

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Mirant Americas Energy Marketing, LP	Docket Nos.	ER01-1265-002 ER01-1265-004 ER01-1265-005
Mirant Zeeland, LLC		ER01-1263-002 ER01-1263-003 ER01-1263-004 ER01-1263-005
Mirant Bowline, LLC		ER01-1266-002 ER01-1266-004 ER01-1266-005
Mirant California, LLC		ER01-1267-002 ER01-1267-003 ER01-1267-004 ER01-1267-005 ER01-1267-006
Mirant Canal, LLC		ER01-1268-003 ER01-1268-005 ER01-1268-006
Mirant Chalk Point, LLC		ER01-1269-002 ER01-1269-003 ER01-1269-004 ER01-1269-005
Mirant Delta, LLC		ER01-1270-002 ER01-1270-003 ER01-1270-004 ER01-1270-005 ER01-1270-006

Mirant Kendall, LLC	ER01-1271-003 ER01-1271-005 ER01-1271-006
Mirant Lovett, LLC	ER01-1272-002 ER01-1272-004 ER01-1272-005
Mirant Mid-Atlantic, LLC	ER01-1273-002 ER01-1273-003 ER01-1273-004 ER01-1273-005
Mirant New England, LLC	ER01-1274-003 ER01-1274-005 ER01-1274-006
Mirant NY-Gen, LLC	ER01-1275-002 ER01-1275-004 ER01-1275-005
Mirant Peaker, LLC	ER01-1276-002 ER01-1276-003 ER01-1276-004 ER01-1276-005
Mirant Potomac River, LLC	ER01-1277-002 ER01-1277-003 ER01-1277-004 ER01-1277-005
Mirant Potrero, LLC	ER01-1278-002 ER01-1278-003 ER01-1278-004 ER01-1278-005 ER01-1278-006
Shady Hills Power Co, LLC	ER02-537-002 ER02-537-004 ER02-537-005

Mirant Sugar Creek, LLC	ER02-900-001 ER02-900-003 ER02-900-004
Wrightsville Power Facility, LLC	ER02-1028-001 ER02-1028-003 ER02-1028-004
West Georgia Generating Co., LLC	ER02-1052-001 ER02-1052-003 ER02-1052-004
Mirant Energy Trading, LLC	ER02-1213-001 ER02-1213-003 ER02-1213-004
Mirant Oregon, LLC	ER02-1331-002 ER02-1331-004 ER02-1331-006
Mirant Las Vegas, LLC	ER03-160-001 ER02-900-003 ER02-900-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 26, 2005)

1. In this order the Commission accepts an updated market power analysis filed by Mirant Americas Energy Marketing, LP (MAEM); Mirant California, LLC; Mirant Delta, LLC (Delta); Mirant Potrero, LLC (Potrero); Mirant New England, LLC; Mirant Canal, LLC; Mirant Kendall, LLC; Mirant Bowline, LLC; Mirant Lovett, LLC; Mirant NY-Gen, LLC; Mirant Chalk Point, LLC (Chalk Point); Mirant Mid-Atlantic, LLC; Mirant Peaker, LLC (Peaker); Mirant Potomac River, LLC; Mirant Zeeland, LLC; West Georgia Generating Company, LLC; Mirant Sugar Creek, LLC; Shady Hills Power Company, LLC; Wrightsville Power Facility, LLC; Mirant Energy Trading, LLC (MET); Mirant Oregon, LLC; and Mirant Las Vegas, LLC (collectively, the “Mirant Entities”). As discussed below, the Commission concludes that the Mirant Entities satisfy the Commission’s standards for market-based rate authority. The Commission also accepts revisions to the market-based rate tariffs of Mirant California, LLC; Mirant Delta, LLC; Mirant Potrero, LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; Mirant Peaker, LLC; Mirant Potomac River, LLC; and Mirant Zeeland, LLC to include the

Commission's market behavior rules.¹ The tariffs incorporating the Commission's market behavior rules for the remaining Mirant Entities were previously accepted by the Commission.² This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The Mirant Entities' next updated market power analysis is due three years from the date of this order.

