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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

In re)	
)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML
)	Jointly Administered
Debtors.)	
)	Hearing Date and Time: To Be Set, if Necessary

**APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 327(a)
AND 328 AUTHORIZING THE EMPLOYMENT AND RETENTION OF
PENNENERGY, INC. AS TURBINE MARKETERS AND BROKERS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(a) and 328 Authorizing the Employment of PennEnergy, Inc. acting through Oil & Gas Journal Exchange (“PennEnergy”) as the Debtors’ Turbine Marketers and Brokers (the “Application”), and in support of this Application, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated case.

5. The Examiner. On April 7, 2004, this Court authorized the UST to appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

Retention of PennEnergy

6. The Debtors request authorization to retain PennEnergy as turbine marketers and brokers, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, effective

as of May 21, 2004.¹ The terms of PennEnergy's employment are set forth in the Engagement Letter, a true and correct copy of which is appended hereto as Exhibit 1.

7. Prepetition, the Debtors upgraded their existing power generation facilities by acquiring new turbines and ancillary equipment (the "Equipment Items"). Before installing the Equipment Items, a downturn in the energy sector caused the Debtors to cancel the projects for which the Equipment Items were to be used, and the Equipment Items were stored. The Debtors have determined to sell the Equipment Items because they are no longer of any use to the estates.

8. The Debtors desire to retain PennEnergy to market and sell the Equipment Items. PennEnergy is dedicated to providing trusted business intelligence and solutions to global energy professionals through its centralized, secure, neutral, and content-rich exchanges and web sites. In the complex and capital-intensive energy markets, PennEnergy joins buyers and sellers with effective "e-solutions" for their asset management challenges and satisfies their myriad information needs so critical to sound business decisions. PennEnergy has developed state-of-the-art technology for its e-commerce and content platforms. PennEnergy has extensive marketing channels available in the power generation marketplace through PennWell's power industry magazines and POWER-GEN conferences in the United States, Europe, Asia, Canada, the Middle East and other international business centers worldwide.

9. The Equipment Items are identified on Attachment "C" to the Engagement Letter. PennEnergy will market the Equipment Items through publication ads, broadcast e-mail

¹ The Debtors notified the Court on April 20, 2004 that they would be retaining PennEnergy to render services to the estates.

messages, representation at conferences, and utilizing its expertise and contacts in both the global and domestic marketplace to introduce, promote and present all credible opportunities to the Debtors and assist in the consummation of targeted sales transactions.

10. In addition, PennEnergy will render other services in connection with the marketing of the Equipment Items including, but not limited to:

- Assisting in establishing confidentiality agreements between potential buyers and the Debtors;
- Providing and managing due diligence material to potential buyers, as well as equipment site visits and addressing high level questions;
- Determining credibility of potential buyers (financial wherewithal, permitted projects, etc.); and
- Other activities as necessary to complete sale, including rendering services in connection with the Debtors' efforts to obtain Bankruptcy Court approval of any sale.

11. The Debtors believe that PennEnergy is well suited to render the above services. The Debtors have determined that it is in the best interest of the estates to seek to market the Equipment Items, and PennEnergy is well positioned to assist the Debtors in maximizing the value of those assets.

Compensation

12. Pursuant to section 328(a) of the Bankruptcy Code, the Debtors may retain PennEnergy on any reasonable terms and conditions. With respect to any sales to buyers that are not identified by the Debtors, PennEnergy will be paid in accordance with the following scale:²

² Those fees are based on a percentage of gross sales price for any given transaction, net of any applicable taxes.

- 3% of the first \$0- \$25 million of the purchase price
- 2.75% of the next \$25-50 million of the purchase price
- 2.5% of the next \$50-75 million of the purchase price
- 2.25% of all amounts in excess of \$75 million of the purchase price

13. Prior to retaining PennEnergy, the Debtors identified Wisconsin Energy's Port Washington Generating Station Project ("Washington Energy") as a potential purchaser of certain Equipment Items. Because the Debtors identified Washington Energy as a potential purchaser, PennEnergy and the Debtors have agreed to reduce PennEnergy's commissions from the sale of any of the Equipment Items purchased by Washington Energy, to 1.5% of the aggregate purchase price.

14. In either case, the referral fee described above is the only compensation that PennEnergy is entitled to receive for its services provided under the Engagement Letter. Thus, PennEnergy will not be entitled to reimbursement of its expenses in connection with the engagement, as set forth in the Engagement Letter. With respect to the reimbursement of costs, the Engagement Letter provides:

Pending Bankruptcy Court approval, Mirant shall be responsible for the direct costs of placing the advertisements described in Paragraph 6, up to a maximum of \$100,000 (the "Advertising Costs"); provided, however that PennEnergy shall be responsible for arranging for the placement of such advertisements at a rate equal to 80% of the 6-times frequency rate published in the 2004 media kits for such publications. Within five business days of final approval of this Agreement by the Bankruptcy Court, PennEnergy shall reimburse Mirant for any Advertising Costs incurred and initially paid by Mirant.

