

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

Mirant Delta, LLC) Docket No. ER04-227-000
Mirant Potrero, LLC)

JOINT PROVISIONAL PROTEST

Pursuant to Rules 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211 (2003), the California Independent System Operator Corporation (“ISO”), Pacific Gas and Electric Company (“PG&E”), the California Electricity Oversight Board (“EOB”), and the California Public Utilities Commission (“CPUC”) (collectively the “Parties”) 1/ submit this Provisional Protest. In support thereof, the Parties state as follows:

I. Background

On November 25, 2003, 2/ Mirant Delta, LLC (“Mirant Delta”) and Mirant Potrero, LLC (“Mirant Potrero”) (collectively “Mirant”) filed, pursuant to Section 205 of the Federal Power Act (“FPA”), revisions to certain Reliability Must-Run Rate Schedules of its Reliability Must Run Agreements (“RMR Agreements”) with the ISO for Contract Year 2004 for the generation facilities currently owned by

1/ Each of the Parties has filed a separate Motion to Intervene.

2/ On October 29, 2003, Mirant, the ISO and Pacific Gas and Electric Co. (“PG&E”) filed a Motion for Extension of Time to permit Mirant until November 25, 2003 to make its Limited 205 Filing in order to allow the parties additional time to reach a settlement on all outstanding issues regarding Mirant’s 2003 Limited 205 Filing in Docket No. ER03-215-000, which settlement would affect the figures that would be submitted by Mirant in its 2004 Limited 205 Filing. The Commission granted the requested extension of time.

Mirant Delta, the Contra Costa and Pittsburg Power Plants, and those currently owned by Mirant Potrero, commonly known as the Potrero Power Plant (collectively the “RMR Units”). ^{3/} Mirant’s Limited 205 Filing proposes a number of changes to the rate schedules for the RMR Agreements including the: (1) Air Emissions Limitations; (2) Contract Service Limits; (3) Hourly Availability Charges and Penalty Rates; (4) Capital Item Charges and Penalty Rates for the RMR; (5) Prepaid Start-up Costs; and (6) outage hours. Mirant requested an effective date of January 1, 2004.

On December 3, 2003, the Commission issued a “Notice of Filing” setting December 16, 2003, as the date for interventions, comments and protests.

II. Provisional Protest

Based on its initial review of the Limited 205 Filing, the Parties have identified the following problems.

1. Prepaid Start-up Cost Calculation: Mirant has failed to provide adequate supporting data to allow the Parties to determine whether Mirant has used the energy pricing from the correct period as a basis for calculating its Prepaid Start-up Costs and energy pricing that is consistent with the terms of the RMR Agreements. Without the supporting data the Parties cannot determine the accuracy and reasonableness of the proposed Start-up Costs.

^{3/} Because the facilities covered by these agreements must operate at certain times for the reliability of the transmission grid, they are referred to as “reliability must-run” or RMR units and the agreements covering them are referred to as “RMR Agreements.” Other capitalized terms that are not defined in this filing have the same meaning set forth in the RMR Agreements or in the Master Definitions Supplement, Appendix A to the ISO Tariff.

2. Contract Service Limits and Other Outage Hours: Although Mirant has provided the Parties with yearly outage data, Mirant has failed to provide the monthly data as required under § 4.11 of the RMR Agreement to support the proposed changes to the Contract Service Limits and Other Outage Hours. Without such data, the Parties cannot verify the accuracy and reasonableness of the Contract Service Limit and Other Outage Hours values included in the Limited 205 Filing.

3. Long-term Planned Outage Hours: Mirant stated in its filing that details regarding its planned outages will be provided to the ISO. Since its receipt of such information, the Parties, in particular the ISO, have not had adequate time to verify that the planned outages represented in the Long-term Planned Outage Hours of Mirant's Limited 205 Filing were properly requested and approved for 2004.

4. Capital Item Overages: Mirant proposes to revise its Hourly Capital Item Charges for the RMR Units. Pursuant to the RMR Agreements, Mirant may only include approved Capital Item costs in the Hourly Capital Item Charges. The Parties have not been able to verify that the Capital Item costs that exceed the approved amounts are justified and reasonable.

5. Emission Limits: The emission limits listed for the Contra Costa Power Plant are not clearly identified with a specific unit.

Section 35.13 of the Commission's regulations requires a filing for a rate schedule change to include supporting information. A filing is deficient absent such supporting information or waiver of the Commission's regulations. See, 18

C.F.R. § 35.5 (2003). Accordingly, the Parties urge the Commission to issue a deficiency letter requiring Mirant to file supporting data in a compliance filing within fifteen (15) days of the issuance of the deficiency letter; or in the alternative, rule that the proposed changes set forth in Mirant's filing have not been shown to be just and reasonable; suspend the rate schedules subject to hearing and establish a refund date that is the same as the proposed effective date, January 1, 2004.

Should the Commission suspend the rate schedules, the Parties request that the Commission defer further action in this proceeding for 45 days, until January 30, 2004, to give the Parties time to review the supporting data and engage in further informal discovery, if needed, in order to resolve the above-identified issues associated with the Limited 205 Filing. 4/

III. Conclusion

For the foregoing reasons, the Parties respectfully request that the Commission issue a deficiency letter requiring Mirant to file supporting data in a compliance filing within fifteen (15) days of the issuance of the deficiency letter; or in the alternative, rule that the rate schedules set forth in Mirant's filing have not been shown to be just and reasonable; suspend the rate schedules subject to hearing and establish a refund date equal to the proposed effective date, January 1, 2004,

4/ As noted in Mirant's Motion for Extension of Time and in the Transmittal Letter to its Limited Section 205 Filing, Mirant, the ISO and PG&E are engaged in settlement negotiations regarding Mirant's 2003 Limited 205 Filing, which figures affect Mirant's proposed changes to its RMR Agreements for the 2004 Contract Year. As Mirant indicated, the parties anticipate that a settlement of the 2003 Limited 205 Filing will be filed shortly. The Parties believe a 45 day abeyance of Commission action would also allow the parties to reach a final settlement regarding the 2003 Limited 205 Filing, which settlement, may help resolve some of the problems the Parties have identified with the 2004 Limited 205 Filing.

and defer action on the Limited 205 Filing for 45 days, until January 30, 2004, to give the Parties and Mirant time to attempt to resolve outstanding issues associated with the Limited 205 Filing.

Dated: December 16, 2003

Respectfully submitted

/s/ Mary Anne Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of December, 2003 caused to be served a copy of the forgoing Joint Provisional Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

/s/ Karin L. Larson

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