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**ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
MIRANT AMERICAS GENERATION, LLC**

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

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

**AMENDED**

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
MIRANT AMERICAS GENERATION, LLC FOR AUTHORITY TO RETAIN  
MR. JAMES M. DONNELL AS ENERGY INDUSTRY CONSULTANT**

**TO: THE HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Unsecured Creditors (the “MAGI Committee”) of Mirant Americas Generation, LLC (“MAGI”), by and through its attorneys Cadwalader, Wickersham & Taft LLP and Cox & Smith Incorporated, hereby applies for an order authorizing the retention of Mr. James M. Donnell as energy industry consultant for the MAGI Committee (the “Application”). In support of this Application, the MAGI Committee respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are

§§ 328 and 1103(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **BACKGROUND**

2. On July 14, 2003 (the “Petition Date”), Mirant Corporation (“Mirant”) and its affiliated debtors (the “Debtors”) commenced their respective reorganization cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. On July 25, 2003, the MAGI Committee was appointed in these cases by the Office of the United States Trustee for the Northern District of Texas. The members of the MAGI Committee are California Public Employees Retirement System (“CalPERS”), Elliott Associates, L.P., JPMorgan Chase, Lehman Brothers Inc., Mackay Shields Financial, The Royal Bank of Scotland plc and Wells Fargo Bank, as Indenture Trustee.

### **RELIEF REQUESTED**

4. By this Application, the MAGI Committee seeks Court approval to retain and employ Mr. James M. Donnell as a consultant on matters related to the energy industry. Mr. Donnell has agreed to provide services to the MAGI Committee in accordance with the terms and conditions set forth in (i) the letter agreement, dated June 11, 2004 entered into between Mr. Donnell and the MAGI Committee (the “Engagement Letter”), a copy of which is attached hereto as Exhibit A; and (ii) the affidavit, sworn to on June 14, 2004, of Mr. Donnell with respect to the proposed retention (the “Donnell Affidavit”), a copy of which is attached hereto as Exhibit B.

5. The services to be provided by Mr. Donnell to the MAGI Committee will be at the request of the MAGI Committee, and appropriately directed by the MAGI Committee so as to avoid duplicative efforts among the professionals retained in the case. It is presently anticipated that Mr. Donnell will provide the following services to the MAGI Committee:

(a) Provide the MAGI Committee with strategic advice and information regarding the energy industry and in particular, the assets and businesses of MAGI and its subsidiaries, and the various alternatives available to the MAGI Committee to maximize value for the benefit of MAGI's creditors;

(b) Review, analyze and advise on the operational, personnel, regulatory, financial and other issues related to a sale or other disposition of MAGI and its subsidiaries, and a severance of their stock ownership and other relationships with Mirant and its other subsidiaries;

(c) Assist in the preparation of a business plan to sever MAGI and its subsidiaries from ownership and other relationships with Mirant and its other subsidiaries and for the operation of MAGI and its subsidiaries post-emergence from chapter 11;

(d) Provide advice to the MAGI Committee on other strategic alternatives relating to MAGI's business and assets;

(e) Assist and advise the MAGI Committee on such other matters as it may request; and

(f) Testify in Court on behalf of the MAGI Committee.

6. The MAGI Committee seeks to retain Mr. Donnell to obtain the benefit of his substantial experience leading merchant energy companies similar to MAGI. Mr. Donnell's focus will be the development of an operational business plan to sever MAGI's assets from the

other Mirant debtors, so that MAGI may be run on a stand-alone basis. This will entail developing the management and other infrastructure necessary for MAGI to run independently. The services to be provided by Mr. Donnell are distinct from those of the MAGI Committee's presently retained professionals. Nevertheless, in order to ensure that there is no overlap or duplication of services, Mr. Donnell will coordinate carefully with the MAGI Committee's other professionals in developing a work plan, to be approved by the MAGI Committee, that will provide distinct tasks for each retained professional.

