associated with non-Regulation Ancillary Services (Spinning Reserve and Non-Spinning Reserve) into the California ISO Control Area. The DS Agreement establishes the framework of operating and scheduling requirements for the dynamic scheduling functionality and requires the Scheduling Coordinator responsible for operation of the functionality to comply with the applicable provisions of the ISO Tariff, including the California ISO Dynamic Scheduling Protocol (“DSP”). The DSP covers several important operating and scheduling provisions that are derived primarily from applicable NERC policies and WECC requirements.

## **II. Variation from Pro Forma Agreement**

The Mirant DS Agreement satisfies the requirements established by the Commission’s June 29, 2004 order concerning Amendment No. 59 to the California ISO Tariff (“Amendment No. 59”), 107 FERC ¶ 61,329 (“Amendment No. 59 Order”), in Docket No. ER04-793. The *pro forma* Dynamic Scheduling Agreement for Scheduling Coordinators (“DSA”) was submitted in Attachment F to the Amendment No. 59 filing,

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the California ISO Tariff.

submitted on April 30, 2004. The *pro forma* DSA was approved in paragraph 24 and ordering paragraph (A) of the Amendment No. 59 Order.

Although the Mirant DS Agreement substantially conforms to the provisions of the *pro forma* DSA, it modifies the requirement in the DSP that every change of a certain magnitude in a dynamic schedule necessitates a conforming change in the e-tag. Specifically, Section 4.1.1 of the Mirant DS Agreement exempts Mirant from the provisions of Section DSP 6.2 that would otherwise require it to make a change in an e-tag in the event of that there is a change in magnitude of the dynamic schedule by 25% or more, or 25 MW, whichever is less, including all such dynamic scheduling changes occurring within the applicable hour.<sup>2</sup> This exemption is necessary because Western Area Power Administration, Desert Southwest Region (“WALC”) has represented that it is unable to support the intra-hour e-tag changes associated with dynamic schedules in the manner required in the California ISO DSP. WALC will be an intermediary Control Area on the transmission path for the dynamic schedule originating at the Apex Power Plant in the Nevada Power Company Control Area, with regard to which Mirant will be providing Energy, Supplemental Energy, and Energy associated with non-Regulation Ancillary Services (Spinning Reserve and Non-Spinning Reserve) dynamically to the California ISO Control Area pursuant to the DS Agreement.

In general, an Energy transaction is deemed not implemented unless all entities listed on the e-tag approve it. NERC requires that any intra-hour dynamic schedule change of 25% or more is e-tagged, but WECC obtained a general waiver from NERC’s dynamic schedule e-tagging requirement. While WECC has selectively adopted certain aspects of the NERC e-tagging requirement, that partial WECC adoption does not currently require any intra-hour e-tag changes. Thus, while California ISO DSP 6.2 requires that any intra-hour change in a dynamic schedule’s magnitude greater than 25% of the “base schedule value” or 25 MW (whichever is greater) be e-tagged, that requirement is more stringent than current WECC requirements. As a number of Control Areas in the WECC are able to meet only the current WECC requirements for this aspect of e-tagging, the California ISO considers an exemption from California ISO DSP 6.2 justifiable in this case in order to enable WALC to facilitate the dynamic scheduling envisioned in the DS Agreement.

Sections 3.2.2, 4.1.1, 4.1.4, and 5.1 of the DS Agreement have also been modified to reflect that the parties must comply with the DSP instead of the California ISO’s “Standards for Dynamic Imports of Energy, Supplemental Energy, and Energy Associated with Non-Regulation Ancillary Services.”<sup>3</sup>

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<sup>2</sup> It should be noted that this DSP provision is more stringent than the currently existing NERC or WECC e-tagging requirements.

<sup>3</sup> The Mirant DS Agreement refers to the Dynamic Scheduling Protocol rather than to the *Standards for Dynamic Imports of Energy, Supplemental Energy, and Energy Associated with Non-Regulation Ancillary Services* contained in Attachment E to the April 30, 2004 filing of Amendment No. 59 (“Standards”). The Amendment No. 59 Order (at paragraph 21 and ordering paragraph (B)) directed the California ISO to file California ISO Tariff sheets containing the *Standards*. To comply with this directive, the California ISO submitted the Dynamic Scheduling Protocol on July 29, 2004. The Commission accepted the California ISO’s compliance filing by letter order issued September 15, 2004.

