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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN 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.)	
)	Date and Time: July 28, 2004;
_____)	10:30 a.m.

**DEBTORS' MOTION TO REJECT EXECUTORY CONTRACT
BETWEEN DEBTOR MIRANT AMERICAS ENERGY MARKETING, LP
AND EL PASO NATURAL GAS COMPANY**

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

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq., as amended) (the "Bankruptcy Code") for authority to reject the "Transportation Service Agreement" (the "Contract") dated February 22, 2001 by and between Debtor Mirant Americas Energy Marketing, LP ("MAEM") and El Paso Natural Gas Company ("El Paso") which is described

below in greater detail and attached hereto as Exhibit A.¹ In support thereof the Debtors represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 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. This Court has jurisdiction to grant the relief requested herein. Specifically, El Paso has blanket certificate authority to enter into, and terminate, the Contract pursuant to 18 C.F.R. Part 284, Subpart G of the regulations of the Federal Energy Regulatory Commission (“FERC”), without FERC approval. These jurisdictional matters will be discussed more fully below.

II. 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.

¹ Not all parties were served with the attached Exhibit. Any party in interest may make a request upon Debtors’ counsel in writing for a copy of the Exhibit.

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 (“UST”) in these administratively consolidated cases.

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.

III. FACTUAL BACKGROUND

(i) *The Contract*.

6. El Paso owns and operates a gas transmission system (the “Transmission System”). MAEM and El Paso entered into the Contract to provide for transportation of 5,766 Mcf/day, gas on a firm basis, to the Debtors’ California plants.

7. The Contract requires the payment by MAEM to El Paso of demand charges in the amount of \$55,765/month. The Contract expires as of June 1, 2006.

8. On July 1, 2002, MAEM posted collateral in the form of a letter of credit (the “Letter of Credit”) in the amount of \$5 million issued by Wachovia Bank for El Paso’s benefit and that of a number of El Paso affiliates.² The Letter of Credit secures MAEM’s performance of its obligations under the Contract and various other agreements which are not being assumed or rejected hereunder. El Paso and three of its affiliates have made certain draws on the Letter of Credit such that the current amount available thereunder is \$829,289.59.

Although the principal amount of the Letter of Credit was \$5.0 million, only \$193,047 of the

² Specifically, MAEM has contracts with the following El Paso affiliates: ANR Gas Pipeline Company, Tennessee Gas Pipeline Company, Southern Natural Gas Company, and Gulf Terra Texas Pipeline, L.P.

Letter of Credit was allocated as collateral for the Contract. The Letter of Credit expired June 30, 2004.

9. At the time the Debtors entered into the Contract, they intended to use the firm gas transportation capacity to provide a greater supply of natural gas for the California plants. The Debtors have alternative supplies of fuel sufficient to meet the needs of the California plants and have no need for the firm transport capacity at any price.

IV. RELIEF REQUESTED

10. By this Motion, the Debtors hereby seek approval of the rejection of the Contract under section 365 of the Bankruptcy Code. The Debtors specifically direct this Court's attention to the fact that the Contract is a contract over which FERC has certain jurisdictional authority. However, the Debtors submit that there is no jurisdictional impediment to this Court granting the Motion.

11. The Debtors submit that the rejection of the Contract may, and should, be approved by this Court. El Paso has blanket certificate authority to enter into the Contract pursuant to 18 C.F. R. Part 284, Subpart G of FERC's regulations, and, as such, the agreement did not require specific FERC approval to MAEM and El Paso entering into such agreement. This blanket certificate authority granted to El Paso contains pre-granted automatic abandonment authority, and so FERC approval is also not required to "abandon" the service and terminate the Contract. 18 C.F. R. § 84.221(d). Certainly, if the parties have the authority to enter into and terminate the Contract without seeking explicit FERC approval due to El Paso's blanket

certificate authorization, the Debtors should be permitted to reject the Contract under the unique facts and circumstances presented here.³

V. BASIS FOR RELIEF

12. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, may assume or reject an executory contract of the debtor.” 11 U.S.C. § 365(a). An executory contract is defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *See In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994).