15. The Debtors believe that proposed terms and conditions of this engagement represent the most reasonable terms and conditions for the services contemplated to

be rendered by PennEnergy in a competitive market for these services. The Debtors further understand that the proposed terms and conditions of the engagement are reasonable and based upon industry standards. In sum, the Debtors believe that the fees charged by PennEnergy are reasonable in light of (a) industry practice; and (b) market rates charged for comparable services both in and out of the chapter 11 context.

PennEnergy Is A Disinterested Person

16. To the best of the Debtors' knowledge, information and belief, PennEnergy represents no interest adverse to the Debtors or to their estates, except as set forth herein and the affidavit of Paul Westervelt, Vice President and Chief Operating Officer of PennEnergy (the "Westervelt Affidavit"). The Westervelt Affidavit, executed on behalf of PennEnergy in accordance with the provisions of section 327 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, Local Bankruptcy Rule 2016(b) and U.S. Trustee Guidelines, is incorporated herein by reference. The Debtors' knowledge, information and belief regarding the matters set forth in this Application are based, and made in reliance, upon the Westervelt Affidavit.

17. Out of an abundance of caution, PennEnergy disclosed to the Debtors that it was retained by NRG Energy, Inc. to provide similar services, authorized by the United States Bankruptcy Court of the Southern District of New York, in Case No. 03-13024, *In re NRG Energy, Inc., et.al.*, wholly unrelated to the services that PennEnergy will render to the Debtors. Neither the Debtors nor PennEnergy believe that the NRG connection represents an interest adverse or even potentially adverse to the Debtors.

18. In addition, as set forth in the Westervelt Affidavit, PennEnergy has represented to the Debtors that PennEnergy (and its employees) is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that PennEnergy, its partners and employees, to the best of their knowledge:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not investment bankers for any outstanding security of the Debtors;
- c. have not been, within 3 years before the date of the filing of the Debtors’ chapter 11 petitions, (i) investment bankers for a security of the Debtors, or (ii) an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the Debtors;
- d. are not and were not, within 2 years before the date of the filing of the Debtors’ chapter 11 petitions, a director, officer, or employee of the Debtors or of an investment banker specified in subparagraph (b) or (c) of this paragraph, and
- e. do not have an interest materially adverse to the interest of the Debtors’ estates, or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors or an investment banker, specified in subparagraphs (b) or (c) of this paragraph, or for any other reason.

Engagement of Sub-Broker – Existence of Fee-Sharing Agreement

19. Pursuant to a separate agreement, PennEnergy has engaged Thomassen Amcot International (“Thomassen”) as a sub-broker to assist PennEnergy in locating potential buyers of the Equipment Items. Thomassen and PennEnergy had a similar relationship in the NRG chapter 11 cases, as described above.

20. Pursuant to the Fee Sharing Agreement between PennEnergy and Thomassen, appended hereto as Exhibit 2, PennEnergy will pay Thomassen one half of the gross fee paid by the Debtors, as described above. Thomassen will not seek reimbursement of any expenses associated with this engagement nor will it seek any additional compensation from the Debtors' estates.

21. Thomassen has disclosed to the Debtors that it was retained by LSP – Nelson Energy, LLC and NRG Nelson Turbines LLC to provide similar services, authorized by the United States Bankruptcy Court of the Southern District of New York, in Case No. 03-13024, *In re NRG Energy, Inc., et.al.*, wholly unrelated to the services that Thomassen as a sub-broker to PennEnergy will render to the Debtors.

22. As far as the Debtors have been able to ascertain, Thomassen and its employees rendering services in connection with this engagement (1) are “disinterested persons” within the meaning of the Bankruptcy Code and (2) do not represent an interest adverse to the Debtors' estates. Rick Williamson, President of Thomassen, has executed an affidavit of disinterestedness. That affidavit is appended hereto as Exhibit 3.

WHEREFORE, the Debtors respectfully request that the entry of an order (i) approving the retention of PennEnergy, Inc. as turbine marketers and brokers pursuant to sections 327(a) and 328 of the Bankruptcy Code, and (ii) granting the Debtors such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 23rd day of June, 2004.

