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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

In re:)	
)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML) 11
)	Jointly Administered
Debtors,)	
)	Hearing Date and Time:
)	
)	September 15, 2004 at 10:30 a.m.

**DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR
APPROVAL OF THE TERMINATION AND SETTLEMENT OF THE
SCHEDULING AGENCY AND ELECTRIC POWER SALES AGREEMENT BY
AND BETWEEN COLONIAL PIPELINE COMPANY AND MIRANT
AMERICAS RETAIL ENERGY MARKETING, LP**

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the
“Debtors”), as debtors and debtors-in-possession, file this motion (the “Motion”)
pursuant to Rule 9019 of Federal Rule of Bankruptcy Procedure for an order approving

DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019
FOR APPROVAL OF THE TERMINATION AND SETTLEMENT
OF THE SCHEDULING AGENCY AND ELECTRIC POWER
SALES AGREEMENT BY AND BETWEEN COLONIAL
PIPELINE COMPANY AND MIRANT

the settlement letter agreement with respect to the Scheduling Agency and Electric Power Sales Agreement dated December 29, 1999 by and between Colonial Pipeline Company (“CPC”) and Mirant Americas Retail Energy Marketing, LP (“Mirant”), formerly known as Southern Company Retail Energy Marketing L.P. (together with all amendments thereto, the “Power Sales Contract”), which Power Sales Contract is attached hereto as Exhibit A, and, in support thereof, respectfully 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.

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 and 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 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

6. Colonial Pipeline Company (“CPC”) and Mirant are parties to the Power Sales Contract, pursuant to which Mirant agreed to provide services to CPC related to the purchase and scheduling of electric energy.

7. Mirant does not currently schedule electric energy for CPC. Further, CPC is no longer in need of Mirant’s services under the Power Sales Contract. Consequently, both parties to the Power Sales Contract wish to terminate it as set forth in that certain Letter Agreement dated August 23, 2004 between CPC and Mirant (the “Letter Agreement”) a copy of which is attached hereto as Exhibit B, approval of which is requested herein.

8. Under the terms of the Letter Agreement, each party agrees to terminate the Power Sales Contract and in connection with such termination provides the other party with a general release of all liabilities and obligations arising out of the conduct of such party in connection with the Power Sales Contract.¹ After reasonable investigation,

¹ The release provides that “each [p]arty does for itself and its successors, assigns, affiliated companies, agents, attorneys and employees forever release and discharge the other [p]arty, its successors, assigns, affiliated companies, agents, attorneys and employees from any and all manner of actions, suits, debts, covenants, contracts, controversies, agreements, obligations, promises, liabilities, damages, claims, and any and all demands, whether known or unknown, matured or unmatured, liquidated or unliquidated, at law or
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the Debtors have determined that they do not have any claims against CPC (or vice versa). The release is merely perfunctory and for the avoidance of doubt. There are no further obligations, monetary or otherwise on the part of any party owing to the counterparty under the Power Sales Contract.

IV. RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of an order, in the form of Exhibit C attached hereto, authorizing Mirant to enter into the Letter Agreement and authorizing the termination and settlement of the Power Sales Contract pursuant to the terms of the Letter Agreement.

V. APPLICABLE AUTHORITY

10. Bankruptcy Rule 9019(a) provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed.R. Bankr.P. 9019(a).

11. Bankruptcy Rule 9019(a) empowers the Bankruptcy Court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *Official Committee of Unsecured Creditors v. Cajun Electric Power Corporation, Inc. (In re Cajun Electric Power Cooperative, Inc.)*, 119 F.3d 349, 355(5th Cir. 1997); *see also, Feld v. Zale Corporation (In re Zale Corp.)*, 62 F.3d 746, 754 (5th Cir. 1995) (stating that “the ‘fair and equitable’ determination does not give the

in equity, which such [p]arty, its successors, assigns, affiliated companies, agents, attorneys and employees ever had, now have or may hereafter have against the other [p]arty, its successors, assigns, affiliated companies, agents, attorneys and employees arising out of the conduct of the parties with regard to the Agreement.” *Letter Agreement p. 1.*

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bankruptcy court jurisdiction over settlement conditions that do not bear on the court's duties to preserve the estate and protect creditors."'). A decision to accept to reject a compromise or settlement is within the sound discretion of the Court. *See 9 Collier on Bankruptcy* ¶ 9019.02 (15th ed. Rev. 2001). "Compromises are favored in bankruptcy" because they minimize the costs of litigation and further the parties' interest in expediting administration of a bankruptcy estate. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (citing *9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not "fall beneath the lowest point in the range of reasonableness." *Vaugh v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the process of evaluating proposed settlements, then, is "the need to compare the terms of the compromise with the likely rewards of litigation." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968).

12. Termination of the Power Sales Contract would eliminate administrative expenses and burdens to the Debtors and their estates from an agreement which provides no benefit to the debtor and is of no value to the estate, thereby preserving and protecting the value of the Debtors' assets. Thus, the issuance of an order by this Court authorizing the termination and settlement of the Power Sales Contract is well within the authority afforded the bankruptcy courts by the Bankruptcy Code. As discussed earlier, termination of the Letter Agreement would excuse Mirant's performance thereunder and will preserve the resources, monetary and otherwise, of the Debtors by eliminating an

administrative inconvenience and any potential future claims thereunder. Debtors are not required to pay any amounts with respect to the termination of this Power Sales Contract. By maximizing and preserving the estates of Debtors, the termination and settlement of the Power Sales Contract is in the best interests of the creditors' and Debtors' estates.

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CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors request that the Court (i) grant the relief requested herein in full and in all respects; (ii) enter an order in the form attached hereto as Exhibit C; and (iii) grant to the Debtors such other and further relief as is just and proper.

Dated: Fort Worth, Texas
August 23, 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
Craig H. Averch
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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 she provided a true and correct copy of the foregoing to Bankruptcy Services, LLC, and the addressees below, and directed them to effect service upon the parties identified below and on the Limited Service List via U.S. mail on the 23rd day of August 2004.