13. The Contract is an executory contract that may be rejected under section 365 of the Bankruptcy Code. *See, e.g., In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Power Cooperative, Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection Of the Contract Is Within the Debtors’ Business Judgment.

14. As noted previously, rejection of an executory contract requires court approval. A debtor’s decision to assume or reject will be approved, provided that it meets the “business judgment” test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d

³ Although El Paso has not specifically requested termination of the Contract pursuant to this Motion, conduct of a party may constitute consent. *See, e.g., Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 1769 (2003).

1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) (“[A] bankruptcy court applies the business judgment rule to evaluate a trustee’s rejection decision...”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor’s request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith).

15. The “business judgment” test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984). “The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.” *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

16. There are adequate, alternative supplies of natural gas sufficient to meet the needs of the California plants. Based upon the foregoing and for the reasons stated herein, the Debtors’ reasonable business judgment is that rejection of the Contract is necessary because the Debtors have no need for the firm capacity reserved by the Contract at any price.

VI. CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors request that the Court grant the relief requested herein, and any other relief that is necessary and proper.

Dated: July 1, 2004

Haynes and Boone, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

-and-

By /s/ Michelle C. Campbell

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the undersigned provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibit) via U.S. mail, and the addressees set forth below via U.S. mail (with exhibit) on the 1st day of July, 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue, Suite 1600
Austin, TX 78701

Deborah D. Williamson
Thomas Rice
Cox & Smith Incorporated
112 East Pecan St., Suite 1800
San Antonio, TX 78205-1505

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

Federal Energy Regulatory Commission
Attn: Dennis Lane
888 First Street, NE
Washington, DC 20426

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El Paso Natural Gas Company
Attn: David Cain
Legal Department
Mainline Transportation Department
P.O. Box 1087
Colorado Springs, CO 80944-1087

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El Paso Natural Gas Company
Attn: Mike J. McGinnis
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P.O. Box 2511
1001 Louisiana
Houston, TX 77252

El Paso Natural Gas Company
Attn: Don Zinko, VP, Marketing
Mainline Transportation Department
P.O. Box 1087
Colorado Springs, CO 80944-1087

/s/ Michelle C. Campbell

EXHIBIT A

TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of this 22nd day of February, 2001, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter referred to as "El Paso," and MIRANT AMERICAS ENERGY MARKETING, LP, a Delaware Limited Partnership, hereinafter referred to as "Shipper."

WHEREAS, El Paso owns and operates a natural gas transmission system; and

WHEREAS, El Paso has a blanket certificate authorizing transportation pursuant to Subpart G of Part 284 of the Regulations promulgated by the Federal Energy Regulatory Commission ("Commission"); and

WHEREAS, Shipper requires transportation of natural gas pursuant to Part 284, Subpart G, of the Commission's Regulations on a firm basis; and

WHEREAS, El Paso and Shipper have entered electronically into an agreement that provides for the firm transportation by El Paso of certain quantities of natural gas from existing Receipt Point(s) listed on Exhibit A to Delivery Point(s) listed on Exhibit B, pursuant to said Regulations, and now desire to memorialize such agreement in writing;

NOW THEREFORE, in consideration of the representations, covenants and conditions herein contained, El Paso and Shipper agree as of the date first above written as follows:

ARTICLE I

Gas to be Transported

1.1 Subject to the terms and provisions of this Agreement and of El Paso's Rate Schedule FT-1, El Paso agrees to receive on each day at each Receipt Point, such quantity of natural gas, if any, up to the Maximum Daily Quantity specified for each Receipt Point on Exhibit A, not to exceed the physical capacity of such point, as may be tendered to El Paso by Shipper (or for Shipper's account), and to transport such quantity on a firm basis for Shipper. The sum of the Maximum Daily Quantities reflected on Exhibit A shall constitute Shipper's Transportation Contract Demand reflected on Exhibit B.