HAYNES AND BOONE, LLP
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(214) 651-5000

Robin Phelan
State Bar No. 15903000

-and-

By: Michelle C. Campbell

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
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ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all parties on the Limited Service List via first class mail, postage prepaid, the 23rd day of June 2004 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Michelle C. Campbell _____

MARKETING ENGAGEMENT AGREEMENT

THIS AGREEMENT, is hereby entered into by and between PennEnergy, Inc., a Delaware Corporation, acting through its Oil & Gas Journal Exchange division, whose principal office is located at 1700 W. Loop South, Suite 1000, Houston, Texas 77027 (“PennEnergy”) and Mirant Corporation, a Delaware Corporation whose Principal Office is located at 1155 Perimeter Center West, Atlanta, GA 30338, on behalf of itself and its affiliated Debtors (collectively, “Mirant”).

WITNESSETH:

WHEREAS, through several discussions, writings, and other communications, Mirant and PennEnergy have agreed to form a business relationship for the purpose of marketing and selling certain equipment items, and have agreed to enter into certain agreements for the carrying out of certain business transactions; and

WHEREAS, this Agreement shall set forth the basis of the business relationship between Mirant and PennEnergy by establishing the terms and conditions by which PennEnergy shall provide services to Mirant and the fees that it shall receive for all of those services.

NOW, THEREFORE, in and for the mutual promises and covenants contained herein, and for otherwise good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed as follows:

- 1.0 *Scope of Services.*** PennEnergy, utilizing its best reasonable efforts, shall provide to Mirant the marketing, sales, and support activities, including but not limited to those described in ATTACHMENT “A”, to enable Mirant to introduce, offer for sale, and consummate the sale of the equipment as set forth in ATTACHMENT “C” to this Agreement (the “Equipment Items”). These Equipment Items may be more particularly described in one or more quotations or other documents that Mirant or PennEnergy might hereafter cause to be provided to one another. As part of the business relationship between Mirant and PennEnergy, PennEnergy will provide an online exchange and will list and promote the sale of each Equipment Item on Mirant’s behalf through the Internet. PennEnergy will also provide monthly marketing activity reports (“Monthly Marketing Reports”) as outlined in ATTACHMENT A, which will include any interested and credible buyers of the Equipment Items and the associated project (such specified potential buyers and the associated project shall be qualified as “Prospects”).
- 2.0 *Information.*** As Mirant and PennEnergy conduct the business relationship and its associated agreements described in Section 1.0 above (the “Business Relationship”), (i) Mirant and PennEnergy will be exchanging written and oral information that is confidential or proprietary to either or both of Mirant and PennEnergy, and (ii) Mirant and PennEnergy may cause others to disclose information to PennEnergy and to Mirant that is confidential or proprietary (collectively, “Information”).

- 3.0 Confidentiality.** Mirant and PennEnergy agree that neither Mirant nor PennEnergy will use any Information for any purpose other than evaluating and/or establishing the Business Relationship, and/or carrying out its associated agreements and transactions, and/or listing, promoting, and selling each Equipment Item through PennEnergy's online exchange or otherwise through PennEnergy's efforts (the "Permitted Purposes"). Nor will either Mirant or PennEnergy as a receiving party disclose any Information to any third party which does not have a "need-to-know" such Information in carrying out the Permitted Purposes. In the case of a third party who is not an employee of the receiving party, no such disclosure shall be made until such third party has signed a Confidentiality Agreement provided and executed by Mirant or PennEnergy, as applicable.
- 4.0 Exclusivity.** Except for an Affiliate Transaction described in Section 5.0 below, Mirant grants PennEnergy the exclusive right to list and promote the sale of each Equipment Item on Mirant's behalf, for the purpose of selling or transferring any portion of any Equipment Item(s) to one or more Prospect(s), and Mirant agrees not to take any action to circumvent PennEnergy by forming a relationship with any Prospect, either directly or indirectly (other than through PennEnergy) for the purpose of selling or transferring any portion of any Equipment Item(s). However, Mirant reserves the right in its sole and absolute discretion to designate any person or entity an "Excluded Prospect." PennEnergy agrees not to contact or share any Information with any Excluded Prospect or take any other action for the purpose of selling or transferring Equipment Items to an Excluded Prospect.
- 5.0 No Obligation to Sell.** Mirant reserves the right, in its sole and exclusive discretion, to decline or otherwise reject a sale or opportunity generated under this Agreement. Nothing in this Agreement shall be construed to create an obligation on behalf of Mirant to sell any Equipment Item. Furthermore, Mirant reserves the right to sell, transfer or convey any of the Equipment Items to any affiliate of Mirant (an "Affiliate Transaction"), and any such Affiliate Transactions are excluded from the Business Relationship contemplated in this Agreement. It is understood and agreed that an affiliate of Mirant is any entity that controls, is controlled by, or is under common control with Mirant.
- 6.0 Marketing.** PennEnergy, in addition to the services provided pursuant to Paragraph 1, shall provide at PennEnergy's sole cost, subject to Paragraph 15 hereof, the following additional marketing services during the Term of the Agreement, subject to the prior review and approval by Mirant:
- 6.1 Monthly ½ page ads in *Power Engineering* magazine beginning with the next issue for which the ad closing date is not less than one week following the effective date of this Agreement
 - 6.2 Monthly ½ page ads in *Power Engineering International* magazine beginning with the next issue for which the ad closing date is not less than one week following the effective date of this Agreement
 - 6.3 Monthly ½ page ads in *Electric, Light & Power* magazine beginning with the next issue for which the ad closing date is not less than one week following the effective date of this Agreement