7. MR. DONNELL'S DECISION TO ACCEPT THE ENGAGEMENT IS CONTINGENT UPON HIS ABILITY TO BE RETAINED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF EMPLOYMENT PROVIDED IN THE ENGAGEMENT LETTER, SUCH THAT MR. DONNELL IS COMPENSATED FOR HIS SERVICES AND REIMBURSED FOR THE OUT-OF-POCKET EXPENSES HE INCURS IN RELATION TO THIS ENGAGEMENT. THE ENGAGEMENT LETTER PROVIDES THAT MR. DONNELL IS TO RECEIVE A FIXED MONTHLY FEE OF \$100,000 FOR THE FIRST THREE MONTHS OF THIS ENGAGEMENT AND \$75,000 PER MONTH FOR THE REMAINING TERM OF HIS RETENTION, PLUS REIMBURSEMENT OF REASONABLE OUT-OF-POCKET EXPENSES INCURRED IN CONNECTION THEREWITH. THE MAGI COMMITTEE REQUESTS THAT MR. DONNELL NOT BE REQUIRED TO SUBMIT MONTHLY STATEMENTS OF HIS TIME, BROKEN DOWN IN SIX-MINUTE INCREMENTS AND BY CATEGORY, AS PART OF HIS REQUEST FOR PAYMENT. MR. DONNELL PROPOSES TO SUBMIT MONTHLY STATEMENTS DESCRIBING THE NATURE OF THE WORK PERFORMED FOR THE MAGI COMMITTEE, AND DETAILING THE EXPENSES INCURRED THAT MONTH.

8. The MAGI Committee selected Mr. Donnell because of his knowledge and experience relevant to the public energy industry. As described on the curriculum vitae annexed hereto as Exhibit C, Mr. Donnell previously was president and chief executive officer of Duke Energy North America (“Duke Energy”). In that position, Mr. Donnell was responsible for a merchant energy operation of 1,400 employees and annual revenues of \$3.3 billion. As a result of this experience, Mr. Donnell has in-depth knowledge of all aspects of the power generation business. The MAGI Committee believes that the services and advice to be provided by Mr. Donnell will benefit MAGI and its creditors.

9. To the best of the MAGI Committee’s knowledge, information and belief, Mr. Donnell is not related to nor connected with, and neither holds nor represents any interest adverse to the Debtors, their respective estates, their creditors or any other party in interest herein or their respective attorneys or the United States Trustee or anyone employed in the Office of the United States Trustee in the matters for which he is proposed to be retained.

10. Consequently, Mr. Donnell is a “disinterested person,” as that term is defined in § 101(14) of the Bankruptcy Code and as required by § 1103(b) of the Bankruptcy Code. In accordance with section 1103(a) of the Bankruptcy Code and Rule 2014 of the Bankruptcy Rules, the Donnell Affidavit is appended hereto and incorporated herein by reference. The MAGI Committee’s knowledge, information and belief regarding the matters set forth in this paragraph are based upon the Donnell Affidavit. Mr. Donnell has informed the MAGI Committee that he has undertaken a detailed search of available information, as set forth below, to determine and to disclose, whether Mr. Donnell has any relationship to any significant creditors, equity security holders or insiders in these cases. In connection with his proposed retention by the MAGI Committee in these cases, Mr. Donnell conducted a review of his

professional and personal contacts with the Debtors, their affiliates and other interested parties identified on a list (“Interested Party List”) provided to Mr. Donnell by counsel to the MAGI Committee in this proceeding. As a result of this review, Mr. Donnell has concluded that none of his current or past engagements: (i) are connected in any way to this proceeding; (ii) will impact or conflict with or be adverse to the rights of the Debtors in this proceeding; or (iii) will compromise Mr. Donnell’s ability to provide services in this proceeding.

11. Mr. Donnell’s former employer, Duke Energy and/or its customers, affiliates, officers, directors, principal shareholders and their respective affiliates may have had relationships with the Debtors or other parties in interest in these bankruptcy cases of which Mr. Donnell was not informed, or may have developed relationships with such parties of which Mr. Donnell is unaware.

12. Mr. Donnell will promptly update his Affidavit, disclosing any material developments regarding the Debtors or any other pertinent relationships that require disclosure in the above-referenced cases, if and when any such developments or relationships come to his attention.

13. No previous application for the relief requested herein has been made in these chapter 11 cases.

**CONCLUSION**

WHEREFORE, the MAGI Committee respectfully requests that the Court enter an order substantially in the form attached hereto, authorizing the MAGI Committee to retain Mr. James M. Donnell as energy industry consultant, and grant the MAGI Committee such other and further relief as the Court deems just and proper.

