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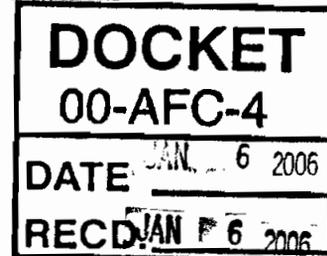
# LATHAM & WATKINS LLP

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January 6, 2006

File No. 031132-0012



### VIA FEDEX

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 00-AFC-4  
1516 Ninth Street  
Sacramento, California 95814-5512

Re: Potrero Power Plant Unit 7 Project: CEC Docket No. 00-AFC-4

Dear Sir/ Madam:

Pursuant to California Energy Commission Siting Regulation §1209(c) and §1209.5, enclosed herewith for filing please find the original and twelve (12) copies of Applicant's Response to Objections to Request for Continued Suspension of Proceedings and Motion for Termination.

Please note that the enclosed submittal was filed today via electronic transfer (e-mail) to your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Kihm".

Paul E. Kihm  
Senior Paralegal

Enclosures

cc: Michael J. Carroll, Esq. (w/encl.)

LATHAM & WATKINS LLP  
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STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION  
FOR POTRERO POWER PLANT UNIT 7  
PROJECT

CASE NO. DOCKET NO. 00-AFC-4

RESPONSE TO OBJECTIONS TO REQUEST  
FOR CONTINUED SUSPENSION OF  
PROCEEDINGS AND MOTION FOR  
TERMINATION

A. **Background**

On November 5, 2003, Applicant requested an indefinite suspension of these proceedings. On November 13, 2003, the Committee granted that request for a period extending until November 15, 2004. On November 12, 2004, Applicant requested a one-year continuation of the suspension, which was granted by the Committee on December 3, 2004. On November 15, 2005, Applicant requested that the Committee continue the current suspension for an additional one-year period, until November 15, 2006. Applicant hereby responds to the joint opposition to Applicant's most recent request filed by interveners Our Children's Earth, Southeast Alliance for Environmental Justice and Communities for a Better Environment ("Intervener's Opposition"), as well as the Motion for Termination of Proceedings filed by the City and County of San Francisco ("CCSF Motion"). Each of the objections to continued suspension of these proceedings is addressed below.

B. Responses

1. Applicant's Bankruptcy Status

Both the Intervener's Opposition and the CCSF Motion cite the fact that there are no guarantees that Applicant will emerge from bankruptcy as a basis for not granting a continued suspension of these proceedings (Intervener's Opposition, p. 1; CCSF Motion, p. 3).

Mirant Corporation, and more than 75 of its affiliates, including those involved in these proceedings, emerged from Chapter 11 bankruptcy on January 3, 2006. Mirant will now operate its business without court supervision.

2. Staleness of the Record

Intervener's Opposition and the CCSF Motion assert that the current record is so stale as to be useless in any future proceedings (Intervener's Opposition, p. 1; CCSF Motion, pp. 1-2).

While it is certainly true that the pending application would need to be supplemented and updated should the proceedings re-commence, it is also the case that in many topic areas for which extensive analysis has been completed and evidentiary hearings have been concluded, neither the background conditions or anticipated project impacts have changed materially. Such areas include Worker Safety and Fire Protection, Cultural Resources, Terrestrial Biology, Traffic and Transportation, Environmental Justice, Hazardous Waste Management, Waste Management, Geology and Paleontology and Socioeconomics. It would be a waste of resources to simply discard the record, and begin anew, without completing a careful analysis to determine which portions of the painstakingly established record could be preserved. Continuing the suspension, as requested by Applicant, would allow such an analysis to be undertaken in the event that Applicant elects to re-commence proceedings.

3. Viability of Alternatives

While there continues to be a number of active proposals for addressing electric reliability needs for the City and County of San Francisco, contrary to the suggestions made by the Interveners (Intervener's Opposition pp. 1-2; CCSF Motion pp. 2-3), the viability and timing associated with these proposals continues to be unclear. As recently as this week, the City and

County of San Francisco conceded that the San Francisco Electric Reliability project will be unable to meet its anticipated 2007 on-line date, and that meeting a 2008 on-line date will require extraordinary efforts (SFERP Status Report #8, January 4, 2005). In the event that none of the alternative proposals prove viable, it is possible that Applicant would elect to re-initiate proceedings on Potrero Unit 7.