- 6.4 A minimum of 3, ½ page ads in *Oil & Gas Journal* magazine
- 6.5 A minimum of 3, ½ page ads in *Offshore* magazine
- 6.6 A minimum of 3, ½ page ads in *Oil, Gas & Petrochem Equipment* magazine
- 6.7 Monthly broadcast email messages to PennEnergy's database of power generation equipment buyers
- 6.8 Representation at POWER-GEN EUROPE 2004, POWER-GEN INTERNATIONAL 2004 and Canada Power 2004 including booth graphics and show guide ads and attendee bag literature, as available; provided in each case that not less than 45 days remain in the Term (including any renewal, if any) at the commencement of each conference.

7.0 *Term.* This AGREEMENT shall become effective on the 21 day of May, 2004, subject to the required approvals in Paragraph 14 and shall remain in force for a period of 6 months thereafter (the "Term"). It is understood and agreed that this AGREEMENT constitutes an agency coupled with an interest and shall therefore be irrevocable during the Term, provided however, that if PennEnergy's performance under this Agreement is non-compliant with the material terms and conditions of this Agreement, then Mirant shall provide notice of such default to PennEnergy. PennEnergy shall have ten (10) calendar days to cure such default. If PennEnergy has not effectuated such cure, then Mirant may terminate this AGREEMENT for default and it shall have no liability to PennEnergy for such termination.

8.0 *No Guarantees.* PennEnergy makes no representations or guarantees that a sale or exchange of Equipment Items or other items will actually occur.

9.0 *Compensation.* Upon Mirant's receipt of Bankruptcy Court approval of the sale of each Equipment Item, PennEnergy shall be entitled to receive, and shall be deemed to have earned, the referral fee set forth in ATTACHMENT "B" if, when, and as each Equipment Item is sold, transferred, or provided by Mirant or through Mirant directly or indirectly to any Prospect (including any Excluded Prospect) while this Agreement is in force and PennEnergy shall be paid solely from the proceeds of any such sale or transfer. In the case of any Affiliate Transactions, the referral fee will not apply and PennEnergy will not be entitled to any compensation.


10.0 *After-Sales.* If prior to or within 6 months after the termination, expiration, or other ending of this Agreement, Mirant enters into a binding contract for a sale, transfer, or provision of any Equipment Item with or on behalf of any Prospect identified as a direct contact in one or more of the Monthly Marketing Reports received by Mirant prior to the termination of this Agreement and such sale is fully and finally closed with such Prospect or its assigns after the termination, expiration or other ending of this Agreement, PennEnergy will be entitled to the full referral fee(s) stated in Section 9.0 above for each such Equipment Item.

11.0 *Governing Law.* This AGREEMENT shall be governed by the laws of the State of New York, USA (excluding rules on conflicts of laws).

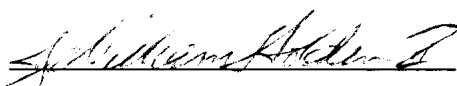
- 12.0 **General.** The terms of this AGREEMENT may not be altered by any course of performance between Mirant and PennEnergy, any course of dealing, or any usage of trade. Except as may be specifically set forth in this AGREEMENT, this AGREEMENT may be amended or terminated only by a written instrument executed by both Mirant and PennEnergy. Either Mirant's or PennEnergy's failure to enforce a provision of this AGREEMENT shall not be construed as a waiver of such Mirant's or PennEnergy's respective rights to enforce such provision.
- 13.0 **Counterparts.** This AGREEMENT may be executed simultaneously in one or more counterparts (including by fax), each of which shall be deemed an original, but all of which together will constitute one and the same Agreement, and which shall be sufficiently evidenced by any one of such original counterparts. The undersigned acknowledge and accept that their faxed signatures shall be as legally binding as their signatures upon originals.
- 14.0 **Approvals.** Mirant and PennEnergy acknowledge and agree that this AGREEMENT is subject to any and all necessary internal corporate approvals of Mirant and approval of the Bankruptcy Court having jurisdiction over Mirant's chapter 11 cases.
- 15.0 **Cost Pending Bankruptcy Court Approval.** Pending Bankruptcy Court approval, Mirant shall be responsible for the direct costs of placing the advertisements described in Paragraph 6, up to a maximum of \$100,000 (the "Advertising Costs"); provided, however that PennEnergy shall be responsible for arranging for the placement of such advertisements at a rate equal to 80% of the 6-times frequency rate published in the 2004 media kits for such publications. Within five business days of final approval of this Agreement by the Bankruptcy Court, PennEnergy shall reimburse Mirant for any Advertising Costs incurred and initially paid by Mirant.