Dated: June 15, 2004

Respectfully submitted,

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF MIRANT AMERICAS GENERATION, LLC

By:     /s/ Charles Greer      
Charles Greer, Co-Chair

AND

COX & SMITH INCORPORATED  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205  
Telephone: (210) 554-5000  
Facsimile: (210) 226-8395

By:     /s/ Thomas Rice      
Thomas Rice  
Texas Bar No. 24025613

AND

CADWALADER, WICKERSHAM & TAFT LLP  
100 Maiden Lane  
New York, New York 10038  
Telephone: (212) 504-6000  
Facsimile: (212) 504-6666

**ATTORNEYS FOR THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS OF MIRANT  
AMERICAS GENERATION, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 15, 2004, a true and correct copy of the forgoing has been sent via electronic mail to the parties listed below and via United States First Class Mail, postage prepaid, to the parties listed on the Official Shortened Service List (5/14/04).

Paul Silverstein  
Andrews & Kurth  
450 Lexington Avenue  
New York, NY 10017  
E-mail: paulsilverstein@andrewskurth.com

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E-mail: george.f.mcelreath@usdoj.gov

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Frederic Sosnick  
Shearman & Sterling LLP  
5900 Lexington Avenue  
New York, NY 10022  
fsosnick@shearman.com

/s/ Thomas Rice  
Thomas Rice

June 11, 2004

The Official Committee of Unsecured Creditors of  
Mirant Americas Generation, LLC  
c/o Bruce R. Zirinsky, Esq.  
Cadwalader, Wickersham & Taft LLP  
100 Maiden Lane  
New York, New York 10038

Ladies and Gentleman:

This letter sets forth my retention as a consultant to the Official Committee of Unsecured Creditors (the "Committee") of Mirant Americas Generation, LLC ("MAGI") in connection with the chapter 11 cases currently pending in the United States Bankruptcy Court for the Northern District of Texas, Case No. 03-46590-DML *et al.* (the "Bankruptcy Court").

1. **Scope of Engagement.** In connection with my employment, as a consultant to the Committee, I will perform the following work on behalf of the Committee:

(a) Provide the Committee with strategic advice and information regarding the energy industry and in particular, the assets and businesses of MAGI and its subsidiaries, and the alternatives available to the Committee to maximize value for the benefit of MAGI's creditors;

(b) Review, analyze and advise on the operational, personnel, regulatory, financial and other issues related to a sale or other disposition of MAGI and its subsidiaries, and a severance of their stock ownership and other relationships with Mirant Corporation ("Mirant") and its other subsidiaries;

(c) Assist in the preparation of a business plan to sever MAGI and its subsidiaries from ownership and other relationships with Mirant and its other subsidiaries and for the operation of MAGI and its subsidiaries post-emergence from chapter 11;

(d) Provide advice to the Committee on other strategic alternatives relating to MAGI's business and assets;

(e) Assist and advise the Committee on such other matters as the Committee may request; and

(f) Testify in Court on behalf of the Committee.

2. **Committee Engagement.** Neither the Committee, the members thereof, their constituents, nor any of their advisors or professionals (including, but not limited to,

Cadwalader, Wickersham & Taft LLP, "Committee Counsel"), shall be liable for the payment of any fees, expenses or other amounts payable to me hereunder. Notwithstanding such arrangement, my duties hereunder run solely to the Committee, and I am not authorized to be, and will not purport to be, acting on behalf of, or at the direction of either the Debtors or MAGI for any purpose unless otherwise agreed to by the Committee. All strategic advice, written or oral, provided by me to the Committee pursuant to this Agreement is intended solely for the use and benefit of the Committee and shall be maintained as confidential information by me. At the direction of the Committee's legal counsel, certain communication and correspondence between me and the Committee, and work product and analyses prepared by me for the Committee in connection with this matter, will be considered in preparation for litigation, and accordingly, will be subject to the attorney-client privilege and work-product privilege between counsel, the Committee, and me.

3. **Consultant.** My services are limited to those specifically provided in this Agreement or subsequently agreed-upon by the parties hereto and approved by the Bankruptcy Court, and I shall have no obligation or responsibility for any other services. I am providing my services hereunder as an independent contractor.