### **III. Request for Waiver**

The California ISO respectfully requests a waiver of FPA Section 205(d), which would require this DS Agreement to go into effect no earlier than 60 days after it was filed. The California ISO requests that the DS Agreement be made effective one day after the date of filing with the Commission, or November 17, 2004. Granting the waiver will enable the California ISO to begin implementation of the dynamic schedule and will allow Mirant to participate in the California market as quickly as possible. Granting the waiver, therefore, is appropriate.

### **IV. Expenses**

No expense or cost associated with this filing has been alleged or judged in any judicial or administrative proceeding to be illegal, duplicative, unnecessary, or demonstratively the product of discriminatory employment practices.

### **V. Service**

Copies of this filing have been served on Mirant, the California Public Utilities Commission, and the California Electricity Oversight Board.

### **VI. Materials Contained in the Instant Filing**

Enclosed for filing is an original and six copies of this transmittal letter, the "non-conforming" Mirant DS Agreement (Attachment A), a blackline version of the same showing the differences between the DS Agreement and the California ISO's pro forma DSA (Attachment B), and a Notice of Filing suitable for publication in the Federal Register, together with an electronic version of the Notice (Attachment C).

### **VII. Correspondence**

The California ISO requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following:

Charles F. Robinson\*  
Deborah A. Le Vine\*  
Michael Dozier  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

\*Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 203(b)(3).

**VIII. Proposed Designation**

The California ISO proposes a designation for the DS Agreement, as follows:  
Service Agreement No. 580.

Respectfully Submitted,

Geeta O. Thola / Jmm

Charles F. Robinson

General Counsel

Geeta O. Tholan

Regulatory Counsel

The California Independent

System Operator Corporation

151 Blue Ravine Road

Folsom, CA 95630

**ATTACHMENT A**

**DYNAMIC SCHEDULING AGREEMENT FOR SCHEDULING  
COORDINATORS WITH MIRANT AMERICAS ENERGY  
MARKETING, LP**

**Effective: November 17, 2004**

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**CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR**

**AND**

**MIRANT AMERICAS ENERGY MARKETING, LP**

**DYNAMIC SCHEDULING AGREEMENT FOR  
SCHEDULING COORDINATORS**

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## DYNAMIC SCHEDULING AGREEMENT FOR SCHEDULING COORDINATORS

THIS AGREEMENT is dated this 12<sup>th</sup> day of November, 2004 and is entered into, by and between:

(1) **Mirant Americas Energy Marketing, LP** having its registered and principal place of business located at 1155 Perimeter Center West, Atlanta, Georgia 30338-5416 (the "Scheduling Coordinator");

and

(2) **California Independent System Operator Corporation**, a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the ISO Governing Board may from time to time designate, initially 151 Blue Ravine Road, Folsom, California 95630 (the "ISO").

The Scheduling Coordinator and the ISO are hereinafter referred to as the "Parties".

### Whereas:

- A. The ISO Tariff provides that a Scheduling Coordinator may submit dynamic schedules to the ISO from System Resources.
- B. The Scheduling Coordinator is currently Scheduling Coordinator for a System Resource associated with a power plant(s) interconnected in a Control Area other than the ISO Control Area (the "Host Control Area").
- C. The Scheduling Coordinator wishes to implement and operate a dynamic functionality that allows scheduling of Energy, Supplemental Energy, and Energy associated with Spinning Reserve and Non-Spinning Reserve dynamically from a System Resource into the ISO Control Area from the Host Control Area and, therefore, wishes to undertake to the ISO that it will comply with the applicable provisions of the ISO Tariff.
- D. The Parties are entering into this Agreement in order to establish the terms and conditions on which the ISO and the Scheduling Coordinator will discharge their respective duties and responsibilities under the ISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the ISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) if there is any inconsistency between this Agreement and the ISO Tariff, the ISO Tariff will prevail to the extent of the inconsistency;
  - (b) the singular shall include the plural and vice versa;
  - (c) the masculine shall include the feminine and neutral and vice versa;
  - (d) "includes" or "including" shall mean "including without limitation";
  - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
  - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
  - (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
  - (h) unless the context otherwise requires, any reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
  - (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
  - (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
  - (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