IN WITNESS WHEREOF, Mirant and PennEnergy, intending to be legally bound hereby, have caused this Agreement to be executed through their duly-authorized representatives.

PennEnergy, Inc.

By: 
Title: COO
Date: 5/21/04

Mirant Corporation on behalf of itself and each of its affiliated Debtors

By: 
Title: SVP & TREASURER
Date: 5/20/04

ATTACHMENT "A"

Scope of Services

- PennEnergy shall market the Equipment Items through publication ads, broadcast e-mail messages, representation at conferences, and utilizing its expertise and contacts in both the global and domestic marketplace to introduce, promote and present all credible opportunities to Mirant and assist in the consummation of targeted sales transactions.
- PennEnergy shall provide Monthly Marketing Reports by the end of the first week of the calendar month presenting marketing activities for the prior month to date. Such reports shall include:
 - Audit statements verifying circulation for publications used in advertising
 - Summary breakdown and description of contacts for e-mail blasts
 - Summary of direct contacts with credible buyers
 - List of interested and credible buyers and the associated projects
 - Any information reasonably available on similar transactions that may have taken place in the market
- PennEnergy shall provide other sales activities that will include, but are not limited to:
 - Assisting in establishing confidentiality agreements between Prospects and Mirant
 - Providing and managing due diligence material to Prospects, as well as equipment site visits and addressing high level questions
 - Determining credibility of Prospects (financial wherewithal, permitted projects, etc.)
 - Coordinating OEM support required to complete a sale
 - Other activities as necessary to complete sale
- PennEnergy shall provide support to Mirant, the Creditor Committees and/or advisors, and Bankruptcy Court for and in the approval of any given transaction. Such activities may include:
 - Providing testimony, affidavits, or meeting presentations on a given Mirant equipment sale and similar completed transactions in the market place (including known or estimated transaction prices and terms.)
 - Other support as necessary for court approval

ATTACHMENT "B"

Compensation

Referral Fee:

- For new Prospects, PennEnergy shall be paid in accordance with the below-listed decreasing scale of fees for any given Mirant equipment transaction that is actually closed and booked as a final sale. The referral fee is based on a percentage of gross sales price for any given transaction, net of any applicable taxes, as follows:
 - 3% for the first \$0- \$25 MM of the transaction sale price
 - 2.75% for the next \$25-50 MM of the transaction sale price
 - 2.5% for the next \$50-75MM of the transaction sale price
 - 2.25% for all amounts in excess of \$75 MM of the transaction sale price

- 1.5% for pre-existing Prospect of Wisconsin Energy's Port Washington Generating Station Project.

In either case, the referral fee described above is the only compensation that PennEnergy is entitled to receive for its services provided under the Agreement.

ATTACHMENT "C"

Equipment Items List

The Equipment Items covered by this Agreement are the equipment items described in this Attachment C. Each Equipment Item is understood to include each such equipment item and each portion of such item.

From Mirant's Bowline Facility:

- (3) GE 7FA dual fuel combustion turbines
- (3) IHI HRSG's for use with GE 7FA combustion turbines
- (1) GE D-11 steam turbine generator rated at 342.016 MW output

From Mirant's storage facility in Memphis, TN

- (1) GE D-11 steam turbine generator rated at 250 MW output

From Mirant's Wyandotte Facility:

- (2) Mitsubishi 501 F combustion turbines
- (2) IHI HRSG's for use with Mitsubishi 501 combustion turbines
- (1) Mitsubishi steam turbine generator



Equipment Exchange

May 20,2004

Rick Williamson
Thomassen Amcot International
6509 Muirfield Road
Ft. Worth, TX 76132

Dear Mr. Williamson:

Subject: Fee Sharing Agreement

This Fee Sharing letter agreement (the "Agreement") confirms the following understandings and agreements:

1.0 Definitions As used in this Agreement:

"You," "your," and "Sub-Broker" refer to Mr. Rick Williamson, an individual resident of Texas and to Thomassen Amcot International. "We," "us," "our," and "OGJE" and "Head-Broker" refer to PennEnergy, Inc., acting through its Oil & Gas Journal Exchange division. You and we may also each be called a "party" and collectively the "parties."