4. **Compensation.** Subject to the approval by the Bankruptcy Court of my retention, my compensation will be \$100,000 per month, commencing as of June 1, 2004, for the first three months of my engagement, and \$75,000 per month thereafter. In addition, I will be reimbursed, upon request from time to time, for all reasonable out-of-pocket expenses reasonably incurred by me in connection with the matters contemplated by this Agreement. Out-of-pocket expenses shall include, but are not limited to, all reasonable travel expenses, duplicating charges, on-line service charges, messenger services, delivery services, meeting services, long distance telephone and facsimile charges incurred by me.

5. **Bankruptcy Court:** The Committee will use its reasonable best efforts to obtain prompt authorization of my retention on the terms and provisions in this Agreement. The employment application and the proposed Bankruptcy Court order approving the Agreement and authorizing the retention shall be reasonably acceptable to me.

6. **Termination.** This Agreement is terminable upon thirty (30) days prior written notice by either the Committee or me. The termination of this Agreement will not affect both (a) the protections afforded me under this Agreement or any applicable Bankruptcy Court order, and (b) my right to receive any and all fees and expenses accrued as of the effective date of termination of this Agreement.

7. **Choice of law; Jurisdiction.** This agreement has been negotiated, executed and delivered at and shall be deemed to have been made in New York City, within the State of New York. This agreement shall be governed by and construed in accordance with the laws of the State of New York.

8. **Counterparts.** For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

9. **Severability.** If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

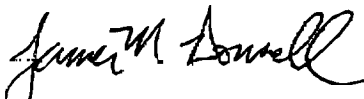
10. **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understanding relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each party.

11. **Protected Person.** Upon the Bankruptcy Court's entry of an order authorizing the Committee's retention of me, I shall be afforded the protections and privileges provided to, and shall be considered a, "Protected Person" as that term is defined in the Bankruptcy Court's *Order Restricting Pursuit of Certain Persons*, entered on August 6, 2003.

12. **Confidentiality Obligations.** I agree that all information not publicly available and received by him from the Debtors, the Committee, the Committee's other advisors or Committee counsel in connection with this engagement will be treated confidentially in accordance with the Bankruptcy Court's *Order Approving Specified Information Blocking Procedures and Permitting Trading in the Debtors' Securities, Bank Debt, Purchase or Sale of Trade Debt and Issuing of Analyst Reports Upon Establishment of A Screening Wall Effective July 25, 2003*, entered on August 13, 2003, as amended subsequently by Order entered on April 21, 2004.


Please indicate your acceptance and approval of the terms and conditions of this Agreement by signing in the space provided below.

Very truly yours,

  
James M. Donnell

ACCEPTED AND AGREED:

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF MIRANT AMERICAS GENERATION, LLC**

A handwritten signature in cursive script, appearing to read "Charles Green".

By: Charles Green  
Co-Chair of the Official Committee of  
Unsecured Creditors of Mirant Americas Generation, LLC

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

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

**AFFIDAVIT OF JAMES M. DONNELL IN SUPPORT OF THE  
APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF MIRANT AMERICAS GENERATION, LLC FOR  
AUTHORITY TO RETAIN HIM AS ENERGY INDUSTRY CONSULTANT**

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF HARRIS        )

**JAMES M. DONNELL** being duly sworn according to law, upon his oath, deposes and says:

1. This affidavit is being submitted in connection with and in support of the Application of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the “MAGI Committee”) for authority to retain me as a consultant on energy industry matters (the “Application”) to perform those services described in more detail herein.

2. To the best of my knowledge and belief, insofar as I have been able to ascertain after due inquiry, I do not have any professional relationship to or connection with the above-captioned debtors and debtors-in-possession (collectively the “Debtors”), their creditors, other parties in interest herein, or the United States Trustee or anyone employed in the Office of the United States Trustee, or hold or represent any interest adverse to any such party. None of

my present or past engagements (i) are connected in any way to this proceeding; (ii) will impact or conflict with or be adverse to the rights of the Debtors in this proceeding; or (iii) will compromise my ability to continue providing services in this proceeding.

3. In connection with the preparation of this Affidavit, I have conducted a review of my professional contacts with the Debtors, their affiliates and other interested parties identified on a list (“Interested Party List”) provided to me by counsel to the MAGI Committee in this proceeding. To the best of my knowledge and belief, I have no present or former connection to the parties listed on the Interested Party List.