4. Impacts on San Francisco Electric Reliability Project (04-AFC-1)

Intervener's Opposition states that the continued suspension of the Potrero Unit 7 AFC undermines alternative projects such as the San Francisco Electric Reliability Project because it requires such projects to include consideration of Potrero Unit 7 impacts in their cumulative impacts analysis. While intervener's may be correct that as a matter of law such impacts should be included in the cumulative impacts analysis for the San Francisco Electric Reliability Project, the fact of the matter is that they are not. The following is an excerpt from Appendix 8.1F, Cumulative Impacts Analysis for the SFERP Facility (p. F-5):

All three future scenarios [analyzed for cumulative impacts] assume that Potrero Unit 7 will not be built. The Applicant does not believe it is reasonably foreseeable that Potrero Unit 7 will be constructed and operated for the following reasons:

1. The proponent of Potrero Unit 7, Mirant, is in bankruptcy proceedings and the Potrero Unit 7 licensing proceeding has been suspended since November 13, 2003; and
2. It is formal City policy to oppose the construction of Potrero Unit 7.

Accordingly, the City considers the construction of Potrero 7 to be highly unlikely.

Thus, contrary to the argument made in the Intervener's Opposition, the continued suspension of the Potrero Unit 7 AFC does not appear to be affecting the analysis of the San Francisco Electric Reliability Project at all, and certainly not in the area of cumulative impacts.

5. Applicant's Failure to Comply with Prior Committee Order

The CCSF Motion asserts that Applicant failed to comply with the prior Committee Order by failing to provide notice to the parties 45 days prior to re-commencing proceedings. There has been no such failure to comply because Applicant has not at this point elected to re-commence proceedings. To the contrary, Applicant has requested that the suspension of proceedings be continued.

C. Conclusion

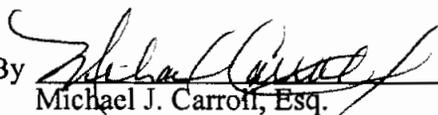
For the reasons set forth above, the opposition to continued suspension of the Potrero Unit 7 proceedings, and the request for termination of those proceedings, are without merit. To do so at this time simply eliminates an additional, potentially viable option for addressing the electric reliability needs of the San Francisco region, and scuttles all of the effort that has gone into processing the application to date. Consistent with its stated expectation in the request for continued suspension, Mirant has now emerged from bankruptcy. Mirant further expects to be in a much better position to evaluate the merits of its suspended projects and to determine the appropriate course of action with regard to the Potrero Unit 7 project by year-end 2006.

Applicant notes that the California Energy Commission staff is not opposed to continued suspension of these proceedings. Applicant does not object to the recommendations of staff set forth in its December 21, 2005 Response to Applicant's Request to Continued Suspension of Proceedings.

Dated: January 6, 2006

Respectfully submitted,

LATHAM & WATKINS LLP

By   
Michael J. Carroll, Esq.

**STATE OF CALIFORNIA**  
**Energy Resources**  
**Conservation and Development Commission**

In the Matter of:	)	Docket No. 00-AFC-4
	)	
Application for Certification,	)	<b>PROOF OF SERVICE</b>
for the POTRERO POWER PLANT UNIT 7	)	[REVISED 12/22/05]
PROJECT	)	
by Mirant Potrero LLC	)	
_____	)	

I, Paul Kihm, declare that on January 6, 2006, I distributed copies of the attached:

**RESPONSE TO OBJECTIONS TO REQUEST FOR CONTINUED SUSPENSION OF PROCEEDINGS AND MOTION FOR TERMINATION**

via electronic transmission (e-mail) and by depositing copies with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 00-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512  
Email: docket@energy.state.ca.us

by depositing copies in the United States mail at Costa Mesa, California with first class postage thereon fully prepaid and addressed to the following:

APPLICANT

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POTRERO POWER PLANT UNIT 7 PROJECT  
CEC Docket No. 00-AFC-4

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POTRERO POWER PLANT UNIT 7 PROJECT  
CEC Docket No. 00-AFC-4

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POTRERO POWER PLANT UNIT 7 PROJECT  
CEC Docket No. 00-AFC-4

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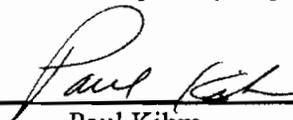
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I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Paul Kihm