"Buyer" means any potential purchaser of any Equipment Item identified in Attachment A to this Agreement.

2.0 Engagement You and we acknowledge and agree that we will be acting as Head-Broker under an exclusive contract with Mirant Corporation (the "Principal"), to locate Buyer(s) for certain equipment items described in Attachment A to this Agreement (the "Equipment Items"). We as Head-Broker wish to engage you as Sub-Broker, upon execution of such contract with the Principal, to assist us in locating Buyer(s) for the Equipment Items.

3.0 Commission In consideration for the Equipment Items being purchased, leased, or otherwise transferred (each, a "Transfer") from the Principal to any Buyer, we agree to pay you one-half (1/2) of Our Fee (the "Commission"). "Our Fee" shall mean the gross fee paid by the Principal, if any, for our services concerning the Equipment Items that are conveyed to a Buyer in a Transfer, less any sales related expenses or payments to a third party which have been agreed to in writing by both you and us. We shall pay you such Commission promptly upon our receipt of Our Fee. You agree to be responsible for any and all taxes and other charges (income, withholding, and otherwise) that may be assessed, levied, or otherwise imposed by any governmental authority anywhere in the world concerning any monetary amount that we pay you under this Agreement. You agree to defend, indemnify, and hold harmless us and our privies from and against any claim

that may be asserted against us or any of our privies by any such governmental authority concerning any such amount.

4.0 Non-Circumvention We hereby irrevocably agree not to circumvent, avoid, or bypass you in any transaction initiated, introduced, or otherwise disclosed by you with any Buyer involving any Equipment Item (a "Transaction"), nor assist any other corporation, partnership, individual, or other entity (a "Third Party") to do any of the foregoing, directly or indirectly.

5.0 Non-Disclosure

5.1 *Obligations.* "Confidential Information" shall mean any technical, business, financial, customer, or other information disclosed by one party to the other party under this Agreement which is marked "Confidential" or "Proprietary," or which, under all of the given circumstances, ought reasonably to be treated as confidential information of the disclosing party. Each receiving party shall: (i) treat as confidential all Confidential Information of the disclosing party; (ii) not use such Confidential Information except to carry out a Transaction and/or to complete a Transfer; (iii) implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse, or removal of the disclosing party's Confidential Information; (iv) not disclose such Confidential Information to any third party except as reasonably necessary to carry out a Transaction and/or to complete a Transfer; and (v) only disclose the Confidential Information to those of its employees who have need to know such Confidential Information in order for the receiving party to exercise its rights and fulfill its obligations set forth in this Agreement. Without limiting the foregoing, each of the parties shall protect the Confidential Information using at least the same procedures and degree of care that it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care.

5.2 *Exceptions.* Neither party shall have liability to the other party concerning any Confidential Information which: (i) was publicly known and available at the time it was disclosed, or becomes publicly known and available, through no fault of the receiving party; (ii) was known to the receiving party without restriction at the time of disclosure as shown by the files of the receiving party in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of the disclosing party's Confidential Information, *provided that* the receiving party can demonstrate such independent development by documented evidence prepared contemporaneously with such independent development; or (v) is disclosed by order of a court, administrative agency, or other governmental body, *provided that* the receiving party shall provide prompt advance notice of such anticipated disclosure to enable the disclosing party to seek a protective order or otherwise to prevent such disclosure.

6.0 Sub-Broker's Warranty Sub-Broker hereby represents and warrants that Sub-Broker has no agency or other similar relationship with any Buyer, which relationship would or may entitle Sub-Broker to any compensation or reimbursement whatsoever from such Buyer on account of any Transaction or completed Transfer. We hereby represent and warrant that we have no agency or other similar relationship with any Buyer, which relationship would or may entitle us to any compensation or reimbursement whatsoever from such Buyer on account of any Transaction or completed Transfer.

Mr. Rick Williamson
April 7, 2004
Page 3 of 4

7.0 Term and Termination This Agreement is valid for a period of one (1) year from the date first above written.

8.0 Choice of Law; Dispute Resolution This Agreement shall be governed by the laws of the State of New York, USA (excluding rules on conflicts of laws). Any controversy related to this Agreement shall be heard in the appropriate State or Federal court in New York City, New York, and each of Sub-Broker and Head-Broker consents to the jurisdiction of such courts. Should a material dispute arise between us and the Principal, we agree to consult with you before pursuing litigation against the Principal.