Background

2. On March 29, 2002, Mirant California, Delta, and Potrero (Mirant California Companies) filed an updated market power analysis based on the Commission's Supply Margin Assessment (SMA) Screen adopted in an order issued November 20, 2001.³

3. On October 10, 2003 the Mirant Entities, filed an updated market power analysis pursuant to the Commission's orders granting the Mirant Entities authority to sell electric energy and capacity at market-based rates.⁴ In this filing, MAEM conducted an updated market analysis for all Mirant Entities, including the Mirant California Companies.

¹ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order).

² *Acadia Power Partners, LLC*, Docket No. ER03-295-001 (March 29, 2004) (unpublished letter order).

³ *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 (2001).

⁴ *Southern Energy Potrero, L.L.C.*, Docket Nos. ER99-1833-000, ER99-1841-000, and ER99-1842-000 (March 31, 1999) (unpublished letter order); *Mirant Energy Trading, LLC*, Docket No. ER02-1213-000 (March 28, 2002) (unpublished letter order); *Cambridge Electric Light Co.*, 85 FERC ¶ 61,217 (1998); *Geysers Power Co., L.L.C.*, 87 FERC ¶ 61,108 (1999); *Southern Company Energy Marketing L.P.*, Docket No. ER00-3760-000 (November 21, 2000) (unpublished letter order); *SEI Michigan, L.L.C.*, Docket No. ER01-562-000 (January 5, 2001) (unpublished letter order); *Mirant Americas, Inc.*, Docket No. ER02-900-000 (March 19, 2002) (unpublished letter order); *Mirant Oregon, LLC*, Docket No. ER02-1331-000 (May 17, 2002) (unpublished letter order); *Mirant Las Vegas, LLC*, Docket No. ER03-160-000 (December 17, 2002) (unpublished letter order); *Wrightsville Power Facility, LLC*, Docket No. ER02-1028-000 (March 20, 2002) (unpublished letter order); *Shady Hills Power Company L.L.C.*, Docket No. ER02-537-000 (January 30, 2002) (unpublished letter order); *Cataula Generating Company, L.P.*, 79 FERC ¶ 61,261 (1997).

4. On November 9, 2003, Mirant California, Delta, Potrero, Chalk Point, Mirant Mid-Atlantic, Peaker, Mirant Potomac River, and Mirant Zeeland filed amendments to their market-based rate tariffs incorporating the Commission's market behavior rules (Behavior Rules Filing). On January 4, 2005, the November 9, 2004 compliance filing was amended to include market behavior rules for Mirant Zeeland, which was omitted from the November 9, 2004 compliance filing.

5. Also on November 9, 2004, the Mirant Entities filed an updated market power analysis (November 9, 2004 Update Filing) pursuant to the Commission's orders granting the Mirant Entities authority to sell electric energy and capacity at market-based rates. The November 9, 2004 filing addresses the two market power screens that the Commission recently adopted for its generation market power analysis.⁵

6. On March 29, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter seeking additional information relating to the Mirant Entities' submittal. On April 19, 2005, the Mirant Entities filed its response to the deficiency letter.

7. The Mirant Entities state that MAEM, a wholly-owned subsidiary of Mirant Corporation, is a power marketer which does not own any generation, transmission, or distribution facilities. The Mirant Entities state further that MAEM markets energy, capacity, and ancillary services pursuant to long-term contracts with the Mirant Entities. The Mirant Entities state that MAEM is the parent company of MET which the Commission has authorized to engage in wholesale sales of energy, capacity, and certain ancillary services at market-based rates.⁶

8. The Mirant Entities state that Mirant New England is a power marketer, and that Mirant Canal and Mirant Kendall own, in aggregate, 1,453 MW of generation in the control areas administered by ISO-New England, Inc. (ISO-NE). The Mirant Entities state that these affiliates all have Commission authorization to make wholesale sales at market-based rates.⁷

⁵ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁶ *Mirant Energy Trading, L.L.C.*, Docket No. ER02-1213-000 (March 28, 2002) (unpublished letter order).

⁷ *Southern Energy New England, L.L.C.*, Docket No. ER99-3917-000 (September 2, 1999) (unpublished letter order).