1.2 In addition to the quantity which Shipper may tender or cause to be tendered to El Paso at each Receipt Point each day for firm transportation in accordance with

paragraph 1.1, Shipper shall tender or cause to be tendered to El Paso at that point that quantity of natural gas as may be required from time to time to compensate El Paso for fuel consumption, shrinkage and lost and unaccounted for volumes associated with such transportation. Such additional quantity is additive to (and shall not be considered as constituting a part of) Shipper's Maximum Daily Quantity at such Receipt Point.

1.3 In accordance with Section 4.1 of the General Terms and Conditions incorporated by reference in Rate Schedule FT-1, El Paso shall deliver and Shipper shall accept or cause to be accepted at the Delivery Point(s) referenced in paragraph 2.2 of Article II, a quantity of natural gas equivalent, on a dth basis, to the sum of the quantities of natural gas received by El Paso at the Receipt Points for transportation hereunder in accordance with paragraph 1.1; provided, however, that in no event shall El Paso be obligated to deliver on any day a quantity in excess of Shipper's Transportation Contract Demand set forth on Exhibit B.

1.4 Upon request of Shipper, El Paso, at its reasonable discretion, may receive, transport, and deliver natural gas in excess of Shipper's Transportation Contract Demand. If El Paso elects to transport said excess gas, Shipper shall pay El Paso pursuant to the terms and conditions set forth in El Paso's Rate Schedule FT-1.

1.5 If on any day El Paso should determine that the transportation capacity of its facilities is insufficient to transport all volumes of natural gas up to the Transportation Contract Demand tendered for transportation under this Agreement and by other shippers under similar, firm transportation agreements, El Paso shall allocate the available transportation capacity on the basis set forth in the General Terms and Conditions incorporated by reference in El Paso's Rate Schedule FT-1.

ARTICLE II

Receipt Point(s), Delivery Point(s) and Delivery Pressures

2.1 The Receipt Point(s) at which Shipper shall cause natural gas to be tendered to El Paso for transportation hereunder are described in Exhibit A to this Agreement. The delivery pressure and other pertinent factors are also set forth in Exhibit A.

2.2 The Delivery Point(s) at which El Paso shall deliver hereunder, are described in Exhibit B to this

Agreement. The delivery pressure and other pertinent factors applicable to the Delivery Point(s) are also set forth in Exhibit B.

ARTICLE III

Rate, Rate Schedule(s) and General Terms and Conditions.

3.1 Shipper shall pay El Paso for services rendered hereunder in accordance with El Paso's Rate Schedule FT-1, or superseding rate schedule(s), on file with and subject to the jurisdiction of the Commission and lawfully in effect from time to time.

3.2 The parties hereto agree that El Paso shall have the right from time to time to propose and file with the Commission, in accordance with Section 4 of the Natural Gas Act, changes, amendments, revisions and modifications in:

- (a) the rate(s) and Rate Schedule incorporated by reference as a part of this Agreement pursuant to this Article III; and
- (b) the General Terms and Conditions incorporated by reference in said Rate Schedule, which are applicable hereto;

provided, however, that Shipper shall have the right to protest any such changes before the Commission (or successor governmental agency) or other authorities and to exercise any other rights that Shipper may have with respect thereto.

3.3 This Agreement in all respects is subject to the provisions of El Paso's Rate Schedule FT-1, or superseding rate schedule(s), and applicable provisions of the General Terms and Conditions included by reference in said transportation rate schedule filed by El Paso with the Commission, all of which are by reference made a part hereof.

3.4 Certain of the General Terms and Conditions may be adjusted for the purpose of this Agreement and any such adjustments shall be set forth in Exhibit C to this Agreement.

{NOT APPLICABLE}

ARTICLE IV

Regulatory Requirements and Conditions Precedent

4.1 The transportation arrangements provided for in this Agreement are subject to the provisions of Subpart G of Part 284 of the Commission's Regulations, as amended from time to time.