**ARTICLE II**  
**ACKNOWLEDGEMENTS OF SCHEDULING COORDINATOR AND ISO**

- 2.1 ISO Responsibility.** The Parties acknowledge that the ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Council and further acknowledges that the ISO may not be able to satisfy fully these responsibilities if the Scheduling Coordinator fails to fully comply with all of its obligations under this Agreement and the ISO Tariff.

**ARTICLE III**  
**TERM AND TERMINATION**

- 3.1 Effective Date.** This Agreement shall be effective as of the date set forth above, unless accepted for filing and made effective by FERC on some other date, if FERC filing is required, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.

**3.2 Termination**

- 3.2.1 Termination by ISO.** Subject to Section 3.2.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the ISO's agreement with the Host Control Area has terminated or the Scheduling Coordinator commits any material default under this Agreement and/or the ISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Scheduling Coordinator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the ISO will be considered timely if: (1) the filing of the notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within sixty (60) days after issuance of the notice of default. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if filed with FERC, or thirty (30) days after the date of the ISO's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

- 3.2.2 Limitation on ISO Termination.** Notwithstanding the provisions of Section 3.2.1, in the event of noncompliance with the provisions of the ISO Dynamic Scheduling Protocol, the ISO shall have the right to terminate this Agreement after three (3) instances of noncompliance. In the event that the ISO determines

that the Scheduling Coordinator has failed to comply with the ISO Dynamic Scheduling Protocol, the ISO will provide written notice to that effect to the Scheduling Coordinator, and the Scheduling Coordinator shall have seven (7) days to correct the non-compliant condition(s). If the ISO determines that Scheduling Coordinator has not corrected the non-compliant condition(s) within seven (7) days after the third notice of noncompliance, the ISO may, by further written notice to the Scheduling Coordinator, terminate this Agreement and the existing functionality and arrangements described herein pursuant to Section 3.2.1, but without providing for the additional thirty (30)-day cure period otherwise provided in Section 3.2.1.

**3.2.3 Termination by Scheduling Coordinator.** In the event that the Scheduling Coordinator no longer wishes to submit dynamic schedules to the ISO, it may terminate this Agreement, on giving the ISO ninety (90) days written notice. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the ISO will be considered *timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within thirty (30) days of receipt of such request.* This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if such notice is required to be filed with FERC, or upon ninety (90) days after the ISO's receipt of the Scheduling Coordinator's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

## **ARTICLE IV GENERAL TERMS AND CONDITIONS**

### **4.1 Dynamic Scheduling Requirements and Obligations**

**4.1.1** The dynamic functionality established under this Agreement shall be implemented and operated in accordance with ISO Tariff Section 2.2.7.6, other applicable provisions of the ISO Tariff, all applicable NERC and WECC policies, requirements, and provisions, and the ISO Dynamic Scheduling Protocol, except that the provisions of Section DSP 6.2 requiring a conforming change in the associated e-tag if there is a change in magnitude of the dynamic schedule by 25% or more, or 25 MW, whichever is less, including all such dynamic schedule changes occurring within the applicable operating hour, shall not be applicable. The associated e-tag shall be submitted and approved by all pertinent parties before the beginning of the applicable operating hour and shall reflect the best expected value of the dynamic schedule in the applicable operating hour.