9. The Mirant Entities state that Mirant Bowline, Mirant Lovett, and Mirant NY-Gen own, in aggregate, total nameplate capacity of 1,644 MW located within the New York Independent System Operator (NYISO) market, and that all have Commission authorization to make wholesale sales at market-based rates.⁸

10. The Mirant Entities state that Chalk Point, Mirant Mid-Atlantic, Peaker, and Mirant Potomac River own or control 5,639 MW of nameplate capacity in the PJM Interconnection, L.L.C. (PJM) market, and that all have Commission authorization to make wholesale sales at market-based rates.⁹

11. The Mirant Entities state that Mirant California is a power marketer which owns a direct 100-percent interest in Potrero and Delta, which in turn own 2,413 MW of generation entirely in the California Independent System Operator Corporation (CAISO) market. These affiliates all have Commission authorization to make wholesale sales at market-based rates.¹⁰

12. The Mirant Entities state that the remaining affiliates¹¹ own generation in various control areas where construction on these facilities commenced on or after July 9, 1996, and that these affiliates have no other affiliates in the subject control areas. Accordingly, the Mirant Entities state that it is not necessary for them to submit a generation market power analysis for these control areas.¹²

Notice and Responsive Pleadings

13. Notice of the March 29, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 17,422 (2002), with interventions or protests due on or before April 19, 2002. The CAISO filed a timely motion to intervene and protest, which was supplemented on May 3, 2002.

⁸ *Geysers Power Co., L.L.C.*, 87 ¶ FERC 61,108 (1999).

⁹ *Southern Company Energy Marketing L.P.*, Docket No. ER00-3760-000 (November 21, 2000) (unpublished letter order).

¹⁰ *Southern Energy Potrero, L.L.C.*, Docket Nos. ER99-1833-000, ER99-1841-000, and ER99-1842-000, (March 31, 1999) (unpublished letter order).

¹¹ The remaining affiliates are West Georgia Generating Company, Mirant Zeeland, Mirant Sugar Creek, Shady Hills Power Company, Wrightsville Power Facility, Mirant Oregon, and Mirant Las Vegas.

¹² *April 14 Order* at P 38.

14. The CAISO protested the March 29, 2002 filing, stating that the Commission should terminate the Mirant California Companies' market-based rate authority based on (1) the anti-competitive market behavior that Mirant California Companies have exhibited, (2) a structural analysis of Mirant California Companies' potential market power given their share of supply available to meet residual demand, and (3) the overall market conditions in California at [that] time.¹³ In addition, the CAISO stated that if the Commission decided not to terminate the Mirant California Companies' market-based rate authority, then the Commission should require the Mirant California Companies to justify continuation of such authority under a revised market power test. Finally, the CAISO stated that market conditions at that time require that the Commission extend the west-wide mitigation measures then in place beyond September 30, 2002.

15. Notice of the Mirant Entities' October 10, 2003, filing was published in the *Federal Register*, 68 Fed. Reg. 65,262 (2003), with interventions or protests due on or before October 31, 2003. On October 31, 2003, The Public Utilities Commission of the State of California and the People of the State of California *ex rel.* Bill Lockyer, Attorney General (collectively, California State Parties) filed a motion to intervene, protest, and comments. On November 17, 2003, the California Electricity Oversight Board (Board) filed a motion to intervene out-of-time and protest. On November 18, 2003, the Mirant Entities filed an answer to the California State Parties' and the Board's protests.

16. In its November 17, 2003 protest, the Board argues that the SMA screen does not provide adequate assurance as to a seller's lack of market power and does not apply at all to entities in the CAISO. The Board contends that it is not possible for the CAISO, or any other ISO or RTO, to ensure that sellers will not be able to exercise market power in spot markets.

17. The California State Parties contend that Mirant possesses market power and that its market power has not been adequately mitigated by market power mitigation mechanisms approved for the CAISO. The California State Parties state that Mirant engaged in various gaming activities during the 2000-2001 California energy crisis and have not offered any indication that they lack the ability to repeat market manipulation activities it engaged in during that time.

18. The California Parties cite to other Commission proceedings in which certain of the Mirant Entities are alleged to have engaged in a variety of market abuses. They cite the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market

¹³ CAISO May 3 Supplemental Protest at 1.

Behavior¹⁴ and the California Refund Case,¹⁵ as indicating that Mirant appears to have engaged in a variety of market abuses related to the 2000-2001 California energy crisis

19. Notice of the November 9, 2004 Update Filing was published in the *Federal Register*, 69 Fed. Reg. 68,894 (2004), with interventions or protests due on or before November 30, 2004. The Board filed a timely motion to intervene and protest. On December 1, 2004, Southern California Edison Company (So Cal Edison) filed a motion to intervene out-of-time.