Everett Perkins
Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30004-4738

Amy Alcoke Quackenboss
Hunton & Williams
Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308

/s/ Michelle C. Campbell
Michelle C. Campbell

EXHIBIT A

**Southern Company
Energy Marketing L.P.**
1155 Perimeter Center West
Suite 1300
Atlanta, Georgia 30338-5416
Tel 678 379 5000
Fax 678 379 5601



March 14, 2000

Colonial Pipeline Company
Attention: Bill Scott
Senior Vice President and
Chief Operating Officer
P.O. Box 18855
Atlanta, Georgia 31126

RE: Amendment to Scheduling Agency and Electric Power Sales Agreement

Dear Mr. Scott:

Pursuant to Section 2.1(2) of the Scheduling Agency and Electric Power Sales Agreement ("Agreement") between Southern Company Retail Energy Marketing L.P. ("Southern") and Colonial Pipeline Company ("Colonial") dated December 29, 1999, Southern and Colonial desire to enter into this letter agreement concerning a third party supplier arrangement whereby Southern has arranged for GPU Advanced Resources, Inc. ("Advanced Resources") to perform certain obligations under the Agreement for the period beginning February 1, 2000 and ending April 30, 2000.

Advanced Resources has entered into a separate contract with Colonial to assume certain obligations originally owed to Colonial by Southern under Sections 3.2, 4.1, 5.1, 6.1, 6.2, 7.2, 10.1, 12.1 and 14.13 of the Agreement. As a result of this arrangement, Colonial hereby agrees to look to Advanced Resources for performance of only those exact obligations that are the subject of the separate contract between Advanced Resources and Colonial. Southern will remain responsible to Colonial for the performance by Advanced Resources of those obligations that are the subject of the separate contract, in the event Advanced Resources breaches its obligations under such separate contract.

In addition, Southern and Colonial desire to amend certain definitions and provisions of the Agreement as set forth below to clarify operational matters:

1. A definition shall be added after "DP&L" as follows: "Electric Distribution Company" or "EDC" means the utility company that owns the wires and other distribution facilities from which a retail customer receives electric service.
2. The definition of "Electric Energy Price" shall be revised by deleting "Delivery Point" and replacing with "EDC determined location for delivery."

3. The term "Installed Capacity" shall be globally replaced by the term "Unforced Capacity."
4. Section 5.1(1) is revised by inserting "by the EDC" after "the megawatts of load measured" and before "at the Delivery Point(s)."
5. Section 5.1(2) is revised by inserting "Electric Energy to fulfill each Stations' end use requirements up to" before "a maximum of twenty-five (25) MW per hour."
6. Section 5.1(2) is further revised by deleting "Colonial" and replacing with "the EDC" after "The actual quantity of Electric Energy delivered will be determined according to the metering data provided by..."
7. Section 6.2 is hereby revised by inserting "hourly" before "quantities of Electric Energy..."
8. Section 10.1 is revised by deleting "an invoice from PJM" and replacing with "metered data from the EDC and billing determinants from PJM" after "Southern shall promptly, after its receipt of..."
9. Section 10.1 is further revised by inserting "taxes and EDC administrative fees" after "including Transmission and Ancillary Services Costs,"

Southern and Colonial agree that, except as specifically modified herein, the Agreement shall remain in full force and effect in accordance with its terms.

This letter agreement shall be considered an amendment to the Agreement and shall be likewise treated regarding all terms and conditions contained therein.

Sincerely,



John Ragan
Vice President

SE:JRP

Acknowledged and effective as of the date first written above:

Colonial Pipeline Company

Name: W. H. [Signature]
Title: Vice President & COO

SCHEDULING AGENCY AND ELECTRIC POWER SALES AGREEMENT

This Scheduling Agency and Electric Power Sales Agreement (the "Agreement") is entered into as of this **29**th day of December, 1999 (the "Effective Date") by and between **Southern Company Retail Energy Marketing L.P.**, a Delaware limited partnership ("Southern"), and **Colonial Pipeline Company**, a Delaware corporation ("Colonial"). Each of Colonial and Southern may also be referred to individually as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, Colonial operates an extensive pipeline network to transport refined petroleum throughout the southeast and eastern seaboard;

WHEREAS, Colonial is the owner of pumping stations located in Landenburg, Pennsylvania ("Landenburg"), Brandywine, Pennsylvania ("Brandywine"), Woodbury, New Jersey ("Woodbury"), Allentown, New Jersey ("Allentown"), Linden, New Jersey ("Linden"), Pennsauken, New Jersey ("Pennsauken"), Conowingo, Maryland ("Conowingo"), Bel Air, Maryland ("Bel Air"), Aberdeen, Maryland ("Aberdeen"), Dorsey, Maryland ("Dorsey") and Reisterstown, Maryland ("Reisterstown") (collectively, the "Stations");

WHEREAS, Colonial desires to purchase capacity, electric energy and ancillary services from Southern and Southern desires to sell capacity, electric energy and ancillary services to Colonial to meet the energy requirements of the Stations located in Pennsylvania and New Jersey with the possibility of serving the Stations located in Maryland in the future;

WHEREAS, Colonial desires Southern to act as agent for Colonial to schedule electric energy made available under the PJM Open Access Transmission Tariff to meet the electric energy requirements of the Stations;

WHEREAS, Southern desires to act as scheduling agent and may credit Colonial for electric energy scheduled in excess of Colonial's requirements; and

WHEREAS, Colonial desires Southern to provide certain risk management services, including but not limited to, identifying potential peak load hours, potential transmission zonal peak hours and periods when the locational marginal prices in PJM are expected to significantly increase or decrease.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

SECTION 1 DEFINITIONS

All references to Sections, Exhibits and Annexes are to those set forth in or appended to this Agreement. Reference to any document means such document as amended from time to time and reference to any Party includes any permitted successor or assignee thereof. The following definitions and any terms defined internally in this Agreement shall apply to this Agreement and all notices and communications made pursuant to this Agreement.