9.0 General Provisions The terms of this Agreement may not be altered by any course of performance between the parties, any course of dealing, or any usage of trade. Except as specifically set forth in this Agreement, this Agreement may be amended or terminated only by a written instrument executed by both parties. Either party's failure to enforce a provision of this Agreement shall not be construed as a waiver of such party's rights to enforce such provision.

10.0 Counterparts This Agreement may be executed in one or more counterparts (including by fax), each of which shall be deemed an original, but all of which together will constitute one and the same agreement, and which shall be sufficiently evidenced by any one of such original counterparts.

11.0 Effective Date This Agreement shall become effective as of the date first above written.

If this accurately sets forth our understandings and agreements concerning the fee sharing arrangement for the Equipment Items, please so indicate by providing an authorized signature below and returning one fully signed original to me. Thank you.

Sincerely,

AGREED AND ACCEPTED:

Paul Westervelt
VP and Chief Operating Officer
Oil & Gas Journal Equipment Exchange

Thomassen Amcot International

By: _____

Title: _____

Attachment A

Equipment Items

From Mirant Corporation's Bowline Facility:

- (3) GE 7FA dual fuel combustion turbines
- (3) IHI HRSG's for use with GE 7FA combustion turbines
- (1) GE D-11 steam turbine generator rated at 342.016 MW output
- (1) GE D-11 steam turbine generator rated at 250 MW output

From Mirant Corporation's Wyandotte Facility:

- (2) Mitsubishi 501 F combustion turbines
- (2) IHI HRSG's for use with Mitsubishi 501 combustion turbines
- (1) Mitsubishi steam turbine generator

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

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML
Debtors.)	Jointly Administered
)	Hearing Date and Time: To Be Set

AFFIDAVIT AND DISCLOSURE STATEMENT OF RICHARD WILLIAMSON

STATE OF TEXAS)
) ss.:
COUNTY OF Tarrant)

Richard Williamson, being duly sworn, deposes and says:

1. I am President of Thomassen Amcot International LLC, ("TAI"). I am authorized to execute this Affidavit on behalf of TAI. TAI is an Independent Asset divesture consultant working under a co-brokerage agreement with Pennenergy Inc., ("Sub-Broker Agreement"), in support of the "Application for Order, Under Bankruptcy Code Sections 327(a) and 328(a), Authorizing Employment and Retention of PennEnergy, Inc. (Oil & Gas Journal Exchange) as the Debtors' Turbine Marketers and Brokers" (the "Application").

2. Unless otherwise stated, I have personal knowledge of the facts hereinafter set forth. PennEnergy desires to be engaged by Mirant Corporation and its affiliated debtors (collectively, "Mirant" or the "Debtors") as the Debtors' turbine brokers and marketers. TAI will work with Pennenergy to promote the sale of turbines or related equipment, utilizing its knowledge of the Power generation industry. TAI, along with PennEnergy will use its industry

knowledge to present credible sales opportunities for the turbines and related equipment. TAI with PennEnergy, will assist in the consummation of targeted credible sales transactions. I understand that the Debtors are required to seek separate court approval under Bankruptcy Code section 363 of the sale of any turbines or related equipment.

3. TAI and certain of its officers and employees have in the past, currently, and may in the future serve as advisors to certain of the companies that currently or in the future may be creditors or claimants of the Debtors. However such services are wholly unrelated to the services that TAI as a sub-broker to PennEnergy will render to the Debtors and will not, in the good faith opinion of TAI, represent an interest materially adverse to the Debtors, their estates, their creditors or any other party in interest herein or their attorneys or accountants in the matters for which PennEnergy is proposed to be engaged. Out of an abundance of caution, TAI discloses that it is currently retained by LSP – Nelson Energy, LLC and NRG Nelson Turbines LLC. to provide similar services, authorized by the United States Bankruptcy Court of the Southern District of New York, in Case No. 03-13024, *In re NRG Energy, Inc., et.al.*, wholly unrelated to the services that TAI as a sub-broker to PennEnergy will render to the Debtors.

4. Insofar as I have been able to ascertain, TAI and its employees:

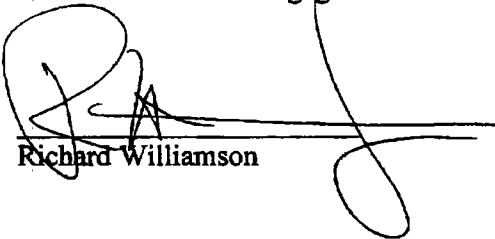
- (a) Are not creditors, equity security holders, or insiders of Debtors;
- (b) Are not and were not an investment banker for any outstanding security of debtors;
- (c) Have not been, within three (3) years before the date of the filing of Debtors' chapter 11 petitions, (i) an investment banker for a security of Debtors, or (ii) an attorney for such investment banker in connection with the offer, sale, or issuance of a security of Debtors;
- (d) Are not and were not, within two (2) years before the date of the filing of Debtors' chapter 11 petitions, a director, officer, or

employee of Debtors or of any investment bankers as specified in subparagraph (b) or (c) of this paragraph; and


- (e) Do not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, Debtors or any investment banker as specified in subparagraph (b) or (c) of this paragraph, or for any other reason.

