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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.)	
)	Hearing Requested: August 27, 2003 at
)	9:00 a.m.

**EMERGENCY MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
PURSUANT TO SECTION 105(a) AND SECTION 363(b) OF THE BANKRUPTCY
CODE AUTHORIZING THE PAYMENT BY THE DEBTORS OF COSTS AND
EXPENSES INCURRED BY GENERAL ELECTRIC CAPITAL CORPORATION, AS A
PROSPECTIVE PROVIDER OF DEBTOR-IN-POSSESSION FINANCING**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this emergency motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) authorizing the payment by the Debtors of costs and expenses

incurred by General Electric Capital Corporation (“GE Capital”), as a prospective provider of debtor-in-possession financing. In support of the Motion, the Debtors respectfully state as follows:

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.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.¹ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. New Debtor Petitions. On August 18, 2003, the following Mirant entities filed voluntary petitions in this Court for relief under the Bankruptcy Code: Mirant EcoElectrica Investments I, Ltd, Case No. 03-47927, and Puerto Rico Power Investments, Ltd, Case No. 03-47929 (together, the “New Debtors”). The New Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

4. Creditors' Committees. On July 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC. The appointment lists of members of both official unsecured creditors' committees (the "Creditors' Committees") were filed in their respective chapter 11 cases on July 25, 2003.

5. Joint Administration. On July 15, 2003 this Court entered the Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX LBR 1015.1 Directing Joint Administration of Cases ("Original Joint Administration Order") ordering that the estates of Mirant and certain of its subsidiaries with Case Nos. 03-45688 and 03-45690 through 03-45663 (the "Initial Debtors") be jointly administered. On August 20, 2003, the Initial Debtors and the New Debtors jointly filed the Second Motion of the Debtors Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX LBR 1015.1 Directing Joint Administration of Cases seeking that the cases of the Initial Debtors and the New Debtors be jointly administered, which motion for joint administration is still pending before this Court as of the date of this Motion.

FACTUAL BACKGROUND

A. The Debtors' Business Operations

6. Mirant and its direct and indirect subsidiaries, including the New Debtors, comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and

services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

7. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. Facts relevant to the Motion

8. Prior to the Petition Date, by a proposal letter dated June 27, 2003 (the "Proposal Letter"), between Mirant and GE Capital, GE Capital provided Mirant with an indication of its interest to provide debtor in possession financing facility (the "DIP Facility") to the Debtors. Pursuant to the Proposal Letter, Mirant agreed to pay to GE Capital and its affiliate GECC Capital Markets Group, Inc., upon demand (i) all reasonable out-of-pockets legal fees and expenses incurred in connection with the Proposal Letter and the DIP Facility, (ii) a field examination fee of \$750 per-person per-diem, and (iii) reasonable documented out-of-pocket

expenses in connection with the conduct of GE Capital's field audit and the evaluation and documentation of the DIP Facility (including reasonable fees and expenses pertaining to environmental analysis and reasonable fees and expenses of other consultants) (collectively, the "Expenses"). Upon execution of the Proposal Letter, Mirant paid to GE Capital the sum of \$125,000 as an advance against such Expenses (the "Expense Deposit").

9. By a commitment letter dated July 14, 2003 (the "Commitment Letter"), between Mirant and GE Capital, GE Capital agreed to provide a commitment to the Debtors for a DIP Facility in the aggregate amount of up to \$500 million (the "Commitment"), subject to the terms and conditions set out therein, including the completion of mutually satisfactory documentation (the "Definitive Transaction Documents"). Upon the execution of the Commitment Letter and pursuant to the terms thereof, Mirant paid a commitment fee of \$5,000,000 (the "Commitment Fee") and agreed to increase the Expense Deposit to \$500,000. The Commitment Letter provided that if the Definitive Transaction Documents were not entered into, for any reason, on or before 5:00 p.m. (New York City time) on the date falling 30 days after the date of the Commitment Letter (i.e. August 13, 2002) (the "Expiration Date"), the Commitment would expire.