"AAA" shall have the meaning given in Section 13.2.

"Ancillary Services" means those services that are required by the Transmission Provider for the Transaction to occur in accordance with the Transmission Provider's tariff or FERC or other regulations to support the transmission of Electric Energy from resources to loads while maintaining reliable operation of the Transmission Provider's and transmission customers' transmission systems.

"Bankruptcy Proceeding" means, with respect to a Party, that Party

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger),
- (b) makes an assignment or any general arrangement for the benefit of creditors,
- (c) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency or other law affecting creditors' rights and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for its winding-up or liquidation or
 - (ii) is not withdrawn, dismissed or discharged within thirty (30) days after the institution or presentation thereof,
- (d) otherwise becomes bankrupt or insolvent (however evidenced),
- (e) has a secured party take possession of all or substantially all of its assets or has an action or proceeding taken or levied against all or substantially all of its assets and such secured party maintains possession, or any such action or proceeding is not dismissed, in either case for thirty (30) days thereafter, or
- (f) is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due.

"BG&E" means Baltimore Gas & Electric Company, or its successors.

"Billing Month" means with respect to amounts billed Monthly, the Month following the Month in which a Transaction(s) for Electric Energy, Installed Capacity and Ancillary Services is wholly or partially fulfilled.

"Business Day" means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

"Claims" means all claims or actions, threatened or filed and, whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, reasonable attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Delivery Point(s)" means the substation located at each Station.

"DP&L" means Delmarva Power & Light Company, or its successors.

"Electric Energy" means the electric energy identified in a Transaction having the qualities, properties and other characteristics therein specified.

"Electric Energy Price" means the hourly Locational Marginal Price at each Delivery Point plus any charges associated with emergency energy, meter error correction and Ramapo PAR facilities.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"Event of Default" shall have the meaning given in Section 8.1.

"Force Majeure" means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the "Claiming Party"), and which, by the exercise of due diligence, the Claiming Party, or third party, is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not restricted to: acts of God; fire; civil disturbance; sabotage; action or restraint by court order or public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action). Interruption by a Transmission Provider shall not be deemed to be an event of Force Majeure unless

- (a) the Party contracting with such Transportation Provider shall have made arrangements with such Transmission Provider for firm transmission, as defined under the Transmission Provider's tariff, of the Electric Energy to be delivered or received hereunder and
- (b) the Transmission Provider is relieved of liability for such Force Majeure event.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the

facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

"Installed Capacity" means the generating capacity which has successfully met MAAC reliability criteria or a PJM deliverability assessment and has been accepted by PJM for use in installed capacity accounting. Capacity credits derived therefrom are also considered to be Installed Capacity.

"Installed Capacity Price" means the price at which Southern purchases installed capacity in the daily or monthly capacity credit market.

"Interest Rate" means, for any date, two (2) percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates"; *provided, however*, that the Interest Rate shall never exceed the maximum rate permitted by applicable law.

"Law" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

"Legal Proceedings" means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority of competent jurisdiction.

"Locational Marginal Price" or "LMP" means the locational marginal price that is established by PJM for the settlement of hourly energy prices at a specific location.

"MAAC" means the Mid-Atlantic Area Council, a reliability council under § 202 of the Federal Power Act established pursuant to the MAAC Agreement dated August 1, 1994, or any successor thereto.

"Month" means a calendar Month.

"MW" means a megawatt. One MW is equal to 1,000 kW.

"MWh" means a megawatt-hour. One MWh is equal to 1,000 kWh.

"Office of the Interconnection" means the employees and agents of the PJM Interconnection, L.L.C. involved in the implementation of the PJM Operating Agreement and administration of the PJM Tariff, subject to the supervision and oversight of the PJM Board acting pursuant to the PJM Operating Agreement.

"PECO" means PECO Energy Company, or its successors.

"Period of Delivery" means the period of time from the date physical delivery of Electric Energy is to commence to the date physical delivery is to terminate, as set forth in a Confirmation.

"PJM" or "PJM Control Area" means the Pennsylvania/New Jersey/Maryland interconnected power pool cooperatively operated under the Pennsylvania/New Jersey/Maryland Interconnection Agreement dated September 26, 1956 as amended by the Operating Agreement of PJM Interconnection, L.L.C. and as may be further amended or supplemented from time to time.

"PJM Interchange Energy Market" means the regional competitive market administered by the Office of the Interconnection for the purchase and sale of spot Electric Energy at wholesale in interstate commerce and related services established pursuant to Schedule 1 of the PJM Operating Agreement, as amended and restated.

"PJM OATT" means the PJM Open Access Transmission Tariff, as amended from time to time.

"PSE&G" means Public Service Electric & Gas Company, or its successors.

"Ramapo PAR" means the phase angle regulating facilities located at Ramapo, New York that were installed to control or limit unscheduled transmission service (loop flow) between the PJM Control Area and the New York control area. Schedule 1, Section 5.3(b), of the PJM Operating Agreement describes the financial obligation of each transmission owner in PJM with respect to Ramapo PAR.

"Regulatory Approvals" means all current and future valid and applicable Laws, orders, statutes, and regulations of courts or regulatory bodies (state or federal) having jurisdiction over a Party or any Transaction.

"Scheduling" or "Schedule" means the acts of Southern, as agent for Colonial, of notifying, requesting and confirming to each other the quantity and type of Electric Energy to be delivered on any given day or days during the Period of Delivery at a specified Delivery Point.

"Taxes" means any or all *ad valorem*, property, occupation, severance, generation, first use, conservation, Btu or Electric Energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

"Term" shall have meaning set forth in Section 2.1.

"Transaction" means the purchase, sale, scheduling, delivery and crediting of electric energy between the Parties as more fully described in this Agreement.

"Transmission and Ancillary Services Costs" shall have the meaning set forth in Section 6.1.

"Transmission Providers" means the entity or entities, including any applicable Independent System Operator, transmitting or transporting the Electric Energy on behalf of a Party to or from the Delivery Point in a particular Transaction.

"Transmission Services" means a service that allows a utility, qualifying facility, power marketer, or exempt wholesale generator to use the transmission and distribution facilities of other utilities to deliver Electric Energy to another utility, a qualifying facility, a power marketer or an exempt wholesale generator.

SECTION 2 TERM

2.1 Term.

(1) The initial term of this Agreement shall commence on February 1, 2000 and shall remain in effect, unless earlier terminated pursuant to the terms of this Agreement, through January 31, 2002, and thereafter shall continue Month to Month ("Term"). Either Party may terminate the Agreement upon expiration of the initial two (2) year term and thereafter by providing sixty (60) days prior written notice to the other Party. Additionally, Colonial may terminate this Agreement early at any point during the term upon sixty (60) days prior written notice by paying Southern a one-time, lump sum termination payment of \$120,000.00 due on the date of such termination. The parties agree that the termination payment is not a penalty, but constitutes a liquidated damage reflecting Southern's lost opportunities and administrative costs incurred in implementing this Agreement.

(2) The Parties acknowledge that Southern's performance obligations under this Agreement, including the representation under Section 11.1(2), are subject to Southern obtaining all necessary licenses and regulatory approvals. In the event Southern is unable to obtain all necessary licenses and regulatory approvals by February 1, 2000, Southern and Colonial agree to enter into a letter agreement whereby Southern will arrange for a third party to assume certain obligations related to scheduling, billing and payment, and metering. Southern will at all times remain responsible to Colonial for the performance of Southern's obligations hereunder including those obligations that Southern may elect to delegate or sub-contract to a third-party.

2.2 Survival.

No termination shall affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, and this Agreement and any other documents executed and delivered in relation to a Transaction prior to the effective date of termination hereunder shall remain in effect with respect to that Transaction until both Parties have fulfilled all of their obligations under that Transaction.

SECTION 3 SCOPE OF AGREEMENT

3.1 Scope of Agreement.

This Agreement shall govern all Transactions between the Parties from and after the Effective Date unless expressly stated otherwise.

3.2 Appointment of Agent.

Subject to the terms set forth herein, Colonial appoints Southern as its true and lawful agent with the power and authority to act for Colonial with respect to Scheduling deliveries of Electric Energy required by the Stations during the term of this Agreement.

3.3 Risk Management Services.

(1) Southern will use commercially reasonable efforts to perform, by 1 p.m. EPT on a day-ahead basis, the following risk management services for Colonial:

(a) identify fifteen (15) days (between the months of June through September inclusive) which may qualify as five (5) PJM system peak days when Colonial may anticipate an interruption within any hour in a specified six (6) hour period(s) to allow Colonial to manage its Installed Capacity requirements; a period may be identified as one six (6) hour period or multiple shorter periods totaling six (6) hours (e.g., two three (3) hour periods);

(b) identify seven (7) days (between the months of June through September inclusive) which may qualify as the zonal transmission peaks when Colonial may anticipate an interruption within any hour in a specified six (6) hour period(s) due to a transmission forced outage or loading relief in each transmission zone where the Stations are located including the PECO zone and the PSE&G zone (and possibly the BG&E and DP&L zones for the Stations located in Maryland); a period may be identified as one six (6) hour period or multiple shorter periods totaling six (6) hours (e.g., two three (3) hour periods);

(c) identify four-hour (4-hour) blocks of time (between the months of June through September inclusive) in which average Locational Marginal Prices are projected to exceed \$150.00 per MWh; and,

(d) identify four-hour (4-hour) blocks of time in which average Locational Marginal Prices are projected to fall below \$10.00 per MWh.

(2) The service fee to be paid by Colonial to Southern during the Term of this Agreement for the risk management services to be performed by Southern is \$120,000 per year for the Stations located in Pennsylvania and New Jersey. In the event the Parties agree that Southern will also perform risk management services for the Stations located in Maryland, an additional service fee of \$30,000 per year will be added for such Stations. The annual service fee shall be paid in twelve monthly installments per year and included with amounts billed Monthly.

(3) Southern will provide written projections to Colonial regarding peak demand in PJM and Locational Marginal Prices. Southern shall incur no liability for its failure to accurately identify the time periods specified in Sections 3.3(1)(c) and (d) above. In the event, however, Southern fails to accurately identify the time periods specified in Sections 3.3(1)(a) and (b), Colonial's sole remedy shall be to reduce the service fee according to the following schedule:

(a) **Peak Load Hour Identification:** Southern will pay Colonial, up to a maximum total of \$15,000 per year, for actual costs incurred by Colonial to purchase Installed Capacity for peak PJM hours not identified by Southern. Damages incurred under this Section 3.3(3)(a) will be included on the Monthly billing statement following the annual determination by PJM of the peak load hours during the previous year.

(b) **Peak Zonal Transmission Hours:** Southern will pay Colonial, up to a maximum total of \$15,000 per year for all four transmission zones (the PECO zone, the PSE&G zone and, if applicable, the BG&E and DP&L zones), for actual costs incurred by Colonial to purchase transmission service for peak hours not identified by Southern. Damages incurred under this Section 3.3(3)(b) will be included on the Monthly billing statement following the annual determination by the relevant Transmission Provider of the transmission zonal peak hours during the previous year.

3.4 Scheduled and Excess Energy.

(1) According to mutually agreed procedures, timing and protocol that the Parties may develop, Colonial may request that Southern attempt to procure Electric Energy and/or Installed Capacity, up to Colonial's reasonably expected requirements, on a month-ahead, day-ahead or hour-ahead basis. In which case the Electric Energy and/or Installed Capacity will not be priced at the Electric Energy Price and/or Installed Capacity Price but will be priced as agreed by the Parties based on the then prevailing market price for such forward products. In the event Colonial requires more than or less than its pre-scheduled quantity of Electric Energy and/or Installed Capacity, Southern shall respectively:

- (a) provide such additional requirements at the Electric Energy Price and/or Installed Capacity Price as applicable, or
- (b) resell such excess requirements and credit Colonial to the extent of such excess requirements resold at the Electric Energy Price and/or Installed Capacity Price as applicable.

(2) Colonial and Southern acknowledge that Colonial has the ability to lower utilization of its pipeline during the summer Months by shifting usage from on-peak hours to off-peak hours thereby allowing flexibility in scheduling hours of operation. During the summer Months, to the extent Colonial has scheduled Electric Energy pursuant to Section 3.4(1), Southern shall have the right to request Colonial to reduce its load, as mutually agreed by the Parties. Southern shall submit an offer to Colonial to credit such excess amount of Electric Energy, and Colonial shall have the

option to either accept or reject Southern's offer. If Colonial accepts Southern's offer, Colonial understands it has accepted a binding obligation to minimize or curtail operation during those hours agreed upon by the Parties to accept a lower quantity of Electric Energy. In the event Colonial requires additional Electric Energy to meet its operational requirements after accepting Southern's offer, Colonial shall pay the Electric Energy Price for such additional quantities of Electric Energy delivered to the Stations.

3.5 Title, Risk of Loss, and Indemnity.

Southern shall be deemed to be in exclusive possession and control (and be responsible for any damages or injury caused thereby) of the Electric Energy prior to the Delivery Point and Colonial shall be deemed to be in exclusive possession and control (and be responsible for any damages or injury caused thereby) of the Electric Energy at and from the Delivery Point. Title to and risk of loss related to the Electric Energy shall transfer from Southern to Colonial at the Delivery Point. Each Party shall indemnify, defend and hold harmless the other Party from any Claims arising from any act or incident occurring during the period when possession, control and title to the Electric Energy is vested or deemed to be vested in the indemnifying Party.

SECTION 4 **PURCHASE AND SALE OF CAPACITY**

4.1 Installed Capacity.

(1) Subject to the terms of this Agreement, Southern shall be obligated to sell and make available Installed Capacity to Colonial, and Colonial shall be obligated to purchase Installed Capacity. Colonial shall pay Southern the Installed Capacity Price.

(2) During the Term, Southern shall sell to Colonial and Colonial shall purchase a quantity of Installed Capacity to meet Colonial's Installed Capacity obligations as established by PJM. The Parties acknowledge that Colonial's Installed Capacity obligations during the Term may be zero as a result of Southern's risk management services which may allow Colonial to reduce its load obligations on PJM's system peak days.

SECTION 5 **PURCHASE AND SALE OF ELECTRIC ENERGY**

5.1 Electric Energy.

(1) Subject to the terms of this Agreement, Southern shall be obligated to sell and deliver to Colonial, and Colonial shall be obligated to purchase and receive Electric Energy. Colonial shall pay Southern the Electric Energy Price for each sale of Electric Energy to Colonial subject to the provisions of Section 14.13. If requested by Southern, Colonial shall provide Southern a load forecast for each Station by 11:00 a.m. EPT on the day before Electric Energy is scheduled to be delivered. Where applicable, Southern shall submit to the Office of the Interconnection forecasts of Colonial's loads for the next operating day and/or any schedules for any bilateral purchases for delivery to the Stations. In the event Colonial's load forecast is less than the

actual Electric Energy usage by the Stations, Colonial shall pay the LMP for such additional flow of Electric Energy to the Stations. Colonial and Southern understand that imbalances may occur on an hourly basis between the Electric Energy scheduled by Southern on behalf of Colonial and the megawatts of load measured at the Delivery Point(s).

(2) Southern shall sell to Colonial's Stations located in Pennsylvania and New Jersey a maximum of twenty-five (25) MW per hour, unless otherwise agreed to by the Parties. The actual quantity of Electric Energy delivered will be determined according to the metering data provided by Colonial to Southern in addition to the PJM interchange statement which provides an hourly economic reconciliation of generation and load.

(3) All deliveries of Electric Energy shall be made at the Delivery Point.

SECTION 6 **TRANSMISSION; METERING**

6.1 Transmission and Ancillary Services.

Southern shall arrange for and contract for, in Southern's name, all Transmission Services and Ancillary Services necessary to deliver the Electric Energy to the Delivery Point(s) during the Term of this Agreement. Colonial shall reimburse Southern for the costs of Transmission Services and Ancillary Services, including without limitation all costs associated with transmission congestion, transmission losses, unscheduled transmission service and other applicable system costs or charges associated therewith (the "Transmission and Ancillary Services Costs"), incurred by Southern in making such deliveries. Colonial shall also reimburse Southern for any distribution costs and/or losses incurred by Southern to deliver the Electric Energy to the Delivery Point(s).

6.2 Metering.

The quantities of Electric Energy delivered to Colonial shall be determined by means of meters installed, maintained and read at Colonial's expense. Colonial shall electronically transmit metered data to Southern on a weekly basis to be used for billing purposes. Colonial shall also be responsible for any costs related to maintenance, testing, calibration, correction and registration records and precision tolerance of all metering equipment in accordance with Good Utility Practice. If Southern requests a meter test and such meter is determined to register within the established tolerance, Southern shall reimburse Colonial for the expense of such test. If a meter fails for any reason, the Parties shall estimate Colonial's expected usage based on historical data and the PJM interchange statement until such meter error is corrected.

SECTION 7 **FORCE MAJEURE; FAILURE TO PERFORM**

7.1 Force Majeure.

If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under a Transaction, then, during the pendency of such Force Majeure but for no longer

period, the obligations of the Party affected by the event (other than the obligation to make payments then due or becoming due) shall be suspended to the extent required. The Party affected by an event of Force Majeure shall provide the other Party with written notice setting forth the full details thereof as soon as practicable after the occurrence of such event and shall take all reasonable measures to mitigate the effects of such event of Force Majeure; *provided, however*, that this provision shall not require Seller to deliver, or Buyer to receive, any Electric Energy at points other than the Delivery Point. Force Majeure shall not operate to excuse Colonial's obligations to purchase and pay for Installed Capacity.