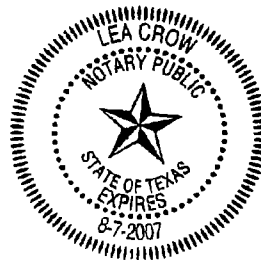
5. To the best of my knowledge, TAI and its employees do not have any relation to or connection with any judge of this Court or with the United States Trustee for this region or any person employed in the Office of the United State Trustee.

6. Pursuant to the sub-Broker Agreement, PennEnergy has agreed to share with TAI one half of all commissions paid by the Debtors. TAI will not seek any additional compensation from the estates. In addition, TAI will not seek from PennEnergy or the estates reimbursement for any expenses incurred in connection with this engagement.


Richard Williamson

Sworn to and Subscribed before me this 17th day of June, 2004


NOTARY PUBLIC
My Commission Expires: 8/7/07



understand that the Debtors are required to seek separate court approval under Bankruptcy Code section 363 of the sale of any turbines or related equipment.

3. PennEnergy is dedicated to providing trusted business intelligence and solutions to global energy professionals through its centralized, secure, neutral, and content-rich exchanges and web sites. In the complex and capital-intensive energy markets, PennEnergy joins buyers and sellers with effective "e-solutions" for their asset management challenges and satisfies their myriad information needs so critical to sound business decisions. PennEnergy has developed state-of-the-art technology for its e-commerce and content platforms. PennEnergy, a wholly-owned subsidiary of PennWell Corporation, has extensive marketing channels available in the power generation marketplace through PennWell's power industry magazines and POWER-GEN conferences in the United States, Europe, Asia, Canada, the Middle East and other international business centers worldwide.

4. As turbine brokers and marketers, PennEnergy will market the equipment identified on Attachment C to the "Marketing Engagement Agreement" appended to the Application through publication ads, broadcast e-mail messages, representation at conferences, and utilizing its expertise and contacts in both the global and domestic marketplace to introduce, promote and present all credible opportunities to Mirant and assist in the consummation of targeted sales transactions.

5. PennEnergy, its sole shareholder, and certain of its officers and employees have in the past, currently, and may in the future serve as advisors to certain of the companies that currently or in the future may be creditors or claimants of the Debtors. However such services are wholly unrelated to the services that PennEnergy will render to the Debtors and will


not, in the good faith opinion of PennEnergy, represent an interest materially adverse to the Debtors, their estates, their creditors or any other party in interest herein or their attorneys or accountants in the matters for which PennEnergy is proposed to be engaged. Out of an abundance of caution, PennEnergy discloses that it was retained by NRG Energy, Inc. to provide similar services, authorized by the United States Bankruptcy Court of the Southern District of New York, in Case No. 03-13024, *In re NRG Energy, Inc., et.al.*, wholly unrelated to the services that PennEnergy will render to the Debtors.

6. Insofar as I have been able to ascertain, PennEnergy and its employees:

- (a) Are not creditors, equity security holders, or insiders of Debtors;
- (b) Are not and were not an investment banker for any outstanding security of debtors;
- (c) Have not been, within three (3) years before the date of the filing of Debtors' chapter 11 petitions, (i) an investment banker for a security of Debtors, or (ii) an attorney for such investment banker in connection with the offer, sale, or issuance of a security of Debtors;
- (d) Are not and were not, within two (2) years before the date of the filing of Debtors' chapter 11 petitions, a director, officer, or employee of Debtors or of any investment bankers as specified in subparagraph (b) or (c) of this paragraph; and
- (e) Do not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, Debtors or any investment banker as specified in subparagraph (b) or (c) of this paragraph, or for any other reason.

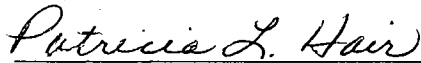
7. To the best of my knowledge, PennEnergy and its employees do not have any relation to or connection with any judge of this Court or with the United States Trustee for this region or any person employed in the Office of the United State Trustee.

8. The foregoing constitutes the statement of PennEnergy pursuant to Section 327 of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.



PAUL WESTERVELT

Sworn to and Subscribed
before me this *8th* day of
June, 2004



NOTARY PUBLIC

My Commission Expires: April 10, 2007