10. By a letter dated August 13, 2003 between Mirant and GE Capital, and subsequently, by verbal agreement, GE Capital agreed to extend the Expiration Date to 5:00 p.m. (New York City time) on August 22, 2003. Although the Debtors have made substantial progress towards the completion of the Definitive Transaction Documents, negotiation of the terms and conditions of such documents and the DIP Facility are not yet fully completed.

11. Accordingly, by a letter dated August 22, 2003 (the “Extension Letter”), between Mirant and GE Capital, GE Capital agreed to further extend the Expiration Date to 5:00 p.m. (New York City time) on August 29, 2003, subject to satisfaction of certain conditions. A copy of the Further Extension Letter is attached hereto as Exhibit A.

12. Given the extended nature of the negotiations, GE Capital has indicated that the Expenses to date have exceeded the Expense Deposit and that additional Expenses will be incurred to complete negotiation of the Definitive Transaction Documents and approval of the DIP Facility. As set forth in the Extension Letter, as a condition to granting further extensions of the Commitment, GE Capital has required the Debtors to seek and receive approval from this Court to pay Expenses incurred in excess of the Expense Deposit. The Debtors have determined that the benefits of preventing the Commitment from lapsing far outweigh the costs of paying Expenses in excess of the Expense Deposit. Accordingly, the Debtors have filed this Motion.

RELIEF REQUESTED

13. By this Motion, the Debtors seek the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing the payment by the Debtors of the Expenses.

14. Section 105(a) of the Bankruptcy Code provides in pertinent part that “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 11 U.S.C. §105(a). Section 363(b) of the Bankruptcy Code provides in pertinent part that a debtor “after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must

demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

15. Courts look to various factors to determine whether to approve a motion under section 363(b), such as (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. *In re Condere*, 228 B.R. 615, 626 (S.D. Miss. 1998).

16. Providing assurance to GE Capital that the expenses incurred in connection with the completion of negotiations and approval of the DIP Facility will be paid is entirely appropriate in these circumstances. Given the Debtors' favorable liquidity position at the time of the filing, the Debtors determined to take a deliberate approach toward the negotiation of the final terms and conditions of the debtor-in-possession financing. In fact, since the commencement of these cases, the Debtors have actively negotiated with two prospective debtor-in-possession lenders to ensure that the Debtors receive the best possible terms available in light of the circumstances. As a result, the Debtors have utilized such time to engage in extensive negotiations over the terms and conditions of the DIP Facility. The Debtors are now entering the final stage of negotiations and anticipate reaching a definitive agreement with GE Capital shortly. Thereafter, such agreement will be presented to this Court for approval.

17. Furthermore, payment by the borrower of a prospective lender's out-of-pocket costs is both standard and customary. Although the Debtors do not require immediate access to debtor-in-possession financing, the Debtors have determined that the benefits to be

obtained from having access to such debtor-in-possession financing during the pendency of these cases far outweigh the incremental costs of the payment of the Expenses in excess of the Expense Deposit. In the event that the Commitment Letter is permitted to expire, the Debtors will need to pay the out-of-pocket expenses of a prospective lender other than GE Capital in connection with the obtaining of a new commitment. Under such circumstances, the costs of negotiation of an alternative debtor-in-possession facility will be far greater than the costs that the Debtors seek to pay in connection herewith. Furthermore, upon expiration of the Commitment Letter, the Debtors will lose the benefit of the Commitment Fee already paid to GE Capital.

18. Based on the foregoing, the Debtors respectfully submit that their request for authority to pay Expenses is entirely appropriate.

NOTICE

19. Notice of this Motion has been given to: (i) the United States Trustee; (ii) counsel to GE Capital; (iii) counsel to each of the Creditors' Committees; (iv) all entities who have filed a notice of appearance and request for service in these cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that such notice is adequate and appropriate under the circumstances.

20. No prior request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing payment of the Expenses and (ii) granting such other relief as is just and proper.