7.2 Failure to Perform.

(1) The Electric Energy to be delivered hereunder is system firm to the extent PJM has Electric Energy available. Southern shall be excused from its obligation to deliver Electric Energy to Colonial in the event PJM is unable to supply Electric Energy for any reason. The Parties understand that Southern must comply with all applicable principles, guidelines, standards and requirements of FERC, NERC and MAAC, comply with the procedures established for operation of the PJM Interchange Energy Market and PJM Control Area and cooperate with the Office of the Interconnection as necessary for the operation of the PJM Control Area in a safe, reliable manner consistent with Good Utility Practice. The Parties acknowledge the risks associated with Electric Energy deliveries within PJM including, but not limited to, those procedures pertaining to minimum and maximum generation emergencies, and measures requiring involuntary customer participation, such as supply voltage reduction or full interruption of customer load by either manual or automatic means.

SECTION 8 **DEFAULTS AND REMEDIES**

8.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(1) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given by the other Party and provided the payment is not the subject of a good faith dispute as described in Section 10.1;

(2) the failure of a Party to perform any covenant set forth in this Agreement (other than events that are otherwise specifically covered in this Section 8.1 as a separate Event of Default), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the other Party;

(3) a Bankruptcy Proceeding is instituted by or against a Party; or

(4) a representation or warranty made by a Party shall have been false or misleading in any material respect when made or deemed repeated.

8.2 Remedies.

The Parties shall have the following remedies available to them hereunder:

(1) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right:

- (a) to suspend performance under any or all Transactions;
- (b) collect all amounts then or thereafter due to it from the defaulting Party hereunder; and
- (c) upon written notice to the other Party, to terminate this Agreement at any time during the continuation of such Event of Default.

(2) If either Party terminates this Agreement as a result of the occurrence of an Event of Default by the other Party, then such terminating Party shall have all rights and remedies available to it under applicable law, subject to the limitations provided in Section 9 and Section 13.

SECTION 9 **LIMITATIONS; DUTY TO MITIGATE**

9.1 Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9.2 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

SECTION 10 **BILLING AND PAYMENT; AUDIT**

10.1 Billing Statements.

In each Billing Month, Southern shall promptly, after its receipt of an invoice from PJM, render a statement setting forth the total quantity of Electric Energy that it has actually delivered over the previous Month and charges due to Southern from Colonial, based on the Electric Energy Price and Installed Capacity Price, including Transmission and Ancillary Services Costs and any amounts or credits due to Colonial from Southern pursuant to Section 3.3(3) or Section 3.4. Billing and payment will be based on the hourly quantities of Electric Energy actually delivered. On or before the seventh (7th) Business Day following receipt of Southern's statement, or if such day is not a Business Day, the immediately following Business Day, Colonial shall pay, by wire transfer (or other mutually acceptable method), the amount set forth on such statement to the payment address provided in Section 14.3 hereto. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Interest Rate. If Colonial, in good faith, disputes a statement, Colonial shall provide a written explanation specifying in detail the basis for the dispute and pay the portion of such statement conceded to be correct no later than the due date. If any amount disputed by Colonial is determined to be due to Southern, it shall be paid within ten (10) days of such determination, along with interest accrued at the Interest Rate until the date paid. Colonial agrees to cooperate with Southern to reconcile metered amounts with amounts contained in the PJM interchange statement. In the event an actual meter reading or the PJM interchange statement is not available, Southern shall estimate Colonial's consumption for billing purposes. Once accurate billing information becomes available, Southern shall make any necessary adjustments to account for any underpayments or overpayments in the following Billing Month.

10.2 Netting.

The Parties agree that any and all amounts which may be due and owing by Colonial to Southern may be offset against any and all amounts which may be due and owing by Southern to Colonial. The Party owing money shall render payment of the net amount shown on the monthly billing statement pursuant to Section 10.1.

10.3 Audit.

Each Party (and its representatives) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such

statement and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from, and including, the date the overpayment or underpayment was made, to, but excluding, the date such adjustment is paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two (2) years from the rendition thereof; and provided further that this Section 10.4 will survive any termination of this Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

SECTION 11 **REPRESENTATIONS AND WARRANTIES**

11.1 Representations and Warranties.

On the Effective Date, for the duration of the contract term, and the date of each Transaction hereunder, each Party makes the following representations and warranties as a basis for its undertakings contained herein:

- (1) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which each such Transaction will be performed by it,
- (2) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement or such Transaction to which it is a party,
- (3) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement or such Transaction to which it is a party are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it,
- (4) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses,
- (5) there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it,
- (6) there is not pending or, to its knowledge, threatened against it or any of its affiliates any Legal Proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement to which it is a party,
- (7) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction, and
- (8) it is acting for its own account, has made its own independent decision to enter into each Transaction and as to whether each such Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the

merits of and understanding, and understands and accepts, the terms, conditions and risks of each such Transaction.

SECTION 12 **TAXES**

12.1 Taxes.

Colonial is liable for and shall pay, or cause to be paid, or reimburse Southern if Southern has paid, all Taxes applicable to a Transaction arising at or prior to the Delivery Point. If Southern is required to remit such Tax, the amount shall be deducted from any sums due to Colonial. Colonial shall indemnify, defend and hold harmless Southern from any Claims for such Taxes. Southern shall be liable for and shall pay, or cause to be paid, or reimburse Colonial if Colonial has paid, all Taxes applicable to a Transaction arising after the Delivery Point. Southern shall indemnify, defend and hold harmless Colonial from any Claims for such Taxes. Both Parties shall provide certificates of exemption or other reasonably satisfactory evidence of exemptions if such Parties are exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any Tax. Each Party shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize the imposition of Taxes. In the event of the institution after the Effective Date of any new or increased Taxes applicable to a Transaction arising at or prior to the Delivery Point, the Parties shall negotiate in good faith to allocate such new or increased tax among themselves in a reasonable manner to restore the two Parties to the greatest extent possible the benefit of their respective bargains on the Effective Date.

