

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF TEXAS
ENTERED
 TAWANA MARSHALL CLERK
 THE DATE OF ENTRY IS
 ON THE COURT'S DOCKET

In re:)	Chapter 11
MIRANT CORPORATION, <u>et al.</u>)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered
)	

AMENDED ORDER PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103(a) AND FED. R. BANKR. P. 2014 AUTHORIZING THE EMPLOYMENT AND RETENTION OF HOULIHAN LOKEY HOWARD & ZUKIN AS FINANCIAL ADVISORS AND INVESTMENT BANKERS FOR THE OFFICIAL COMMITTEE OF CREDITORS OF MIRANT AMERICAS GENERATION, LLC

Come on for consideration the Application dated December 12, 2003 (the "Application"), filed by the Official Committee of Creditors of Mirant Americas Generation, LLC, et al. (the "MAGI Committee"), seeking an order authorizing the retention by the MAGI Committee of Houlihan Lokey Howard & Zukin ("Houlihan") as financial advisors and investment bankers; and upon the engagement letter dated as of July 25, 2003 between the MAGI Committee and Houlihan (the "Engagement Letter") and the Affidavit of William H. Hardie, III (the "Hardie Affidavit"), which were attached to the Application and the *United States Trustee's Objection to Application for Approval of the Employment and Retention of Houlihan Lokey Howard & Zukin, Effective as of July 25, 2003, as Financial Advisor for the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC* (the "Trustee's Objection"); and capitalized terms used and not otherwise defined herein having the meanings set forth in the Application and the Hardie Affidavit; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY FOUND THAT:

A. This Court has jurisdiction over these cases and over the Application pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Notice of the Application has been given in accordance with the statements made in the Application and the associated certificate of service, and no other or further notice is necessary.

C. Houlihan and each of its officers, directors and employees represent no interest adverse to the Debtors or to the Debtors' estates such that would disqualify Houlihan from representation of the MAGI Committee in these chapter 11 cases.

D. Houlihan and each of its officers, directors and employees is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required by section 327(a) of the Bankruptcy Code.

E. The retention of Houlihan as the MAGI Committee's financial advisor and investment banker, on the terms set forth in the Engagement Letter (as modified by this Order), is in the best interests of the MAGI Committee and the persons whose interest the MAGI Committee represents.

E. The Monthly Fee of \$175,000 per month for the first 24 months of the engagement and the \$125,000 per month thereafter provided for in Paragraph 4 of the Engagement Letter constitutes a "reasonable term and condition of employment" pursuant to section 328(a) of the Bankruptcy Code.

F. This Court's Order Restricting Pursuit of Certain Persons, dated August 5, 2003 (as the same has subsequently been extended or amended, including by the Court's September 29, 2003 Order Extending Order Restricting Pursuit of Certain Persons, the "Protected Persons

Order”), which is made applicable to Houlihan by the terms of this Order, provides reasonable protections to Houlihan that accomplish the legitimate purposes that otherwise would be accomplished through the Indemnification provisions that are provided for in Paragraph 12 of the Engagement Letter (the “Indemnification Provisions”), and make it unnecessary for this Court to consider or approve the Indemnification Provisions.

G. In agreeing to act as the MAGI Committee’s financial advisor and investment banker on the terms set forth in the Engagement Letter and herein, Houlihan is relying on the protections afforded by the Protected Persons Order. In the absence of those protections, Houlihan would have required the approval of the Indemnification Provisions as a condition to Houlihan’s agreement to provide services to the MAGI Committee.

IT IS THEREFORE ORDERED THAT:

1. The Trustee's Objection is hereby overruled.
2. The MAGI Committee’s employment and retention of Houlihan as their financial advisor and investment banker to perform the services described in the Application, effective as of July 25, 2003 and on the terms and conditions set forth in the Application and the Engagement Letter, is approved, provided, however:

(a) The Indemnification Provisions are not approved and shall not be effective, for the reasons stated above (without prejudice to Houlihan’s rights to renew its request for the Court’s approval of the Indemnification Provisions (for the period from and after July 25, 2003) if the Protected Persons Order is terminated, expires or otherwise does not provide the protections it is expected to provide);

(b) Paragraph 4 of the Engagement Letter is hereby modified to replace the definition of Tail Period to mean a two month period or such later time as is found

reasonable by the Court, following the termination of the Engagement Letter, in lieu of the nine month period specified in the Engagement Letter; and

(c) In the event that the Engagement Letter is terminated by the MAGI Committee without cause and without the payment of a Transaction Fee pursuant to the Engagement Letter, Houlihan shall have the right to seek additional compensation, in addition to its Monthly Fees, based on the time spent by Houlihan in its performance of services for the MAGI Committee and the reasonable value of those services, upon application to and as determined by the Court.

3. The fees payable to Houlihan pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except that the Court may deny approval of the Transaction Fee payable under the Engagement Letter, to the extent that such fee is unreasonable when compared to the fees paid to, and results obtained by, other comparable investment banking and financial advisory firms in other Chapter 11 cases involving comparable services where such Court was not bound by the terms of the employment agreement.

4. Notwithstanding the foregoing, Houlihan will file applications for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in §§ 330 and 331 of the Bankruptcy Code, and in accordance with the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Chapter 11 Professionals and Committee Members entered by the Court on August 1, 2003, and the Memorandum Order Regarding Compensation of Professionals entered by the Court on August 27, 2003, any applicable Bankruptcy Rules, the applicable local bankruptcy rules, any other orders of this

Court, and any procedures as may be fixed by order of this Court; provided, however, that the (a) approval of Houlihan's fees and expenses will be subject to the review standards set forth above and (b) Houlihan shall not be required to maintain time records for services rendered and shall not be required to provide or conform to any schedule of hourly rates.

6. Houlihan and its affiliates, directors, officers and employees hereby are deemed to be "Protected Professionals" who are entitled to the protections set forth in the Protected Persons Order.

7. The retention of Houlihan shall be subject to review for continuation at the Court's discretion.

8. To the extent that the Engagement Letter is inconsistent with the Application, the terms of the Engagement Letter shall govern, and to the extent that this Order is inconsistent with any prior order or the Engagement Letter, the terms of this Order shall govern.

9. This Order shall be effective from July 25, 2003 through and including the date of the Final Order on the Application.

10. This Order shall become a Final Order on the twenty-seventh (27th) day after entry of the Order without further notice or hearing unless an objection to the Order is timely filed with the Court and served on Houlihan on or before twenty-six (26) days after entry of the Order.

Dated: ~~December~~ ^{January} 21, 2004.



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE