

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

Mirant California, L.L.C.)	Docket No. ER01-1267-002
)	
Mirant Delta, L.L.C.)	Docket No. ER01-1270-002
)	
Mirant Portrero, L.L.C.)	Docket No. ER01-1278-002

**MOTION TO INTERVENE AND PROTEST OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 and 385.214, and the Commission's April 4, 2001 Notice of Filing ("Notice"), the California Independent System Operator Corporation ("CAISO"), hereby submits its Motion to Intervene and Protest in the above-entitled proceedings. These proceedings concern the compliance of Mirant California, L.L.C., Mirant Delta, L.L.C. and Mirant Portrero, L.L.C. (referred to collectively as "Mirant California Companies") with the Commission's requirement that they provide an update of the market power analysis supporting their market-based rate authority. In support hereof, the CAISO respectfully states as follows:

I. BACKGROUND

On March 29, 2002, Mirant California Companies filed their triennial update in support of their market-based rate authority. Mirant California Companies allege that they are exempt from the Supply Margin Assessment ("SMA") screen for

analyzing potential market power¹, and instead, are governed by the specific thresholds and mitigation measures approved by the Commission for the CAISO control area in the Commission's December 15, 2000, March 9, 2001, April 26, 2001, June 19, 2001 and July 25, 2001 orders².

Mirant California Companies claim that the Commission's price mitigation remedies address any potential market power concerns in California. Mirant California Companies conclude that they are unable to exercise market power in generation and continue to qualify for market-based rate authority. Mirant California Companies state that if there is no Commission-approved superseding mitigation regime in place after September 30, 2002, they will undergo review of their market-based rate authority based on the SMA screen, or such other Commission-approved market power analysis in place at that time.

II. MOTION TO INTERVENE

¹ The Commission has ruled that it will apply the SMA screen to all sales other than those in independent system operator ("ISO") or regional transmission organization ("RTO") markets with Commission-approved market monitoring and mitigation. *AEP Power Marketing, Inc. et al.* 97 FERC ¶ 61,219 (2001). ("AEP"). However, the Commission stated that all sales, including bilateral sales, into an ISO or RTO with Commission-approved market monitoring and mitigation will be exempt from the SMA and, instead, will be governed by the specific thresholds and mitigation provisions approved for the particular market. In *Huntington Beach Development, L.L.C.*, 96 FERC ¶ 61,212 (2001), *order denying reh'g*, 97 FERC ¶ 61,256 (2001), the Commission found that the CAISO market has Commission-approved monitoring and mitigation. Accordingly, in approving Huntington Beach's request for market-based rate authority, the Commission found that Huntington Beach was exempt from the SMA screen and was, instead, governed by the specific thresholds and mitigation provisions approved for the California market.

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, et al., 93 FERC ¶ 61,294 (2000) (December 15 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, et al., 94 FERC ¶ 61,245 (2001) (March 9 Order); *Order Establishing Prospective Mitigation and Monitoring Plan for the California Wholesale Electric Markets and Establishing an Investigation of Public Utility Rates in Wholesale Western Energy Markets*, 95 FERC ¶ 61,115 (2001) (April 26 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, et al., 95 FERC ¶ 61, 418 (2001) (June 19 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, et al., 96 FERC ¶ 61,120 (2001) (July 25 Order).

The CAISO is a non-profit public benefit corporation organized and existing under the laws of the State of California, and authorized to do business therein. The CAISO operates a grid comprising the transmission systems of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas and Electric Company and the City of Vernon. The CAISO is responsible for maintaining the reliability of electric transmission scheduled into and through the CAISO Control Area. To support reliability, the CAISO is also responsible for procurement of Ancillary Services, to the extent that they are not self-provided, at least cost.

In the above-entitled docket, Mirant California Companies seek to extend their market-based rate authorization for sales in California of Energy and Ancillary Services. The CAISO currently operates the principal markets for Ancillary Services and Imbalance Energy in California. The CAISO has a direct and substantial interest in this proceeding because of the CAISO's responsibility for maintaining the reliability of the CAISO Control Area in accordance with Western Systems Coordinating Council and North American Electric Reliability Council standards. For these reasons, the CAISO's participation in this proceeding is in the public interest. Moreover, the CAISO's interests cannot be adequately represented by any other party. Accordingly, the CAISO respectfully requests that it be permitted to intervene herein with full rights of a party.

III. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

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IV. PROTEST

The CAISO believes that current and projected future market conditions in California's wholesale energy market, as well as the anticompetitive market behavior of Mirant California Companies over the last two years, requires termination of Mirant California Companies' market-based rate authority until such time that a factual record is developed which demonstrates that the California electricity market is sufficiently robust and competitive to ensure just and reasonable rates for consumers.³ If the Commission is not prepared to terminate Mirant California Companies' market-based rate authority, at a minimum, the Commission should set the matter for hearing.

CAISO personnel are working around-the-clock to put together the CAISO's Comprehensive Market Design proposal that will be filed on May 1, 2002. As a result, the CAISO is not including in the instant Protest the information and analysis that supports termination of Mirant California Companies' market-based rate authority. Accordingly, the CAISO will file a supplement to its Protest next week which will identify the market conditions and specific anticompetitive behavior of the Mirant California Companies that justifies termination of their market-based rate authority.

³ A detailed description of current and potential future market conditions and anti-competitive bidding behavior by Mirant California Companies that warrant denial of Mirant California Companies' request for an extension of their market-based rate authority was provided in the Third Quarterly Update of the California Independent System Operator Corporation which was filed in Docket Nos. EL00-95-000, *et al.* on March 26, 2002.

V. CONCLUSION

WHEREFORE, the CAISO respectfully requests that the Commission (1) permit the CAISO to intervene in the above-entitled proceeding and (2) grant the relief request herein.

Respectfully submitted,

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