4.2 Transportation of natural gas provided for under the terms and provisions of this Agreement shall not commence until the following conditions have been met:

(NOT APPLICABLE)

ARTICLE V

Term

5.1 This Agreement shall become effective as of June 1, 2001.

5.2 After this Agreement becomes effective, it shall continue in full force and effect through May 31, 2006. This Agreement shall terminate as of June 1, 2006.

5.3 Termination of this Agreement shall not relieve El Paso or Shipper of the obligation to correct any volume imbalances hereunder, or either party of the obligation, if any, to pay monies to the other party.

ARTICLE VI

Cancellation of Prior Contracts

6.1 When this Agreement becomes effective, it supersedes and cancels as of the effective date hereof the following contracts between the parties hereto:

(NOT APPLICABLE)

ARTICLE VII

Notices

7.1 Any formal notice, request or demand that either party gives to the other respecting this Agreement shall be in writing and shall be mailed by registered or certified mail or delivered in hand to the following address of the other party:

El Paso: El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79978
Attention: Director, Mainline Transportation
Department

Shipper: Mirant Americas Energy Marketing, LP
1155 Perimeter Center West
Suite 130
Atlanta, Georgia 30338-5416 United States
Attention: Mr. Will van den Boom (Notices)
Attention: Ms. Heather Nason (Invoices)

or to such other address as a party shall designate by formal written notice. Routine communications may be mailed by ordinary mail. Operating communications by telephone, facsimile or other mutually agreeable means shall be considered as duly delivered without subsequent written confirmation. Payments to El Paso for services rendered hereunder shall be made in accordance with Section 6 of the General Terms and Conditions incorporated by reference in Rate Schedule FT-1.

ARTICLE VIII

Other Operating Provisions

8.1 The parties hereto acknowledge that this Agreement or any operation conducted pursuant thereto does not constitute an implied waiver or intentional forfeiture of any rights of either party otherwise available under the Federal Energy Regulatory Commission's Order Nos. 436, et seq.; 451, et seq.; 500, et seq.; or 636, et seq.

8.2 El Paso's obligation to deliver quantities of natural gas hereunder depends on Shipper causing its producers/suppliers to operate so the volumes necessary for Shipper's Transportation Contract Demand in the aggregate are tendered at the Receipt Point(s) capable of receiving such supplies on any day, in accordance with Exhibit A of this Agreement.

ARTICLE IX

Miscellaneous

9.1 El Paso and Shipper expressly agree that the laws of the State of Texas shall govern the validity, construction, interpretation and effect of this Agreement and of the General Terms and Conditions incorporated by reference in El Paso's Rate Schedule FT-1.

9.2 All substances, whether or not of commercial value, including all liquid hydrocarbons of whatever nature, except substances expressly reserved for Shipper, that El Paso recovers in the course of transporting the quantities of natural gas tendered hereunder to Shipper shall be El Paso's sole property and El Paso shall not be obligated to account to Shipper for any value, whether or not realized by El Paso, that may attach or be said to attach to such substances.

9.3 Exhibits A, B and C, attached to this Agreement, are hereby incorporated by reference as part of this Agreement. The parties may amend Exhibits A, B or C by mutual agreement, which amendments shall be reflected in a revised Exhibit A, B or C and shall be incorporated by reference as part of this Agreement.

9.4 Addendum 1, attached to this Agreement, is hereby incorporated by reference as part of this Agreement.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed in two original counterparts, by their duly authorized officers, the day and year first set forth herein.