20. Notice of the November 9, 2004 Behavior Rules Filing and January 4, 2005 amendment were published in the *Federal Register*, 69 Fed. Reg. 68,894 (2004) and 70 Fed. Reg. 3,695 (2005), respectively, with interventions or protests due on or before November 30, 2004 and January 25, 2005, respectively. The CAISO filed a timely motion to intervene and comments.¹⁶

21. In its comments to the November 9 Update Filing, the Board states that it does not specifically protest the results of the screens, but does not necessarily agree that the interim screen methodology is appropriate to adequately assess the potential for sellers (including Mirant) to exercise market power in California's energy markets, particularly given locational market power concerns within the CAISO.

22. In its January 25, 2005 comments, the CAISO states that it does not protest the Mirant Entities' updated market power update filing. However, the CAISO suggests that market power mitigation mechanisms such as those currently used by the CAISO, or that may be proposed as part of the CAISO market redesign, be kept in place for the next three years as a condition to granting all sellers market-based rate authority in the CAISO geographic area.

23. The CAISO states that the Mirant Entities' update filing indicates that they pass both of the market power screens. However, the CAISO states that it believes that these results are based on past market conditions and do not provide any assurance of continued competitiveness in the CAISO market over the next three years. The CAISO states that, over the next three years, supply and demand conditions will continue to require that the Mirant Entities' market-based rate authority be conditioned by market

¹⁴ *American Electric Power Service Corporation, et al.*, 103 FERC ¶ 61,345 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004).

¹⁵ *San Diego Gas & Electric Co., et al.*, Docket No. EL00-95-045, *et al.*

¹⁶ Although the CAISO's comments were filed in accordance with the notice issued concerning the amended Behavior Rules Filing, they concern issues with the Mirant Entities' Update Filing.

power mitigation mechanisms in the CAISO tariff and that current market power mitigation mechanisms approved by the Commission may need to be modified and strengthened as supply and demand conditions change and new market design rules are implemented. Finally, the CAISO also notes that the interim screens do not address issue of locational market power within the CAISO system.

24. Notice of the April 19, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 22,655 (2005), with interventions or protests due on or before May 10, 2005. None was filed.

Discussion

Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue delay or prejudice, we find good cause to grant the California State Parties', Board's, and So Cal Edison's motions to intervene out-of-time.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Mirant Entities' answer and will, therefore, reject it.

Market-Based Rate Authorization

27. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹⁷

28. As discussed below, the Commission concludes that the Mirant Entities satisfy the Commission's standards for market-based rate authority.

Generation Market Power

29. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market

¹⁷ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

share screen.¹⁸ The Mirant Entities have prepared both the pivotal supplier and the wholesale market share screens for the PJM, CAISO, NYISO, and ISO-NE markets, which are the markets in which the Mirant Entities own generation and make wholesale sales at market-based rates and for which generation market power analyses are required by the Commission. Since the Mirant Entities control no transmission, the Commission does not require that they perform generation market power analyses for first-tier markets directly interconnected with the PJM, CAISO, NYISO, and ISO-NE relevant markets.¹⁹

30. For each of the PJM, CAISO, NYISO, and ISO-NE markets, the Mirant Entities state that they pass both the pivotal supplier and wholesale market share screens.²⁰

31. The Commission has reviewed the Mirant Entities' generation market power screens and has determined that the Mirant Entities pass the screens in the relevant markets. Accordingly, the Commission finds that the Mirant Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

32. With regard to the protests filed in response to the Mirant California Companies' March 29, 2002 filing by the CAISO, and the Mirant Entities' October 10, 2003 filing by the Board and the California State Parties, we note that the Commission has replaced the SMA analysis with the two indicative screens, as discussed in the April 14, May 13, and July 8 Orders. In addition, we have reviewed the Mirant Entities' potential to exercise market power in generation under the two indicative screens, the pivotal supplier screen and the wholesale market share screen, and as discussed above, the Commission finds that the Mirant Entities satisfy the Commission's generation market power standard for market-based rate authority. In light of the fact that the Mirant Entities have submitted the market behavior rules pursuant to the Market Behavior Rules Order and given the existence of the CAISO, which is a Commission-approved ISO, with Commission-approved mitigation and monitoring, we believe that the concerns of the CAISO, the Board and the California State Parties have been addressed.