- 4.1.2 The maximum allowable dynamic power transfer (in MW) from the Scheduling Coordinator's System Resource(s) shall be as set forth in Schedule 1 and will be referred to as "Pmax" in all ISO scheduling and control systems.
- 4.1.3 The Scheduling Coordinator warrants that the power plant(s) listed in Schedule 1 is interconnected within the Host Control Area specified in Schedule 1, placing both the plant(s) as well as the associated System Resource under the operational jurisdiction of the Host Control Area.
- 4.1.4 The ISO inertia associated with the System Resource(s) is set forth in Schedule 1. The Scheduling Coordinator may request, and the ISO may agree, at its sole discretion, to change the foregoing ISO inertia association, subject to any limitations set forth in the ISO Dynamic Scheduling Protocol.
- 4.1.5 Unless explicitly agreed otherwise, dynamic functionalities implemented between the ISO and the Scheduling Coordinator may provide only for imports from the System Resource(s) listed in Schedule 1 to the ISO.
- 4.1.6 **Identification of System Resources.** The Scheduling Coordinator has identified the System Resources that it represents in Schedule 1.
- 4.1.7 **Notification of Changes.** Sixty (60) days prior to changing any technical information in Schedule 1, the Scheduling Coordinator shall notify the ISO of the proposed changes. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in the revised Schedule 1. Unless the Scheduling Coordinator fails to test at the values in the proposed change(s), the change will become effective upon the effective date for the next scheduled update of the ISO's Master File, provided the Scheduling Coordinator submits the changed information by the applicable deadline and is tested by the deadline.
- 4.2 **Agreement Subject to ISO Tariff.** The Parties will comply with all applicable provisions of the ISO Tariff, including Sections 2.2.7.6 and 2.5.6.2. This Agreement shall be subject to the ISO Tariff, which shall be deemed to be incorporated herein.
- 4.3 **Obligations Relating to Ancillary Services**
- 4.3.1 **Submission of Bids.** When the Scheduling Coordinator submits a bid for Ancillary Services, the Scheduling Coordinator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff and that it will comply with ISO Dispatch Instructions for the provision of the service in accordance with the ISO Tariff.

**ARTICLE V  
PENALTIES AND SANCTIONS**

- 5.1 **Uninstructed Deviations.** Except for operating emergency situations, real time Energy transfers may not vary from the Final Hour Ahead Schedule as adjusted by any *Dispatch Instructions* by more than the greater of five (5) MW or three percent (3%) of the net dependable capacity (Pmax) of the System Resource, integrated across a ten-minute interval. If such defined performance band is exceeded by any amount in more than five percent (5%) of the ten-minute intervals on three successive days, then such deviations shall constitute one event of non-compliance with the ISO Dynamic Scheduling Protocol pursuant to Section 3.2.2. Deviations from dynamic Energy schedules will also be subject to Uninstructed Deviation Penalties pursuant to Section 11.2.4.1.2 and related provisions of the ISO Tariff.
- 5.2 **General.** The Scheduling Coordinator shall be subject to all penalties made applicable to dynamic imports from System Resources set forth in the ISO Tariff.

**ARTICLE VI  
COSTS**

- 6.1 **Operating and Maintenance Costs.** The Scheduling Coordinator shall be responsible for all its costs incurred in connection with dynamic scheduling and compliance by the System Resources identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

**ARTICLE VII  
DISPUTE RESOLUTION**

- 7.1 **Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to *Market Participants* shall be read as a reference to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE VIII  
REPRESENTATIONS AND WARRANTIES**

- 8.1 Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.

**ARTICLE IX  
LIABILITY**

- 9.1 Liability.** The provisions of Section 14 of the ISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the ISO Tariff to Market Participants shall be read as references to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE X  
UNCONTROLLABLE FORCES**

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 15 of the ISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 15 of the ISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE XI  
MISCELLANEOUS**

- 11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 17 of the ISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- 11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 20.1 of the ISO Tariff. A Party must update the information in Schedule 2 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.

- 11.3 Waivers.** Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consents that any legal action or proceeding arising under or relating to this Agreement to which the ISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 20.8 of the ISO Tariff as if the references to the ISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
- 11.8 Section Headings.** Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.
- 11.9 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information. Nothing contained herein shall be construed as affecting in any way the right of the ISO to unilaterally make application to FERC for a change in the rates, terms and conditions of this Agreement under Section 205

of the FPA and pursuant to FERC's rules and regulations promulgated thereunder.