ATTEST:

EL PASO NATURAL GAS COMPANY

By _____
Assistant Secretary

By *[Signature]*
Vice President

ATTEST:

MIRANT AMERICAS ENERGY
MARKETING, LP

John F. Hogan

By _____
Assistant Secretary

By *John F. Hogan*
Title *Director West Gas Trading*
4/11/01

EXHIBIT A

To The
 Transportation Service Agreement
 Dated February 22, 2001
 Between El Paso Natural Gas Company
 and Mirant Americas Energy Marketing, LP

<u>Receipt Point(s)</u>	<u>Delivery Pressure(s) (psig)*</u>	<u>Maximum Daily Quantity (Mcf)</u>
<u>El Paso San Juan Basin Mainline System</u> (EPNG Code 216822) Any point of interconnection existing from time to time on El Paso's contiguous mainline facilities in the San Juan Basin	Actual operating pressure, not to exceed MAOP of that Facility	**
<u>El Paso Anadarko Mainline System</u> (EPNG Code 216823) Any point of interconnection existing from time to time on El Paso's contiguous mainline facilities in the Anadarko Basin	Actual operating pressure, not to exceed MAOP of that Facility	**
<u>El Paso Permian Mainline System</u> (EPNG Code 216824) Any point of interconnection existing from time to time on El Paso's contiguous mainline facilities in the Permian Basin	Actual operating pressure, not to exceed MAOP of that Facility	**

* Necessary pressure to enter the El Paso System and, except as otherwise noted, not in excess of.

** El Paso shall be obligated to receive hereunder, in accordance with paragraph 1.1 of the Agreement and Section 4.2 of the General Terms and Conditions contained in El Paso's Volume No. 1-A Tariff, or superseding tariff, up to 5,776 Mcf per day of natural gas in the aggregate from all Receipt Point(s), plus applicable fuel, shrinkage and lost and unaccounted for volumes as provided in paragraph 1.2 of the Agreement.

EXHIBIT A

To The
Transportation Service Agreement
Dated February 22, 2001
Between El Paso Natural Gas Company
and Mirant Americas Energy Marketing, LP

- A. Effective Date of this Exhibit A: June 1, 2001.
- B. Supersedes Exhibit A Effective: This is an initial Exhibit A.

MIRANT AMERICAS ENERGY MARKETING, EL PASO NATURAL GAS COMPANY

LP John F. Hogan

By John P. Hogan 4/14/01

By [Signature]
Vice President

Title Director West Coast Trading

Date 4/14/01

Date 4/27/01

EXHIBIT B

To The
Transportation Service Agreement
Dated February 22, 2001
Between El Paso Natural Gas Company
and Mirant Americas Energy Marketing, LP

Maximum
Daily
Quantity
(Mcf)

Delivery Point(s)

PG&E Topock

(EPNG Code 157)

Interconnection between the facilities of El Paso and Pacific Gas and Electric Company located at a point on the borderline between the States of Arizona and California near Topock, Arizona

Shipper's Transportation
Contract Demand:

5,776 Mcf

Unless otherwise specified on this exhibit, the Delivery Pressure(s) for the point(s) listed above shall be the pressure existing from time to time at the metering facility; however, El Paso reserves the right to deliver quantities at pressures up to the MAOP of that facility.

* El Paso shall be obligated to deliver hereunder, in accordance with paragraph 1.3 of the Agreement and Section 4.2 of the General Terms and Conditions contained in El Paso's Volume No. 1-A Tariff, or superseding tariff, up to the MDQ of 5,776 Mcf per day of natural gas in the aggregate at all Delivery Points, not to exceed any stated MDQ at a Delivery Point; provided, that El Paso shall be obligated to deliver hereunder only Shipper's quantities of natural gas received pursuant to this Agreement in the aggregate at all Delivery Point(s).

A. Effective Date of this Exhibit B: June 1, 2001.

B. Supersedes Exhibit B Effective: This is an initial Exhibit B.

MIRANT AMERICAS ENERGY MARKETING,

EL PASO NATURAL GAS COMPANY

LP John E. Hogan

BY John E. Hogan

BY [Signature]

Vice President

Title Director West Cash Trading

Date 4/11/01

Date 4/27/01

ADDENDUM 1

To The
Transportation Service Agreement
Dated February 22, 2001
Between El Paso Natural Gas Company
and Mirant Americas Energy Marketing, LP

OTHER PROVISIONS:

Right-of-First-Refusal Pursuant to Section 20.16 of the Tariff: The capacity offered under this posting is subject to the Right-of-First Refusal by El Paso Merchant Energy-Gas L.P. ("EPME"), the current holder of this firm capacity.