Dated: Fort Worth, Texas
August 22, 2003

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By: /s/ Robin Phelan

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
Debtors.)	Jointly Administered
)	

**ORDER PURSUANT TO SECTION 105(a) AND SECTION 363 OF THE BANKRUPTCY
CODE AUTHORIZING THE PAYMENT BY THE DEBTORS OF COSTS AND
EXPENSES INCURRED BY GENERAL ELECTRIC CAPITAL CORPORATION,
AS A PROSPECTIVE PROVIDER OF DEBTOR IN POSSESSION FINANCING**

Upon consideration of the motion dated August 22, 2003 (the “Motion”) of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for the entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code¹ authorizing the payment by the Debtors of costs and expenses incurred by General Electric Capital Corporation (“GE Capital”), as a prospective provider of debtor-in-possession financing; and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. sections 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best

¹ Capitalized terms not otherwise defined herein shall bear the same meanings ascribed to them in the Motion.

interests of the Debtors and their estates and creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors are authorized to pay the Expenses incurred by GE Capital in connection with the preparation and negotiation of the necessary documentation required for the purposes of providing debtor-in-possession financing to the Debtors.

SIGNED: _____

D. Michael Lynn
United States Bankruptcy Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Motion upon all parties on the Limited Service List via email, facsimile or overnight courier, as indicated, on the 22nd day of August, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Ian T. Peck _____

EXHIBIT A

August 22, 2003

Mirant Corporation
1155 Perimeter Center West
Suite 100
Atlanta, Georgia 30338

Attn: Donald B. Dysert
Vice President, Finance

Re: Commitment Letter dated July 14, 2003 from General Electric Capital Corporation ("GE Capital") to Mirant Corporation ("Mirant") regarding Debtor in Possession Financing, as extended by letter dated August 13, 2003 from GE Capital to Mirant (the "Commitment Letter").

Ladies and Gentlemen:

Reference is made to the Commitment Letter. Capitalized terms used in this letter and not otherwise defined in this letter shall have the meanings set forth in the Commitment Letter.

The Expiration Date was 5:00 p.m. (New York City time) on August 15, 2003. The Expiration Date has been further extended to 5:00 p.m. (New York City time) August 22, 2003.

Mirant has advised GE Capital that, subject to the negotiation of mutually acceptable documentation, it intends to seek Bankruptcy Court approval to enter into the DIP Facility as contemplated by the Commitment Letter and has requested that GE Capital further extend the Expiration Date. In reliance on the foregoing, GE Capital has agreed to further extensions of the Expiration Date on the terms and conditions set forth herein. Accordingly, the Expiration Date is hereby extended to 5:00 p.m. (New York City time) on August 29, 2003

A. On August 22, 2003, Mirant files with the Bankruptcy Court a motion seeking authorization for Mirant to pay all reasonable out of pocket expenses and the field

examination fees incurred in connection with the Commitment Letter and the DIP Facility as set forth in the Commitment Letter and requests an expedited hearing to consider such motion at the earliest possible date (but no later than August 29, 2003) and

B. Mirant uses its reasonable best efforts to obtain the authorizations, approvals and hearings described above; and

C. Mirant accepts the terms of this letter on or before on 5:00 p.m. (New York City time) on August 22, 2003.

Except as expressly amended hereby, all terms and conditions of the Commitment Letter remain in full force and effect. Please indicate your acceptance of the terms hereof by signing the enclosed copy of this letter and returning it to GE Capital.

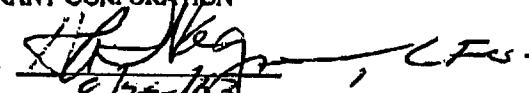
Very truly yours,

GENERAL ELECTRIC CAPITAL CORPORATION

By: 
Its Duly Authorized Signatory

Accepted and agreed this 22nd day of
August 2003:

MIRANT CORPORATION

By:  C.F.S.
Its: 8/22/03