

129 FERC ¶ 61,277
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 29, 2009

In Reply Refer to:
Mirant Potrero, LLC
Docket No. ER10-179-000

Mirant Corporation
601 13th Street, NW
Suite 850N
Washington, DC 20005

Attention: David J. Reich
Director, Federal Regulatory Affairs

Reference: Revisions to Reliability Must-Run Service Agreement

Dear Mr. Reich:

1. On October 30, 2009, you filed, on behalf of Mirant Potrero, LLC (Mirant Potrero), revisions to Mirant Potrero's Reliability Must-Run Service Agreement (RMR Service Agreement) with the California Independent System Operator Corporation (CAISO) for Potrero Power Plant Units 3-6. Mirant Potrero's revised RMR Service Agreement is accepted for filing effective January 1, 2010, as requested. Additionally, we grant waiver of section 35.13(a)(2), (c), (d), (e), and (h) of the Commission's regulations, as requested.¹

2. According to Mirant Potrero, the instant filing is commonly referred to as its annual "limited section 205 filing" permitted under the terms of the RMR Service Agreement. Certain of Mirant Potrero's revisions incorporate the calendar year 2010 Annual Fixed Revenue Requirement values that had previously been accepted by the

¹ See 18 C.F.R. § 35.13(a)(2), (c), (d), (e), and (h) (2009).

Commission.² Mirant Potrero states that these and certain other revisions to unit specifications are consistent with its obligations under the RMR Service Agreement.³

3. Notice of the Mirant Potrero's filing was published in the *Federal Register*, 74 Fed. Reg. 58269 (Nov. 12, 2009), with interventions and protests due on or before November 20, 2009. Timely motions to intervene were filed by Pacific Gas and Electric Company (PG&E), the CAISO, California Public Utilities Commission, and City and County of San Francisco, California (San Francisco). Comments were filed by the CAISO and San Francisco filed a protest. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which they were filed.

4. On December 2, 2009, Mirant Potrero filed an answer to San Francisco's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. However, we will accept Mirant Potrero's answer because it has provided information that assisted us in our decision-making process.

5. The CAISO filed comments that state, sometime during 2010 and upon completion and commencement of reliable operation of the Trans Bay Cable, Potrero Unit 3 will no longer be needed for local reliability and can cease operations.⁴ Thus, the CAISO proffers that it is currently in negotiations with Mirant Potrero concerning the

² See *Mirant Potrero, LLC*, Docket No. ER09-194-000 (Dec. 4, 2008) (unpublished letter order).

³ Mirant Potrero Rate Schedule FERC No. 3 has been modified as follows: Fourth Revised Sheet No. 96 revises operating permit limits; Thirteenth Revised Sheet No. 99 revises contract service limits; Eleventh Revised Sheet No. 101 revises hourly availability charges; Thirteenth Revised Sheet Nos. 103, 103A, and 103B revise capital item costs and charges; Thirteenth Revised Sheet No. 103B also revises hourly penalty rates; Thirteenth Revised Sheet Nos. 104 and 104A revise hourly surcharge penalty rates; Second Revised Sheet No. 104B revises outage hours; and Tenth Revised Sheet No. 126 revises prepaid start-up costs and charges, along with certain ministerial changes.

⁴ The Trans Bay Cable Project is a 53-mile, 400 MW direct current submarine transmission line that will establish a direct connection between PG&E's Pittsburg Substation in the City of Pittsburg, California and PG&E's Potrero Substation in the City of San Francisco, California. The anticipated date of commercial operations is on or about February 1, 2010.

early release of Potrero Unit 3.⁵ Once a mutually agreeable resolution of the terms and conditions associated with a mid-year shut down of Unit 3 is obtained, the CAISO assures the Commission that Mirant Potrero will file a revised rate schedule accordingly.

6. San Francisco protests Mirant Potrero's filing. Because transmission infrastructure upgrades will be completed relatively soon that will allow for the release of Potrero Unit 3 as an RMR unit, San Francisco argues that any extensions of and amendments to the RMR Service Agreement should include a clause allowing for the shut down and early termination of Potrero Unit 3, when the Trans Bay Cable is placed in service in Spring 2010.⁶ According to San Francisco, a similar process was used by CAISO in the past that led to the successful closure of PG&E's Hunters Power Point Plant in May 2006. Moreover, San Francisco argues that a similar procedure should also apply to termination of the RMR designation for Potrero Units 4, 5, and 6, prior to the end of 2010.

7. In its answer, Mirant Potrero argues that San Francisco's protest raises issues beyond the scope of this proceeding. Specifically, Mirant Potrero asserts that San Francisco does not object to any of the proposed revisions made in its instant filing, but instead protests the termination provisions set forth in Article 2 of the RMR Service Agreement, provisions to which Mirant Potrero has proposed no changes. Additionally, Mirant Potrero cites to several prior Commission orders where the Commission rejected intervenors' attempts to challenge existing rate schedule provisions to which a public utility proposed no changes.⁷ With respect to San Francisco's comparison to the closure of PG&E's Hunters Power Point Plant, Mirant Potrero clarifies that PG&E and the CAISO had negotiated a mutually agreeable amendment to their RMR Service Agreement, prior to submitting early termination provisions for Commission approval. According to Mirant Potrero, a negotiated amendment has not yet been achieved between it and the CAISO.

8. We agree that San Francisco's protest raises issues beyond the scope of the instant proceeding, which is limited to Mirant Potrero's proposed revisions to the RMR Service Agreement. Therefore, we deny the requested relief. Additionally, in light of the on-going negotiations between the CAISO and Mirant Potrero regarding the potential early release and shut down of Potrero Unit 3, it appears that San Francisco's concerns will be addressed in a timely manner without a need for a Commission investigation under

⁵ CAISO Comments at 3.

⁶ San Francisco Protest at 3.

⁷ Mirant Potrero Answer at 4, n.13.

section 206 of the Federal Power Act.⁸ Moreover, we note that the revisions proposed by Mirant Potrero were not protested. Accordingly, the proposed revisions to Mirant Potrero's RMR Service Agreement are accepted for filing, effective January 1, 2010.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ 16 U.S.C. § 824e (2006).