The capacity being offered is capacity included in Block III, as described in Section 4.5 of the General Terms and Conditions of the Tariff. The capacity available pursuant to this ROFR Posting is 118,267 Mcf/d (120,987 MMBtu/d).

Bids shall be submitted in accordance with the procedures of Section 28.9 of the General Terms and Conditions of the Tariff. All awarded bids are binding. No contingent bids will be considered. A single bidder may submit multiple bids within this posting as long as the total volume of such bids does not exceed the capacity available in the posting.

A bidder may specify a minimum acceptable award volume.

Capacity is Subject to the Provisions of the Tariff
The capacity awarded pursuant to this posting is subject to the provisions of the Tariff as it exists from time to time. Specifically, parties bidding on the capacity being made available by this posting are hereby advised that El Paso's capacity allocation procedures are under review by the Federal Energy Regulatory Commission ("FERC") at Docket Nos. RP99-507-000 and RP00-139-000. Accordingly, any party(ies) that successfully bids on and is subsequently awarded capacity pursuant to this posting will be bound by any changes to the Tariff provisions resulting from such proceeding and approved by the FERC.

Creditworthiness

All potential bidders must have the appropriate creditworthiness approval prior to submitting any bids; otherwise, the bid will be invalidated. Please contact Ms. Sharon Kimball at (713) 420-2062 to arrange for the necessary creditworthiness determination.

Bid Term

All bid terms will begin on June 1, 2001. Bidder must specify a bid term end date. The minimum term for any bid hereunder shall be one (1) month. The maximum term that may be specified for any bid is unlimited. However, for bid evaluation purposes only, any bid term in excess of five (5) years will be capped at five (5) years. Notwithstanding the above, under any TSA resulting from this ROFR Posting the term actually

ADDENDUM 1

To The
Transportation Service Agreement
Dated February 22, 2001
Between El Paso Natural Gas Company
and Mirant Americas Energy Marketing, LP

reflected shall be the term bid and awarded pursuant to Section 28.10 of the General Terms and Conditions of the Tariff.

Bid Rates

Bidders shall submit their bids as a percentage of the maximum California reservation rate. All bid rates shall be the monthly reservation rate component of the transportation rate in accordance with Section 28.9 of the General Terms and Conditions of the Tariff.

Under any TSA resulting from this ROFR Posting, the maximum usage rate and maximum usage surcharges will be charged consistent with Section 28.16 of the General Terms and Conditions of the Tariff. All rates, charges, and surcharges shall be assessed under Rate Schedule FT-1 of the Tariff as those amounts may be changed from time to time or altered by regulatory authority.

The maximum California reservation rate includes the base reservation rate, the reservation surcharges and, through December 31, 2003, the reservation add-on. For the period starting January 1, 2004, the maximum California reservation rate includes only the California base reservation rate and reservation surcharges.

Minimum Acceptable Monthly Reservation Rate

El Paso is offering for bid the capacity available pursuant to this posting subject to a disclosed Minimum Acceptable Monthly Reservation Rate that is one hundred percent (100%) of the maximum California reservation rate (inclusive of base reservation rate, reservation add-on and reservation surcharges, as applicable).

Fuel

For all transportation service provided hereunder, fuel and/or shrinkage shall be assessed at the applicable maximum Rate Schedule FT-1 fuel percentage as it exists from time to time in the Tariff.

Minimum Bid Volume

The minimum bid volume shall be 4,888 Mcf/d (5,000 MMBtu/d). The bid volume will remain constant for the term of each individual bid, i.e., the bid volume will not vary from month to month.

Primary Delivery Point Access

The primary delivery point for capacity awarded pursuant to this ROFR Posting shall be the PG&E Topock delivery point (DRN 157).