SECTION 13 **DISPUTE RESOLUTION**

13.1 Referral of Disputes to Dispute Resolution Committee.

In the event of a dispute between the Parties under this Agreement that the Parties' representatives are unable to resolve, either Party shall have the right, in lieu of the right to pursue any other means of dispute resolution, to refer the dispute for resolution by a committee (the "Dispute Resolution Committee") consisting of at least one senior executive officer of each Party (but in the case of Southern, consisting of a senior officer from each of its parents) by providing written notice to the other Party setting out the dispute and identifying its member or members of the Dispute Resolution Committee. The Parties shall convene a meeting of the Dispute Resolution Committee as soon as is reasonably practical after receipt of the written notice, but in any event within fifteen (15) days. The members of the Dispute Resolution Committee may meet in person or by telephone, or confer by any other means to resolve the dispute. The Dispute Resolution Committee shall endeavor in good faith to resolve the dispute within fifteen (15) days after convening.

13.2 Arbitration.

All disputes arising under, out of, or in relation to this Agreement that are not resolved by the Parties' representatives or the Dispute Resolution Committee within thirty (30) days after either Party's receipt of written notice referring the dispute to the Dispute Resolution Committee shall be submitted to binding arbitration by one arbitrator who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be selected by mutual agreement of the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with Southern's home office, or in any other mutually agreed upon location. The rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. The arbitrator(s) to the greatest extent possible shall be bound to enforcement of the express terms of this Agreement. Each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses (including attorneys' fees) with respect to the arbitration.

13.3 Binding Nature of Proceedings.

Each Party understands that this Agreement contains an agreement to arbitrate with respect to any dispute. After signing this Agreement, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise that is covered by this arbitration provision. Instead, each Party agrees to submit any such dispute to an impartial arbitrator. Any monetary award of the arbitrator may be enforced by the Party in whose favor such monetary award is made in any court of competent jurisdiction.

SECTION 14 **MISCELLANEOUS**

14.1 Assignment.

No assignment or delegation by either Party (or any successor or assignee thereof) of this Agreement in whole or in part shall be made or become effective without the prior written consent of the other Party in each case obtained; *provided, however*, either Party may, without the consent of the other Party transfer or assign and delegate this Agreement to an affiliate of such Party. Any assignments or delegations by either Party shall be in such form as to assure that such Party's obligations under this Agreement will be honored fully and timely by any succeeding party. Neither Party shall be relieved of any liabilities or obligations under this Agreement and this Agreement shall continue in accordance with its terms and such Party shall be and remain liable to the other under all provisions of this Agreement unless and until the other Party has expressly consented in writing to such release of liabilities and obligations.

14.2 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

14.3 Notices.

Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered, transmitted by telecopy or facsimile equipment (with same day mailing of conforming copies), or mailed, postage prepaid, to the representative of the other party designated in this Section 14.3. Any such notice, demand or request so delivered or mailed shall be deemed to be given when received.

Notices to Southern:

NOTICES & CORRESPONDENCE:
Southern Company Retail Energy Marketing L.P.
Attention: Contract Administration
1155 Perimeter Center West, Suite 130
Atlanta, Georgia 30338-5416
Atlanta, GA 31126-0855
Phone: 678.579.5000

Notices to Colonial:

NOTICES & CORRESPONDENCE:
Colonial Pipeline Company
Attention: Mike Richeson/Robert Williams
P.O. Box 18855
Atlanta, Georgia 31126
Fax: 404.841.2813
Phone: 404.841.2409/2415

PAYMENTS:

NationsBank Global Finance
Dallas, Texas 75265
Attention: Accounting
ABA No.: 111000012
Account No.: 3751003269

INVOICES:

Colonial Pipeline Company
Attention: Mike Richeson/Robert Williams
P.O. Box 18855
Atlanta, Georgia 31126
Fax: 404.841.2813
Phone: 404.841.2409/2415

Either Party may change its applicable address for subsequent notices by written notice to the other in accordance with this Section 14.3.

14.4 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

14.5 Survival.

All indemnity rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect for the purpose of complying herewith.

14.6 Confidentiality.

Each Party shall keep confidential, and shall not disseminate to any third party or use for any other purpose (except with written authorization), any information received from the other that is confidential or proprietary unless legally compelled (by deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal or competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, power pool, independent system operator, government department or agency or other regulatory authority, or by requirements of any securities law or regulation or other legal requirement). Confidential information shall mean all confidential or proprietary information of a Party or its representatives or affiliates revealed to the other Party or its representatives or affiliates during the Term of this Agreement, and the content or substance of such information, including, but not limited to, economic data, load data, market information (including information provided under Section 3.3) and other pricing information. Confidential Information shall not include (i) information which is now in the public domain, or which later enters the public domain, through no action by a Party in violation of this Agreement; or (ii) information which a disclosing Party can demonstrate was already in its possession at the time of its disclosure hereunder and which was not acquired, directly or indirectly, from the other Party on a confidential basis. This Section 14.6 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances. In addition, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of such requirement.

14.7 No Partnership.

Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other relationship that may invoke fiduciary obligations between the Parties hereto.

14.8 Compliance With Laws.

At all times during the term of this Agreement, the Parties shall comply with all laws, rules, regulations, and codes of all governmental authorities having jurisdiction over each of their respective businesses which are now applicable, or may be applicable hereafter, including without limitation, all special laws, policies, ordinances, or regulations now in force, as amended or hereafter enacted. The Parties hereto shall maintain all licenses, permits and other consents from all governmental authorities having jurisdiction for the necessary use and operation of their respective business. Nothing herein shall be deemed a waiver of the Parties' right to challenge the validity of any such law, rule or regulation.

14.9 Captions.

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to all sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.10 Entire Agreement.