4. My former employer, Duke Energy North America (“Duke Energy”) and its customers, clients and their affiliates, officers, directors, principal shareholders and their respective affiliates may have had relationships with parties in interest in these bankruptcy cases of which I was not informed or, subsequent to the termination of my employment with Duke Energy, may have developed relationships with such parties of which I am unaware.

5. I will promptly update and supplement this Affidavit, disclosing any material developments regarding the Debtors or any other pertinent relationships that require disclosure in the above-referenced case, if and when any such developments or relationships come to my attention.

6. I have agreed to provide assistance to the MAGI Committee in accordance with the terms and conditions set forth herein, in the Application and in the letter agreement, dated June 11, 2004 entered into between myself and the MAGI Committee (the “Engagement Letter”), a copy of which is attached to the Application as Exhibit A and incorporated herein by reference.

7. All the services that I will provide to the MAGI Committee will be: (i) at the request of the MAGI Committee, (ii) appropriately directed by the MAGI Committee so as to avoid duplicative efforts among the professionals retained in the case, and (iii) performed in accordance with generally accepted professional standards. It is presently anticipated that I will provide the following services:

(a) Provide the MAGI Committee with strategic advice and information regarding the energy industry and in particular, the assets and businesses of MAGI and its subsidiaries, and the various alternatives available to the MAGI Committee to maximize value for the benefit of MAGI's creditors;

(b) Review, analyze and advise on the operational, personnel, regulatory, financial and other issues related to a sale or other disposition of MAGI and its subsidiaries, and a severance of their stock ownership and other relationships with Mirant Corporation ("Mirant") and its other subsidiaries;

(c) Assist in the preparation of a business plan to sever MAGI and its subsidiaries from ownership and other relationships with Mirant and its other subsidiaries and for the operation of MAGI and its subsidiaries post-emergence from chapter 11;

(d) Provide advice to the MAGI Committee on other strategic alternatives relating to MAGI's business and assets;

(e) Assist and advise the MAGI Committee on such other matters as it may request; and

(f) Testify in Court on behalf of the MAGI Committee.

8. The MAGI Committee seeks to retain my services to obtain the benefit of my substantial experience leading merchant energy companies similar to MAGI. The focus of

the services I will provide the MAGI Committee will include the development of an operational business plan to sever MAGI's assets from the other Mirant debtors, so that MAGI may be run on a stand-alone basis. This will entail developing the management and other infrastructure necessary for MAGI to run independently. Thus, the services I will provide the MAGI Committee are distinct from those of the MAGI Committee's presently retained professionals. Nevertheless, in order to ensure that there is no overlap or duplication of services, I will coordinate carefully with the MAGI Committee's other professionals in developing a work plan, to be approved by the MAGI Committee, that will provide distinct tasks for each retained professional.

#### **Qualifications**

9. A copy of my curriculum vitae and detailed work history is attached to the Application as Exhibit C. As detailed therein, I previously was President and Chief Executive Officer of Duke Energy North America for approximately three years, and prior to that I held various other executive positions with Duke Energy. As president and CEO of Duke Energy's North American operations, I was responsible for an organization of over 1,400 employees with annual revenues of \$3.3 billion. In addition to the executive leadership experience gained at Duke Energy, I also have substantial experience with, and knowledge of, power trading operations and the related risk management activities that are necessary to any energy generation company. As a result of my combined twenty years' experience in the energy industry, I believe that I have experience that will be useful to the MAGI Committee as it evaluates various strategic value-enhancing options for the MAGI assets. I also believe that based upon my work experience in the various aspects of running a merchant energy company, I can provide critical

advice to the MAGI Committee on financial and operational issues relating to the creation of a stand-alone MAGI.

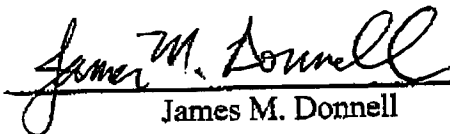
### **Compensation and Billing**

10. I will seek compensation for the services as described herein and in the Application in accordance with the guidelines of this Court and in compliance with the applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Northern District of Texas, the administrative order pertaining to professionals retained in these proceedings and any other orders of this Court. As detailed in the Engagement Letter, my proposed compensation for this engagement is \$100,000 per month, commencing as of June 1, 2004, for the first three months of my engagement, and \$75,000 per month thereafter. In addition, I will be reimbursed for all reasonable out-of-pocket expenses incurred in connection with my work for the MAGI Committee, including travel expenses, duplicating costs, on-line service charges, messenger services, long distance telephone and facsimile charges.

