

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

Mirant California, LLC	)	Docket No. ER01-1267-00_
Mirant Delta, LLC	)	Docket No. ER01-1270-00_
Mirant Potrero, LLC	)	Docket No. ER01-1278-00_
Mirant Chalk Point, LLC	)	Docket No. ER01-1269-00_
Mirant Mid-Atlantic, LLC	)	Docket No. ER01-1273-00_
Mirant Peaker, LLC	)	Docket No. ER01-1276-00_
Mirant Potomac River, LLC	)	Docket No. ER01-1277-00_
Mirant Zeeland, LLC	)	Docket No. ER01-1263-00_

**Motion to Intervene and Comments of the California Independent System  
Operator Corporation**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §385.214, The California Independent System Operator Corporation ("ISO") moves to intervene in the above-captioned docket and offers comments regarding the triennial market power update filings for the above-captioned entities ("Mirant").

In support thereof, the ISO respectfully submits as follows:

**I. COMMUNICATIONS**

Please address communications regarding this filing to the following person:

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## II. BACKGROUND

On April 14, 2004 the Commission issued an order<sup>1</sup> replacing the Supply Margin Assessment (SMA) test announced in the SMA Order<sup>2</sup> with two indicative screens (Pivotal Supplier Indicative Screen<sup>3</sup> and Market Share Indicative Screen<sup>4</sup>) for assessing generation market power and modifying the mitigation announced in the SMA Order. The Commission explained, however, that the generation market power screens are for interim purposes only and adopted in the April 14 Order a policy that provides applicants a number of procedural options, several types of generation market screens, and the option of proposing mitigation tailored to the particular circumstances of the applicant.

The Commission simultaneously issued a notice establishing a generic rulemaking docket (RM04-7) to initiate a comprehensive generic review of the appropriate analysis for granting market-based rate authority, addressing generation market power, transmission market power, other barriers to entry, and affiliate abuse and reciprocal dealing.<sup>5</sup>

On May 13, 2004, the Commission issued an Order Implementing New Generation Market Power Analysis And Mitigation Procedures<sup>6</sup> addressing the procedures for implementing the new interim generation market power analysis and mitigation policy announced in the Commission's April 14 Order. Among

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<sup>1</sup> AEP Power Marketing, Inc., *et al.*, 107 FERC ¶ 61,018 (2004) ("April 14 Order").

<sup>2</sup> AEP Power Marketing, Inc., *et al.*, 97 FERC ¶ 61,219 (2001) ("SMA Order").

<sup>3</sup> The Pivotal Supplier Indicative Screen determines whether market demand can be met during peak times if the relevant supplier were not in the market.

<sup>4</sup> The Market Share Indicative Screen identifies whether the relevant supplier has a dominant market share in the relevant wholesale power market in any season of the year.

<sup>5</sup> Market-Based Rates for Public Utilities, 107 FERC ¶ 61,019 (2004).

<sup>6</sup> Arcadia Power Partners, LLC, *et al.*, 107 FERC ¶ 61,168 (2004) ("May 13 Order").

other things, the May 13 Order directed all applicants with three-year market-based reviews pending before the Commission on or before May 13, 2004, to file their revised generation market power analysis in accordance with the schedule contained in Appendix A of the May 13 Order. Mirant had a pending triennial review before the Commission and therefore, it was directed to revised its generation market power analysis using the new screens within 180 days of the date of the order (i.e. November 9, 2004).

Accordingly, on November 9, 2004, Mirant submitted its triennial market power update applying the new indicative market power screens and submitted an amendment to its (and its entities') respective market-based rate tariffs incorporating market behavior rules in compliance with the Commission's orders accepting their applications for new or continued market-based rate authority. On January 4, 2005, Mirant amended its November 9, 2004 compliance filing to include market behavior rules for a Mirant entity (Mirant Zeeland, LLC) that was omitted from its November 9, 2004 compliance filing.

### **III. BASIS FOR MOTION TO INTERVENE**

The ISO is a not-for-profit corporation organized under the laws of the State of California and is responsible for the safe and reliable transmission of power over the electric grid consisting of the transmission systems of San Diego Gas & Electric Company, Pacific Gas & Electric Company, Southern California Edison Company, and the Cities of Vernon, Azusa, Anaheim, Banning, and Riverside, California, as well as the coordination of a efficient wholesale electric market in California. As the operator of the grid, the ISO believes that it has a

unique interest in any Commission proceeding concerning the above-captioned matter, which involves the price and supply for electricity supplied in the California market. As such, the ISO requests that it be permitted to intervene in this proceeding.

#### **IV. COMMENTS**

The California ISO is responsible for, among other things, reliably operating the transmission grid and ensuring an efficient wholesale electric market in California. To better manage and operate a reliable system, the ISO also has the role of market monitor. In the April 14 and July 8 Orders, the Commission eliminated the ISO/RTO exemption from the generation market power analysis for sales into an ISO/RTO with Commission-approved market monitoring and mitigation and required all sellers within ISO/RTO control areas to submit generation market power analyses. The ISO is not protesting Mirant's triennial update filing to satisfy the Commission's criteria for market based rate authority. Rather, the ISO suggests that market power mitigation mechanisms such that the ISO currently utilizes, or may propose as part of its market redesign, be kept in place for the next three years as a condition to granting all sellers market based rate authority in the ISO geographical area. As the Commission notes in the July 8 Order, "[e]ntities in an ISO/RTO are required to abide by the market rules and tariffs applicable in each ISO/RTO and cannot bypass the ISO/RTO mitigation on transactions in ISO/RTO markets."<sup>7</sup> Moreover, the July 8 Order clarified that the Pivotal Supplier and Market Share screens are intended to compliment, rather than substitute for, market power

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<sup>7</sup> July 8 Order at ¶182.

mitigation measures applied for all ISO participants, by providing “an additional measure to check for the potential of market power.”<sup>8</sup>

Mirant’s triennial market update filing indicates that Mirant passes both the Pivotal Supplier Indicative Screen and Market Share Indicative Screen. The ISO believes that these results, which are based on past market conditions, do not provide any assurance of continued competitiveness in the ISO market over the next three years. On the contrary, the ISO believes that, based on experience during the ISO’s first three years of operation, that over the next three years, supply and demand conditions will continue to require that Mirant’s market based rate authority be conditioned by market power mitigation mechanisms in the ISO Tariff, and that current market power mitigation mechanisms approved by FERC may need to be modified and strengthened as supply and demand conditions change and new market design rules are implemented. For example, current market power mitigation rules do not cover Ancillary Service markets, and such mitigation may be necessary in order to implement new zonal procurement requirements for Ancillary Services. In addition, in order to avoid any repeat of the experience of 2000-2001 in California’s wholesale market, the Commission must commit to take prompt action in the event that market power mitigation measures approved by the Commission prove inadequate to ensure market outcomes consistent with competitive markets. Finally, the ISO also notes that the interim measures proposed by the Commission do not address the issue of locational market power within the ISO system. Transmission and other constraints within the ISO system often give rise to locational market power,

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<sup>8</sup> July 8 Order at ¶175.

created by the need to rely on specific generating units to ensure local grid reliability. While locational market power mechanisms are in place, such as Reliability Must-Run Contracts (“RMR Contracts”), the dynamic and often unpredictable nature of system and market conditions frequently gives rise to other sources of locational market power which cannot be mitigated by a particular *pro forma* RMR contract that has been previously negotiated with a seller. The locational market power of Mirant’s resources is evident by the fact that a significant portion of Mirant’s generation capacity is designated as RMR by the ISO each year. Therefore, the ISO believes that Mirant’s market based rate authority must continue to be conditioned by locational market power mitigation mechanisms in the ISO Tariff.

The Commission, therefore, should allow the ISO to continue to employ its market power mitigation mechanisms to ensure that sellers into the ISO do not exercise market power.

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## V. CONCLUSION

For the above mentioned reasons, the ISO respectfully requests that the Commission condition Mirant and other sellers' market based rate authority on the ISO's having sufficient market power mitigation mechanisms in place for the next three years for all sellers to safeguard against the exercise of market power on a system-wide and locational basis.

Respectfully submitted,

/s/ Geeta O. Tholan  
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Counsel for the California Independent  
System Operator Corporation

Date: January 25, 2005



January 25, 2005

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

**Re:** Mirant California, LLC, Docket No. ER01-1267-00\_  
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Mirant Zeeland, LLC, Docket No. ER01-1263-00\_

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Motion to Intervene and Comments of the California Independent System Operator Corporation. Thank you for your attention to this matter.

Respectfully submitted,

**/s/ Geeta O. Tholan**

Geeta O. Tholan  
Counsel for the California Independent  
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(916) 608-7048

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the Motion to Intervene and Comments of the California Independent System Operator Corporation upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding.

Dated at Folsom, CA, on this 25th day of January, 2005.

**/s/ Geeta O. Tholan**

Geeta O. Tholan