33. In its protest to the November 9, 2004 Update Filing, the Board states that it does not necessarily agree that the interim screen methodology is appropriate to adequately assess the potential for sellers (including Mirant) to exercise market power in California's energy markets, particularly given locational market power concerns within the CAISO.

¹⁸ *April 14 Order*, 107 FERC ¶ 61,018 (2004).

¹⁹ *Id.* at n.64

²⁰ To be noted, Mirant Entities made several simplifying assumptions in their analyses which had the effect of overstating the Mirant Entities' share of uncommitted capacity relative to that of their competitors.

While we appreciate the concerns raised by the Board, the Commission intends to review the indicative generation market power screens in the rulemaking proceeding in Docket No. RM04-7-000.

34. As noted above, the Mirant Entities' analyses demonstrate that they pass the Commission's indicative screens for generation market power in the CAISO market. In addition, Mirant Entities' plants are part of the CAISO market and are subject to the mitigation measures the Commission has approved for that market.²¹ To the extent the CAISO believes that additional mitigation measures may be necessary, it can file a proposal with the Commission. Therefore, the Commission denies the CAISO's request to condition Mirant Entities' market-based rate authority on the CAISO's having mitigation mechanisms in place for the next three years on a system-wide and locational basis. Further, regarding the CAISO's concern that the interim screens do not address the issue of locational market power within the CAISO system, we note that the Commission intends to review the indicative generation market power screens in the rulemaking proceeding in Docket No. RM04-7-000.

Transmission Market Power

35. The Mirant Entities state that neither they, nor any of their affiliates, own any transmission facilities other than limited interconnection facilities associated with the affiliated generating facilities, such as generation step-up transformers and generator leads that are necessary to effect the sales of electric energy at wholesale. The Mirant Entities state that such facilities are not facilities over which third parties would request transmission service and thus do not serve to convey transmission market power. In addition, no intervenor has raised transmission market power concerns. Based on the Mirant Entities' representation, the Commission finds that the Mirant Entities satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

36. The Mirant Entities state that neither they, nor any of their affiliates, own or control interstate or intrastate natural gas transmission or distribution lines or facilities, or other essential resources or inputs that could be used to restrict market entry by competing power suppliers in the relevant market. Accordingly, the Mirant Entities state that they cannot erect any barriers to prevent other competing suppliers from entering the market. No intervenor has raised barrier to entry concerns. Based on the Mirant Entities' representations, the Commission is satisfied that the Mirant Entities cannot erect barriers to entry.

²¹ See *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 (2002); and *California Independent System Operator Corp.*, 106 FERC ¶ 61,179 (2004).

Affiliate Abuse

37. The Mirant Entities state that neither they, nor any of their affiliates, have a franchised service territory and that accordingly, the Mirant entities do not have the power to gain a competitive advantage either by pass-through to ratepayers of excessive costs paid to affiliates for power, or by ratepayer cross-subsidy of preferential pricing of services. In addition, no intervenor has raised affiliate abuse concerns. Based on the Mirant Entities' representations, the Commission finds that the Mirant Entities satisfy the Commission's concerns with regard to affiliate abuse.

Market Behavior Rules

38. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the market behavior rules at such time as they seek continued authorization to sell at market-based rates. In their November 9, 2003 and January 4, 2005 filings, Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, and Mirant Zeeland, LLC submitted revised tariff sheets to amend their tariffs to include the market behavior rules set forth in Appendix A to the Market Behavior Rules Order. The Commission accepts the revised tariff sheets for filing.²²

Reporting Requirements

39. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

²² Mirant California, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Delta, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Potrero, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Chalk Point, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Mid-Atlantic, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Peaker, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Potomac River, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6; Mirant Zeeland, FERC Electric Tariff, First Revised Vol. No. 1, Original Sheet No. 5-6

greater) market-based power sales during the most recent calendar quarter.²³ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²⁴

40. The Mirant Entities must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²⁵ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the Mirant Entities are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

²³ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁴ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁵ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

41. The Mirant Entities are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) The Mirant Entities' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) The Mirant Entities' next updated market power analysis is due within three years of the date of this order.

(C) The Mirant Entities are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement.

(D) The revised tariff sheets incorporating the market behavior rules for Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, and Mirant Zeeland, LLC are hereby accepted for filing, effective December 17, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.