**11.10 Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation *JA*

By: *Randall T. Abernathy*  
Name: Randall T. Abernathy  
Title: Vice President,  
Market Services  
Date: 11/12/04

Mirant Americas Energy Marketing, LP  
By: *Mirant Americas Development, Inc.* *EM/ND*  
*Its general partner*  
By: *John Chiller*  
Name: JOHN CHILLER  
Title: DIRECTOR  
Date: 11/9/04

**SCHEDULE 1**

**SYSTEM RESOURCES AND CONTROL AREA INFORMATION**  
**For**  
**MIRANT AMERICAS ENERGY MARKETING, LP**  
**[Sections 4.1.2, 4.1.3, 4.1.5]**

<b>System Resource ID</b>	APEX_2_MIRDYN
<b>System Resource Scheduling Limit at the Associated ISO Intertie<sup>1</sup></b>	500 MW
<b>Associated ISO Intertie ID</b>	MEAD_2_WALC
<b>Generating Resource(s) Comprising the System Resource</b>	APEX Generating Station (combined cycle) Clark County, Nevada (20 miles North of Las Vegas; APEX Industrial Park)
<b>Host Control Area</b>	Nevada Power Company
<b>Intermediary Control Area(s)</b>	Western Area Power Administration, Lower Colorado (WALC)

<sup>1</sup> This value represents the maximum amount of power that can be scheduled by the System Resource into the ISO Control Area, and is subject to limitation by Congestion on the scheduling path or System Emergencies that could reduce or eliminate the ability to schedule and transfer power from time-to-time.

## SCHEDULE 2

### NOTICES [Section 11.2]

#### Scheduling Coordinator

Name of Primary Representative: John Chillemi  
Title: Director, West Power  
Company: Mirant Americas Energy Marketing, LP  
Address: 1155 Perimeter Center West  
City/State/Zip Code: Atlanta, GA 30338-5416  
Email Address: John.chillemi@mirant.com  
Phone: (678) 579-7454  
Fax No: (678) 579-5541

Name of Alternative Representative: Ryan Smith  
Title: Trading/Asset Analyst  
Company: Mirant Americas Energy Marketing, LP  
Address: 1155 Perimeter Center West  
City/State/Zip Code: Atlanta, GA 30338-5416  
Email Address: Ryan.smith@mirant.com  
Phone: (678) 579-3405  
Fax No: (678) 579-5541

## ISO

Name of Primary Representative: Thomas Doughty  
Title: Director of Client Relations  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email address: tdoughty@caiso.com  
Phone: (916) 608-7373  
Fax: (916) 608-7074

Name of Alternative Representative: Deborah A. Le Vine  
Title: Director of Contracts  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email address: dlevine@caiso.com  
Phone: (916) 351-2144  
Fax: (916) 351-2487

**ATTACHMENT B**

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**CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR**

**AND**

**MIRANT AMERICAS ENERGY MARKETING, LP**

**DYNAMIC SCHEDULING AGREEMENT FOR  
SCHEDULING COORDINATORS**

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## DYNAMIC SCHEDULING AGREEMENT FOR SCHEDULING COORDINATORS

**THIS AGREEMENT** is dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is entered into, by and between:

(1) **Mirant Americas Energy Marketing, LP** having its registered and principal place of business located at 1155 Perimeter Center West, Atlanta, Georgia 30338-5416 (the "Scheduling Coordinator");

and

(2) **California Independent System Operator Corporation**, a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the ISO Governing Board may from time to time designate, initially 151 Blue Ravine Road, Folsom, California 95630 (the "ISO").

The Scheduling Coordinator and the ISO are hereinafter referred to as the "Parties".

### **Whereas:**

- A. The ISO Tariff provides that a Scheduling Coordinator may submit dynamic schedules to the ISO from System Resources.
- B. The Scheduling Coordinator is currently Scheduling Coordinator for a System Resource associated with a power plant(s) interconnected in a Control Area other than the ISO Control Area (the "Host Control Area").
- C. The Scheduling Coordinator wishes to implement and operate a dynamic functionality that allows scheduling of Energy, Supplemental Energy, and Energy associated with Spinning Reserve and Non-Spinning Reserve dynamically from a System Resource into the ISO Control Area from the Host Control Area and, therefore, wishes to undertake to the ISO that it will comply with the applicable provisions of the ISO Tariff.
- D. The Parties are entering into this Agreement in order to establish the terms and conditions on which the ISO and the Scheduling Coordinator will discharge their respective duties and responsibilities under the ISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the ISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) if there is any inconsistency between this Agreement and the ISO Tariff, the ISO Tariff will prevail to the extent of the inconsistency;
  - (b) the singular shall include the plural and vice versa;
  - (c) the masculine shall include the feminine and neutral and vice versa;
  - (d) “includes” or “including” shall mean “including without limitation”;
  - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
  - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
  - (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
  - (h) unless the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
  - (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
  - (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
  - (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