This Agreement, inclusive of any Confirmations entered into pursuant to its terms, sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior understandings. This Agreement may not be amended except by a writing signed by the Parties.

14.11 Severability.

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provisions shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties hereto, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable and which restores the two Parties to the greatest extent possible the benefit of their respective bargains on the Effective Date.

14.12 Further Assurances.

In connection with this Agreement and the Transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and such Transactions and the intention of the Parties hereto.

14.13 Changes in Law.

If and to the extent that, after the Effective Date and during the Term of this Agreement, any laws or regulations shall change in a manner that materially affects any Transaction, then Colonial and Southern hereby agree to effect such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes and to restore to the two Parties to the greatest extent possible the benefit of their respective bargains on the Effective Date. In the event new market rules and procedures become effective in PJM, the Parties agree to negotiate in good faith to amend this Agreement, as appropriate, for the limited purpose of incorporating those rules and procedures into this Agreement. If any operational changes within PJM prevent Southern from submitting a schedule which indicates a zero load and results in an energy imbalance charge equal to the LMP, the Parties agree that Southern shall have the right to amend the terms of this Agreement to recover any incremental costs to Southern to perform its delivery obligations hereunder. In the event the Parties are unable to agree on such an

amendment, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other Party.

14.14 Counterparts.

This Agreement may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement.

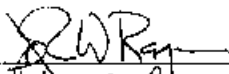
14.15 Interpretation.

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement.

The Parties have executed this Agreement in multiple counterparts to be construed as one effective as of the Effective Date.

SOUTHERN COMPANY RETAIL ENERGY
MARKETING L.P.

COLONIAL PIPELINE COMPANY

By:  *JSR*
Name: John W. Ragan
Title: Vice President
Date: 12/29/99
SEE FOR VPD


By: 
Name: Bill Scott
Title: Senior VP; Chief Operating Officer
Date: 12/29/99

EXHIBIT B

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West, Atlanta, Georgia 30338-5416
T 678 679 5000 F 678 579 5001 U www.mirant.com

August 23, 2004

VIA FEDERAL EXPRESS



Colonial Pipeline Company
Attention: Everett Perkins
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30004-4738

Re: Scheduling Agency and Electric Power Sales Agreement dated as of December 29, 1999, (with all amendments thereto, the "Agreement") by and between Colonial Pipeline Company ("CPC") and Mirant Americas Retail Energy Marketing, LP ("Mirant"), formerly known as Southern Company Retail Energy Marketing L.P. and, herein collectively referred to as the "Parties."

Dear Mr. Perkins:

On March 24, 2004, CPC issued Mirant a notice of termination with respect to the above-referenced Agreement, with a requested effective date of June 1, 2004. Mirant currently is not providing services under the Agreement and CPC has no need for Mirant to perform under the Agreement. The purpose of this letter is to agree to a mutual termination and release under the above-referenced Agreement (as described below). Each Party does for itself and its successors, assigns, affiliated companies, agents, attorneys and employees forever release and discharge the other Party, its successors, assigns, affiliated companies, agents, attorneys and employees from any and all manner of actions, suits, debts, covenants, contracts, controversies, agreements, obligations, promises, liabilities, damages, claims, and any and all demands, whether known or unknown, matured or unmatured, liquidated or unliquidated, at law or in equity, which such Party, its successors, assigns, affiliated companies, agents and employees ever had, now have or may hereafter have against the other Party, its successors, assigns, affiliated companies, agents, attorneys and employees arising out of the conduct of the Parties with regard to the Agreement.

Mirant agrees that it will file notice of the termination and seek approval with the U.S. Bankruptcy Court, Northern District of Texas. This termination shall only become effective upon approval from the Bankruptcy Court.


Please acknowledge your consent to the termination of the Agreement and the terms associated with such termination (including Bankruptcy Court approval) by executing below. If you have any questions, please feel free to contact Sommet Edmonds at (678) 579-5119.

Sincerely,



Name: Tim Delany
Title: Vice President
Mirant America: Retail Energy Marketing, LP
By: Mirant Americas Development, Inc., its General Partner

ACKNOWLEDGED AND ACCEPTED BY:
COLONIAL PIPELINE COMPANY

By: 
Name: KALIN JONES
Title: VICE PRESIDENT
Date: 8/23/04

SR
8/23/04

EXHIBIT C

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

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

**ORDER APPROVING DEBTORS' MOTION PURSUANT TO BANKRUPTCY
RULE 9019 FOR APPROVAL OF THE TERMINATION AND SETTLEMENT
OF THE SCHEDULING AGENCY AND ELECTRIC POWER SALES
AGREEMENT BY AND BETWEEN
COLONIAL PIPELINE COMPANY AND MIRANT CORPORATION, ET AL.**

Upon the Motion (the "Motion")¹ dated August 23, 2004, pursuant to Bankruptcy Rule 9019 for the Approval of the Termination and Settlement of the Scheduling Agency and Electric Power Sales Agreement (with all amendments thereto, the "Power Sales Contract") by and between Colonial Pipeline Company ("CPC") and Mirant Americas Retail Energy Marketing, LP ("Mirant"), formerly known as Southern Company Retail Energy Marketing L.P, the Debtors have moved the Court pursuant to Bankruptcy Rule 9019 for an order authorizing the termination and settlement of the Power Sales Contract; and it appearing that this Court has jurisdiction over this matter; and it appearing that the settlement set forth in the Letter Agreement is "fair and equitable and in the best interest of the estate" and satisfies the requirements for approval of settlements set forth *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); and it appearing that, under the circumstances, due notice of the Motion and the relief set forth

¹ Capitalized terms not otherwise defined herein shall have the same meaning as in the Motion.

herein 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:

1. The Motion is granted;
2. The Power Sales Contract is terminated as of the date hereof;
3. Mirant is authorized to enter into (and perform the terms of) the Letter Agreement; and
4. The mutual releases contained in the Letter Agreement are effective upon entry of this Order.

Date: _____

D. Michael Lynn
United States Bankruptcy Judge