El Paso agrees that upon written notification, given no less than five (5) business days in advance, successful bidder(s) for Block III capacity hereunder will be permitted to permanently redesignate some or all of the awarded capacity to upstream primary delivery point(s) at the

ADDENDUM 1

To The
Transportation Service Agreement
Dated February 22, 2001
Between El Paso Natural Gas Company
and Mirant Americas Energy Marketing, LP

awarded reservation rate if capacity is available to, and at, such upstream delivery point(s).

Receipt Point Access

Any capacity awarded under this ROPR Posting shall have primary receipt point rights from all Basins.

Bid Evaluation Method

In accordance with Section 28.10(b)(iv) of the Tariff, the bid evaluation method is Option 3 - Releasing Shipper's Criteria. El Paso will utilize a bid evaluation method that is a variation of Option 1 - Weighted Composite Bid Calculation (See Section 28.10(b)(ii) of the Tariff) with one hundred percent (100%) weighted to the bid term, provided however, that any bid term in excess of five (5) years will be capped at five (5) years for bid evaluation purposes only.

Tie Breaker

In accordance with Section 28.10(f) of the General Terms and Conditions of the Tariff, If two or more bids are determined to be equal, then the tie breaking method for all equivalent bids shall be pro-rata based upon the volume bid and the volume available subject to bidder's minimum acceptable award volume.

Bid Evaluation and Awarding Capacity

Within two (2) business days of the close of this posting, El Paso will evaluate all of the bids and award the capacity pursuant to the procedures set forth herein.

Matching Rights of EPME

After the bid evaluation and awarding of capacity as set forth above, EPME will then have five (5) business days to match any bid awarded by El Paso. EPME may retain capacity under this posting by matching any awarded reservation rate for the term of the bid pursuant to Section 20.16 of the General Terms and Conditions of the Tariff, provided however, EPME is required to match only up to the maximum California reservation rate and only up to a maximum term of five (5) years. If EPME exercises its matching rights, the awarded bidder(s) will be required to enter into a TSA(s) for the original term of the bid, at the original bid rate and for a volume equal to their original bid volume less any volume matched by EPME subject to bidder's minimum acceptable award volume.

**IN 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. 03-46591(DML)
)	Jointly Administered
Debtors.)	
)	
_____)	

**ORDER GRANTING DEBTORS' MOTION TO REJECT EXECUTORY
CONTRACT BETWEEN DEBTOR MIRANT AMERICAS ENERGY
MARKETING, LP AND EL PASO NATURAL GAS COMPANY**

Upon the motion, dated July 1, 2004, (the "Motion")¹ of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors and debtors-in-possession (collectively, the "Debtors"), for authority to reject the Transportation Service Agreement (the "Contract") between Debtor Mirant Americas Energy Marketing, LP ("MAEM") and El Paso Natural Gas Company ("El Paso") pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY:

ORDERED, that the Motion is GRANTED; it is further

ORDERED, that any and all of the obligations of the Debtors arising under or relating to the Contract are rejected effective as of the date this Order is entered; it is further

¹ Unless otherwise defined herein, capitalized terms have the same meaning set forth in the Motion.

ORDERED that, pursuant to the *Order Pursuant To Bankruptcy Rule 3003(c) For Entry Of An Order (I) Establishing A Bar Date For Filing Certain Proofs Of Claim; (II) Establishing Ramifications For Failure To Comply Therewith; (III) Approving Proof Of Claim Form And Consolidated Notice Of (A) Case Commencement, (B) Bar Date, and (C) Meeting Of Creditors Under Section 341(a) of the Bankruptcy Code; And (IV) Approving Notice And Publication Procedures*, entered on August 21, 2003, the last date to file a timely proof of claim against the Debtors arising from the rejection of the Contract is the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of this Order.

IT IS SO ORDERED.

Dated: July ____, 2004

D. Michael Lynn,
United States Bankruptcy Judge