**ARTICLE II**  
**ACKNOWLEDGEMENTS OF SCHEDULING COORDINATOR AND ISO**

- 2.1 ISO Responsibility.** The Parties acknowledge that the ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Council and further acknowledges that the ISO may not be able to satisfy fully these responsibilities if the Scheduling Coordinator fails to fully comply with all of its obligations under this Agreement and the ISO Tariff.

**ARTICLE III**  
**TERM AND TERMINATION**

- 3.1 Effective Date.** This Agreement shall be effective as of the date set forth above, unless accepted for filing and made effective by FERC on some other date, if FERC filing is required, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.
- 3.2 Termination**
- 3.2.1 Termination by ISO.** Subject to Section 3.2.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the ISO's agreement with the Host Control Area has terminated or the Scheduling Coordinator commits any material default under this Agreement and/or the ISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Scheduling Coordinator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the ISO will be considered timely if: (1) the filing of the notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within sixty (60) days after issuance of the notice of default. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if filed with FERC, or thirty (30) days after the date of the ISO's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.
- 3.2.2 Limitation on ISO Termination.** Notwithstanding the provisions of Section 3.2.1, in the event of noncompliance with the provisions of the ISO's Standards Dynamic Scheduling Protocol, the ISO shall have the right to terminate this Agreement after three (3) instances of noncompliance. In the event that the ISO determines that the Scheduling Coordinator has failed to comply with the ISO's Standards Dynamic Scheduling Protocol, the ISO will provide written notice to

that effect to the Scheduling Coordinator, and the Scheduling Coordinator shall have seven (7) days to correct the non-compliant condition(s). If the ISO determines that Scheduling Coordinator has not corrected the non-compliant condition(s) within seven (7) days after the third notice of noncompliance, the ISO may, by further written notice to the Scheduling Coordinator, terminate this Agreement and the existing functionality and arrangements described herein pursuant to Section 3.2.1, but without providing for the additional thirty (30)-day cure period otherwise provided in Section 3.2.1.

**3.2.3 Termination by Scheduling Coordinator.** In the event that the Scheduling Coordinator no longer wishes to submit dynamic schedules to the ISO, it may terminate this Agreement, on giving the ISO ninety (90) days written notice. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC, if this Agreement has been filed with FERC, or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within thirty (30) days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination, if such notice is required to be filed with FERC, or upon ninety (90) days after the ISO's receipt of the Scheduling Coordinator's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

## ARTICLE IV GENERAL TERMS AND CONDITIONS

### 4.1 Dynamic Scheduling Requirements and Obligations

**4.1.1** The dynamic functionality established under this Agreement shall be implemented and operated in accordance with ISO Tariff Section 2.2.7.6, other applicable provisions of the ISO Tariff, all applicable NERC and WECC policies, requirements, and provisions, and the ISO's "*Standards for Dynamic Imports of Energy, Supplemental Energy, and Energy Associated with Non-Regulation Ancillary Services*" ("*Standards*") posted on the ISO Home Page: [www.caise.com](http://www.caise.com) Dynamic Scheduling Protocol, except that the provisions of Section DSP 6.2 requiring a conforming change in the associated e-tag if there is a change in magnitude of the dynamic schedule by 25% or more, or 25 MW, whichever is less, including all such dynamic schedule changes occurring within the applicable operating hour, regarding the need for a changes in an e-tag in the event of a change of a certain magnitude in a dynamic schedule during the operating hour for which the dynamic schedule is to be effective shall not be applicable. The associated e-tag shall be submitted and approved by all pertinent parties before

the beginning of the applicable operating hour and shall reflect the best expected value of the dynamic schedule in the applicable operating hour.