11. Because of the nature of the work I am to perform for the MAGI Committee, and the fact that I am to be compensated on a fixed monthly fee basis, I would request that I not be required to submit monthly statements with explicit, contemporaneous descriptions of my time, broken down by six-minute increments and categorized by type of work. Instead, I propose to submit monthly statements stating generally the services I performed for the MAGI Committee that month, along with a detailed list of expenses incurred. Invoices for services rendered and out-of-pocket expenses incurred during each month will otherwise be submitted pursuant to the *Memorandum Order Consolidating Certain Professional Fee Orders*

entered by the Court on January 20, 2004. In addition, such fees will be payable as allowed under the Bankruptcy Code.

12. No fee payable to any other person or entity by the Debtors, the MAGI Committee or any other party shall affect any fee payable to me as part of this engagement.

  
James M. Donnell

Sworn to before me this  
14th day of June, 2004.





## James M. Donnell

4141 Tennyson Street  
Houston, Texas 77005  
713.667.4849 Residence  
713.426.7308 Office  
713.962.0093 Cellular

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### Profile

**Senior executive in a leading natural gas and power company with extensive experience in major capital deployment, asset development, operations, acquisitions and divestitures, energy commodity risk management, trading and marketing**

1996 – 12/'02

**DUKE ENERGY CORPORATION**

**HOUSTON, TX**

1999 – 12/'02

**DUKE ENERGY NORTH AMERICA**

*President and Chief Executive Officer*

Responsible for North American wholesale merchant generation and commodity trading businesses. Led the organization's maturation to a staffing level of just over 1,400 and an annual revenue level of \$3.3 billion. Developed and implemented business model which optimized shareholder return through the integration of the asset portfolio, physical and financial trading activities, the long-term marketing efforts, and the acquisition/divestiture pursuits.

- Delivered over \$2 billion in earnings before interest and taxes and three year average return on capital employed of 18 percent
- Drove \$10 billion merchant generation expansion strategy increasing portfolio from 2,700 megawatts to 15,000 megawatts
- Orchestrated asset management and operations functions with a focus on balancing operational excellence with financial results while keeping safety as top priority
- Negotiated multi-billion dollar equipment and long-term service agreements with major turbine manufacturer
- Built direct wholesale customer sales business by integrating asset and trading units; and focusing marketing on customized, long-term physical supply and service contracts
- Launched technology modernization initiative to upgrade risk management systems, controls and business processes
- Represented corporation before regulatory and legislative bodies, investors and media
- Served on the chairman's expanded staff and cross-corporation taskforces on corporate strategy; environment, health and safety; and strategic branding

1998 – 1999

**DUKE ENERGY POWER SERVICES**

*Executive Vice President*

Directed North American asset marketing, development, operations, and acquisition/divestiture activities.

- Achieved board approval of \$1 billion capital budget to construct four merchant power plants, which were completed in 2000
- Built asset management and operations groups commensurate with portfolio growth
- Developed and managed a major project development budget and staff of 40 developers covering the eastern, southeastern, and western regions of the United States
- Captured substantial premiums on facility divestitures
- Supervised negotiations of California generation assets' marketing agreements

- 1997 – 1998      *Senior Vice President*  
 Directed eastern U.S. asset development activities.
- Led development of Duke Energy’s first “greenfield” merchant generation project
  - Provided counsel on bid strategy for PG&E California asset auction
  - Integrated operations of newly acquired PG&E assets into asset management, operations, and trading and marketing organizations
- 1996 – 1997      **PANENERGY POWER SERVICES** (*PanEnergy was acquired by Duke Power in 1997*)  
*Managing Director, Power Trading*  
 Recruited to launch power trading operations.
- Assembled and trained team of power traders and analysts
  - Designed internal reports for position management
  - Established risk management protocols and procedures for power trading
- 1993 – 1996      **DONNELL & ASSOCIATES, LLC**      **HOUSTON, TX**  
*Investor and Managing Partner*
- Managed energy commodity hedge fund
- 1991 – 1993      **GASMARK, LTD.**      **HOUSTON, TX**  
*Executive Vice President and Chief Operating Officer*
- Led privately held gas marketing business
- 1988 – 1991      **NATURAL GAS CLEARINGHOUSE**      **HOUSTON, TX**  
*Vice President*
- Directed marketing and trading activities in western Canada and the U.S
- 1982 – 1988      **TEXACO USA**      **MIDLAND, TX**
- Held various positions within natural gas group.

