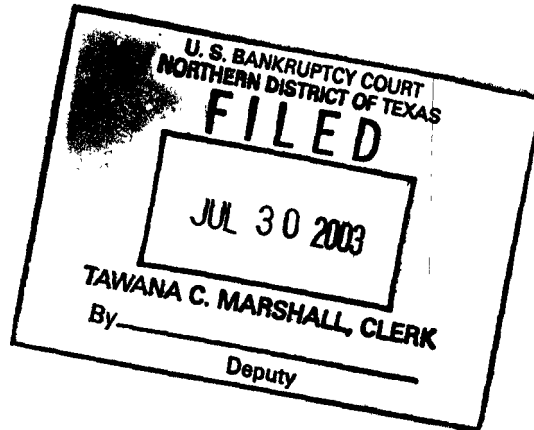


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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

Chapter 11

MIRANT CORPORATION, et al.,

Jointly Administered  
Case No. 03-46590-DML-11

Debtors.

Re: Docket No. 8

**JOINDER OF UNITIL CORPORATION, UNITIL POWER CO. AND UNITIL ENERGY  
SYSTEMS, INC. IN OBJECTION OF POTOMAC ELECTRIC POWER COMPANY  
AND KERN OILS & REFINING CO. TO DEBTORS'  
MOTION FOR AN ORDER PURSUANT TO SECTIONS 365  
AND 554 OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING A  
PROCEDURE FOR THE REJECTION OF CERTAIN EXECUTORY CONTRACTS**

Unitil Corporation, Unitil Power Co. and Unitil Energy Systems, Inc. (collectively, "Unitil") by and through the undersigned counsel, join in the objections of Potomac Electric Power Company ("PEPCO") and Kern Oil & Refining Co. ("Kern") to Debtors' Motion for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contracts ("Motion"). In support of their

Joinder, Unitil incorporates the legal and policy arguments set forth by PEPCO and Kern and respectfully represents as follows:

### **Objection**

1. Notice of the Motion is insufficient. Pursuant to this court's local rules, objections to the Motion were not due until August 4. Moreover, Unitil's counsel contacted the Debtors' counsel and was advised that a hearing on the Motion would not be held before August 6. On July 29, the day before the hearing, Unitil's counsel received notice of the July 30 hearing on the Motion.

2. The Debtors' proposed procedure for rejection of numerous contracts and leases deprives contractual counterparties of their due process rights for the following reasons:

a. The procedures dispense with the necessity and courtesy of serving known counsel, including counsel who have entered an appearance in this bankruptcy case.

b. The abbreviated five day notice period proposed by the Debtors is at odds with Rule 9007.1 of the Local Bankruptcy Rules of this Court (the "Local Rules") and Rule 9006(f) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), which together require at least 23 days' notice of a debtor's proposed assumption or rejection of an executory contract or unexpired lease. Pursuant to Bankruptcy Rules 6006(a) and 9014(a), a motion to assume or reject an executory contract or unexpired lease must be brought on "reasonable notice and opportunity for hearing." Bankruptcy Rule 9014(a). Local Rule 9007.1, in turn, requires that parties receive at least twenty (20) days' notice to object to any such motion.

c. The self-executing element of the procedures is contrary to the Federal Power Act and FERC regulations. The Debtors' expedited and self-executing rejection procedures contravene FERC's regulations, which require that the Debtors file with FERC their proposed termination at least sixty (60) days in advance so that FERC may review the contract termination. 18 C.F.R. §§ 35.13, 35.15.

d. If the nondebtor party does not act swiftly because, for example, the appropriate person does not receive the Rejection Notice within the Notice Period, the nondebtor party will lose its rights and/or any reasonable opportunity to oppose the rejection of its contract or to take any other actions that it may deem necessary or appropriate to protect its interests in the contract. This could result in an increased damages claim against the Debtor's estate. Thus, forcing nondebtor contract parties to respond to a Rejection Notice within the Notice Period prejudices not only the nondebtor contract parties, but also potentially the Debtors and their estates.

e. The Debtors have not met the threshold of "showing cause" under Bankruptcy Rule 9006(c)(1), which permits a court to reduce a notice period for cause shown.

3. The proposed five day rejection period is insufficient as to Unitil. Unitil Energy Systems, Inc. ("UES") is a public utility serving residential and commercial customers in the State of New Hampshire. UES is a party to a contract with one of the debtors under which the debtors sell and deliver power to UES. If the contract is rejected, UES will need to make alternate arrangements for the delivery of power in order that service to UES' customers is not interrupted. Five business days (some of which may be lost while a rejection notice is in the

mail) may not be enough time to make such arrangements. Thus, rejection on such short notice could jeopardize UES' ability to serve its customers and threaten the public safety.

4. If the Debtors, as they state in their Motion, desire to implement streamlined procedures to facilitate the rejection of executory contracts and unexpired leases and reduce related administrative costs, such goals can be accomplished through less draconian procedures that otherwise comply with the Bankruptcy Rules and Local Rules. Any Rejection Procedures should:

a. Require the Debtors to comply with the notice periods established by Local Rule 9007.1, Bankruptcy Rule 9006(f), and FERC's regulations and thus a sufficient opportunity to receive, analyze and respond to a Rejection Notice.

b. Require the Debtors to provide notice to known counsel of any rejection motion.

c. Require that the proposed rejection date set forth in the Rejection Notice be a date after the expiration of the notice period.

d. Clarify that the Debtors will continue to perform under their executory contracts pending the earlier to occur of (i) the effective rejection date set forth in an uncontested Rejection Notice or (ii) the rejection date established by the Court, if any, after a hearing on a contested Rejection Notice.

**Conclusion**

5. For all of the foregoing reasons, Unitil respectfully requests that the Court (a) deny the Motion or (b) alternatively, modify the Rejection Procedures as set forth in paragraph 2 above.

Dated: New York, New York  
July 29, 2003

Respectfully submitted,

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