- 4.1.2 The maximum allowable dynamic power transfer (in MW) from the Scheduling Coordinator's System Resource(s) shall be as set forth in Schedule 1 and will be referred to as "Pmax" in all ISO scheduling and control systems.
- 4.1.3 The Scheduling Coordinator warrants that the power plant(s) listed in Schedule 1 is interconnected within the Host Control Area specified in Schedule 1, placing both the plant(s) as well as the associated System Resource under the operational jurisdiction of the Host Control Area.
- 4.1.4 The ISO intertie associated with the System Resource(s) is set forth in Schedule 1. The Scheduling Coordinator may request, and the ISO may agree, at its sole discretion, to change the foregoing ISO intertie association, subject to any limitations set forth in the Standards ISO Dynamic Scheduling Protocol.
- 4.1.5 Unless explicitly agreed otherwise, dynamic functionalities implemented between the ISO and the Scheduling Coordinator may provide only for imports from the System Resource(s) listed in Schedule 1 to the ISO.
- 4.1.6 **Identification of System Resources.** The Scheduling Coordinator has identified the System Resources that it represents in Schedule 1.
- 4.1.7 **Notification of Changes.** Sixty (60) days prior to changing any technical information in Schedule 1, the Scheduling Coordinator shall notify the ISO of the proposed changes. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in the revised Schedule 1. Unless the Scheduling Coordinator fails to test at the values in the proposed change(s), the change will become effective upon the effective date for the next scheduled update of the ISO's Master File, provided the Scheduling Coordinator submits the changed information by the applicable deadline and is tested by the deadline.
- 4.2 **Agreement Subject to ISO Tariff.** The Parties will comply with all applicable provisions of the ISO Tariff, including Sections 2.2.7.6 and 2.5.6.2. This Agreement shall be subject to the ISO Tariff, which shall be deemed to be incorporated herein.
- 4.3 **Obligations Relating to Ancillary Services**
  - 4.3.1 **Submission of Bids.** When the Scheduling Coordinator submits a bid for Ancillary Services, the Scheduling Coordinator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff and that it will comply with ISO Dispatch Instructions for the provision of the service in accordance with the ISO Tariff.

**ARTICLE V  
PENALTIES AND SANCTIONS**

- 5.1 Uninstructed Deviations.** Except for operating emergency situations, real time Energy transfers may not vary from the Final Hour Ahead Schedule as adjusted by any Dispatch Instructions by more than the greater of five (5) MW or three percent (3%) of the net dependable capacity (Pmax) of the System Resource, integrated across a ten-minute interval. If such defined performance band is exceeded by any amount in more than five percent (5%) of the ten-minute intervals on three successive days, then such deviations shall constitute one event of non-compliance with the ISO's Standards Dynamic Scheduling Protocol pursuant to Section 3.2.2. Deviations from dynamic Energy schedules will also be subject to Uninstructed Deviation Penalties pursuant to Section 11.2.4.1.2 and related provisions of the ISO Tariff.
- 5.2 General.** The Scheduling Coordinator shall be subject to all penalties made applicable to dynamic imports from System Resources set forth in the ISO Tariff.

**ARTICLE VI  
COSTS**

- 6.1 Operating and Maintenance Costs.** The Scheduling Coordinator shall be responsible for all its costs incurred in connection with dynamic scheduling and compliance by the System Resources identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

**ARTICLE VII  
DISPUTE RESOLUTION**

- 7.1 Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE VIII  
REPRESENTATIONS AND WARRANTIES**

- 8.1 Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.

**ARTICLE IX  
LIABILITY**

- 9.1 Liability.** The provisions of Section 14 of the ISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the ISO Tariff to Market Participants shall be read as references to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE X  
UNCONTROLLABLE FORCES**

- 10.1 Uncontrollable Forces Tariff Provisions.** Section 15 of the ISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 15 of the ISO Tariff to Market Participants shall be read as a reference to the Scheduling Coordinator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE XI  
MISCELLANEOUS**

- 11.1 Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 17 of the ISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.
- 11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 20.1 of the ISO Tariff. A Party must update the information in Schedule 2 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.