**Education**

- 2000      **HARVARD UNIVERSITY**      **CAMBRIDGE, MA**  
 Advanced Management Program
- 1982      **TEXAS A&M UNIVERSITY**      **COLLEGE STATION, TX**  
 Bachelor of Science, Mechanical Engineering
- *Degree awarded Cum Laude*
  - *Member, Tau Beta Pi (honors Fraternity)*
  - *Member, Pi Tau Sigma (honors Fraternity)*

**Boards of Directors and Affiliations**

- |  |   |
|--|---|
| <i>Board of Directors, Executive Committee</i> | Electric Power Supply Association       |
| <i>Board of Directors, Development Council</i> | Texas A&M University                    |
|  | Lowry Mays Graduate School of Business  |
| <i>Finance Committee</i>                       | Museum of Fine Arts, Houston            |
| <i>Board of Stewards</i>                       | West University United Methodist Church |

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

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

**INTERIM ORDER GRANTING APPLICATION OF THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS OF MIRANT AMERICAS  
GENERATION, LLC FOR AUTHORITY TO RETAIN  
JAMES M. DONNELL AS ENERGY INDUSTRY CONSULTANT**

Came on for consideration the *Application of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC for Authority to Retain James M. Donnell as Energy Industry Consultant* (the “Application”). The Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Court further finds that this is a core proceeding pursuant to 28 U.S.C. § 157. After reviewing the Affidavit of James M. Donnell in support of the Application (the “Donnell Affidavit”), the Court finds that: (i) the proposed employment of James M. Donnell as energy industry consultant for the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC (the “MAGI Committee”) is in the best interests of the bankruptcy estates and the MAGI Committee; (ii) Mr. Donnell does not hold nor represents any interest adverse to the Debtors’ estates or the MAGI Committee such that he would be disqualified from representing the MAGI Committee in these chapter 11 cases; and (iii) Mr. Donnell is a “disinterested person” as such term is defined in 11 U.S.C. § 101(14). The Court further finds that the Application should be granted. It is therefore

ORDERED, that the retention of Mr. James M. Donnell as energy industry consultant for the MAGI Committee is hereby granted on an interim basis (the “Interim Order”) pursuant to 11 U.S.C. § 1103(a) for the purposes set forth in the Application and the Donnell Affidavit, and on the terms set forth therein, effective as of June 1, 2004 (the “Employment Date”). It is further

ORDERED, that Mr. Donnell shall be considered a “Protected Person” within the terms of the Court’s *Order Restricting Pursuit of Certain Persons*, entered on August 5, 2003. It is further

ORDERED, that within three (3) business days of the entry of this Interim Order, the MAGI Committee shall serve the Interim Order upon all parties entitled to receive notice of the Application. It is further

ORDERED, that except as otherwise provided in the Application and the Donnell Affidavit, Mr. Donnell shall be compensated in accordance with the procedures set forth in §§ 330 and 331 of the Bankruptcy Code and Bankruptcy Rules as may then be applicable, from time to time, and such other procedures as may be fixed by order of the Court. It is further

ORDERED, that the Interim Order shall be effective from the date it is entered through and including the date of final hearing on the Application. It is further

ORDERED, that to the extent of any conflict between the terms and conditions of the Application and the Interim Order, the terms and conditions of this Interim Order shall govern. It is further

ORDERED, that this Interim Order shall become a Final Order on the twenty-seventh (27<sup>th</sup>) day after entry of the Interim Order without further notice or hearing unless an

objection to the Interim Order is timely filed with the Court and served on Mr. Donnell and the MAGI Committee on or before twenty-six (26) days after entry of the Interim Order.

Dated: \_\_\_\_\_, 2004

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**HONORABLE D. MICHAEL LYNN**  
**UNITED STATES BANKRUPTCY JUDGE**