- 11.3 Waivers.** Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consents that any legal action or proceeding arising under or relating to this Agreement to which the ISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 20.8 of the ISO Tariff as if the references to the ISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
- 11.8 Section Headings.** Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.
- 11.9 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information. Nothing contained herein shall be construed as affecting in any way the right of the ISO to unilaterally make application to FERC for a

change in the rates, terms and conditions of this Agreement under Section 205 of the FPA and pursuant to FERC's rules and regulations promulgated thereunder.

**11.10 Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

**California Independent System Operator Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Mirant Americas Energy Marketing, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE 1**

**SYSTEM RESOURCES AND CONTROL AREA INFORMATION**  
**For**  
**MIRANT AMERICAS ENERGY MARKETING, LP**  
**[Sections 4.1.2, 4.1.3, 4.1.5]**

<b>System Resource ID</b>	APEX_2_MIRDYN
<b>System Resource Scheduling Limit at the Associated ISO Intertie<sup>1</sup></b>	500 MW
<b>Associated ISO Intertie ID</b>	MEAD_2_WALC
<b>Generating Resource(s) Comprising the System Resource</b>	APEX Generating Station (combined cycle) Clark County, Nevada (20 miles North of Las Vegas; APEX Industrial Park)
<b>Host Control Area</b>	Nevada Power Company
<b>Intermediary Control Area(s)</b>	Western Area Power Administration, Lower Colorado (WALC)

<sup>1</sup> This value represents the maximum amount of power that can be scheduled by the System Resource into the ISO Control Area, and is subject to limitation by Congestion on the scheduling path or System Emergencies that could reduce or eliminate the ability to schedule and transfer power from time-to-time.

**SCHEDULE 2**

**NOTICES**  
**[Section 11.2]**

**Scheduling Coordinator**

Name of Primary Representative: John Chillemi  
Title: Director, West Power  
Company: Mirant Americas Energy Marketing, LP  
Address: 1155 Perimeter Center West  
City/State/Zip Code Atlanta, GA 30338-5416  
Email Address: John.chillemi@mirant.com  
Phone: (678) 579-7454  
Fax No: (678) 579-5541

Name of Alternative Representative: Ryan Smith  
Title: Trading/Asset Analyst  
Company: Mirant Americas Energy Marketing, LP  
Address: 1155 Perimeter Center West  
City/State/Zip Code Atlanta, GA 30338-5416  
Email Address: Ryan.smith@mirant.com  
Phone: (678) 579-3405  
Fax No: (678) 579-5541

## ISO

### Name of Primary

Representative: Thomas Doughty  
Title: Director of Client Relations  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email address: tdoughty@caiso.com  
Phone: (916) 608-7373  
Fax: (916) 608-7074

### Name of Alternative

Representative: Deborah A. Le Vine  
Title: Director of Contracts  
Address: 151 Blue Ravine Road  
City/State/Zip Code: Folsom, CA 95630  
Email address: dlevine@caiso.com  
Phone: (916) 351-2144  
Fax: (916) 351-2487

**ATTACHMENT C**

**NOTICE OF FILING**

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

**California Independent System Operator ) Docket No. ER05-\_\_-000  
Corporation )**

**Notice of Filing**

[ ]

Take notice that the California Independent System Operator Corporation ("California ISO"), on November 16, 2004, tendered for filing and acceptance a "non-conforming" Dynamic Scheduling Agreement ("DS Agreement") between the California ISO and Mirant Americas Energy Marketing, LP ("Mirant"). The purpose of this filing is to waive a requirement that every change in the magnitude of the dynamic schedule by 25% or 25 MW, whichever is less, be reflected in the associated e-tag. The California ISO requests that the DS Agreement be made effective as of the date of this filing.

The California ISO states that this filing has been served on Mirant, the California Public Utilities Commission, and the California Electricity Oversight Board.

The California ISO is requesting a waiver of the 60-day prior notice requirement to allow the DS Agreement to be made effective as of November 17, 2004.

Any person desiring to intervene or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such motions or protests must be filed in accordance with § 35.9 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at <http://www.ferc.gov>, using the "Documents & Filing" and "eLibrary" and "General Search" links. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222, or TTY, contact (202) 208-1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: \_\_\_\_\_

**ATTACHMENT B**

**ER05-224-001**  
**February 10, 2005**

