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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 |
| Debtors.) | Jointly Administered |
| _____) | Hearing Date and Time: |
|) | December 10, 2003 at 10:30 a.m. |

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT
TO 11 U.S.C. §§ 105(a) AND 365 AND FEDERAL RULE OF BANKURPTCY
PROCEDURE 9019 APPROVING (I) THE SETTLEMENT AGREEMENT
WITH UNITIL POWER CORP. AND UNITIL ENERGY SYSTEMS, INC.
AND (II) THE SETTLEMENT AGREEMENT WITH FITCHBURG
GAS AND ELECTRIC LIGHT COMPANY**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy

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SETTLEMENT AGREEMENT WITH UNITIL POWER CORP. AND
UNITIL ENERGY SYSTEMS, INC. AND (II) THE SETTLEMENT AGREEMENT
WITH FITCHBURG GAS AND ELECTRIC LIGHT COMPANY**

Rules”), approving (I) the Settlement Agreement by and between Mirant Americas Energy Marketing, LP, Unutil Power Corp. and Unutil Energy Systems, Inc. in Connection with the Motion of Unutil Power Corp. and Unutil Energy Systems, Inc. for an Order (1) Setting a Deadline by which the Debtor Must Assume or Reject Agreement and (2) Granting Adequate Assurance Pending Assumption or Rejection and (II) the Settlement Agreement by and between Mirant Americas Energy Marketing, LP and Fitchburg Gas and Electric Light Company in Connection with a Dispute Relating to the Calculation of a Termination Payment, and in support of the Motion, respectfully represent 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. Chapter 11 Filing. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under the Bankruptcy Code.¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary

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 in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

petitions in this Court for relief under chapter 11 of the Bankruptcy Code: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investment, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Joint Administration. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 21, 2003, the Court entered the order approving joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 5, 2003, the Court entered an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to those of the Wrightsville Debtors.

4. The Committees. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases. Specifically, an official unsecured creditors’ committee and an official committee of equity security holders have been appointed for Mirant Corporation and an official unsecured creditors’ committee has been appointed for Mirant Americas Generation, LLC (collectively, the “Committees”).

FACTUAL BACKGROUND

A. The Debtors' Business Operations

5. 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.

6. Mirant employs thousands of employees worldwide, some of whom are based at Mirant's corporate headquarters in Atlanta, and most of whom 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 this Motion

1) *The Unitil Settlement*

7. Unitil Power Corp. (“UPC”) and Unitil Energy Systems, Inc. (“UES” and, together with UPC, the “Unitil Creditors”) are wholly-owned subsidiaries of Unitil Corporation, a New Hampshire corporation.

8. Mirant Americas Energy Marketing, LP (“MAEM”) and the Unitil Creditors are parties to a Portfolio Sale and Assignment and Transition Service and Default Service Supply Agreement, dated February 25, 2003 (the “Unitil Agreement”), whereby (i) UPC agreed to sell, or sell and assign, to MAEM, and MAEM agreed to purchase, or purchase and take assignment, from UPC of UPC’s entitlements under certain power supply agreements; and (ii) MAEM agreed to sell and deliver to UES, and UES agreed to buy and receive from MAEM, wholesale power supplies to enable UES to meet its obligations to its retail customers. Under the Unitil Agreement, MAEM acquires entitlements from UPC and pays the power suppliers (the “Suppliers”) directly for power purchased from such Suppliers. If MAEM fails to pay the Suppliers, UPC remains obligated to pay such amounts.

9. On September 23, 2003, the Unitil Creditors filed a motion with the Court seeking an order requiring, among other things, MAEM to assume or reject the Unitil Agreement by December 1, 2003 (the “Unitil Motion”). The Unitil Creditors assert that UES is required under New Hampshire law to provide reliable “provider of last resort” electric power to its retail customers. The Unitil Creditors further assert that absent a decision to assume or reject the Unitil Agreement now, UES and its retail customers will be harmed, financially and otherwise, due to a lack of stability and reliability with respect to the source and rates of electric power.

The Unitil Creditors have requested that this Court compel MAEM to decide now whether to assume or reject the Unitil Agreement to allow UES to ensure that its retail customers continue to receive adequate, reliable and reasonably-priced electric service. On October 3, 2003, the New Hampshire Office of the Consumer Advocate filed a joinder in support of the Unitil Motion.

10. UPC asserts that it has a claim against MAEM which it estimated to be \$5,312,712 (the “UPC Claim”) as a result of MAEM’s failure to pay Suppliers for their prepetition deliveries of electric power. UPC withheld approximately \$560,000 of amounts owed MAEM under the Unitil Agreement for the prepetition period (the “UPC Holdback”) on account of the UPC Claim. UPC asserts a right to set-off the UPC Holdback against the UPC Claim.

11. UES asserts a right to offset amounts owed by UES to MAEM against amounts UES will be required to pay UPC on account of MAEM’s failure to pay the UPC Suppliers. UES withheld approximately \$4,752,712 of amounts owed MAEM for the prepetition period (the “UES Holdback”). UES asserts that it has a right to withhold the UES Holdback, based upon its obligations to UPC under a System Agreement dated October 1, 1986, between UPC and UES, as amended (the “Amended System Agreement”). MAEM disputes UES’ right to withhold and offset the UES Holdback.

12. MAEM and the Unitil Creditors wish to resolve the Unitil Motion and the other issues described above by entering into a Settlement Agreement, a copy of which is

annexed hereto as Exhibit “A” (the “Unitil Settlement”). The following summarizes the pertinent terms of the Unitil Settlement:²

- (a) MAEM will assume the Unitil Agreement pursuant to section 365 of the Bankruptcy Code. Within two (2) business days of approval of the Unitil Settlement, UES will return to MAEM \$3.6 million of the UES Holdback in immediately available funds.
- (b) The Unitil Creditors will be allowed to apply as partial cure \$1,712,712 of the remaining UPC Holdback and the UES Holdback against the UPC Claim, adjusted for any reconciliations as provided for in subparagraph (c) below (the “Set-off Payment”). Additionally, MAEM and the Unitil Creditors agree that, upon approval of the Unitil Settlement, UPC is authorized to withhold from amounts otherwise due MAEM under the Unitil Agreement and apply as the remaining cure payments the amount of \$900,000 per month for the four months immediately following the assumption of the Unitil Agreement by MAEM (collectively, the “Withholding Payments”).
- (c) MAEM and the Unitil Creditors agree that the amount of the UPC Claim was based upon estimates of amounts owed to Suppliers for prepetition deliveries of electric power, and that such estimates should be reconciled with the actual amounts billed. Based upon such reconciliations to date, the Unitil Creditors agree to pay MAEM the difference between the estimated UPC Claim and the amounts paid by UPC to Suppliers for prepetition deliveries of electric power within two (2) business days of the approval of the Unitil Settlement. MAEM and the Unitil Creditors agree that further reconciliations may be required to reflect revised billings for amounts owed to Suppliers for the prepetition period and that such reconciliations will be reflected as credits or charges on future billing invoices.

² This summary is qualified in its entirety by reference to the provisions of the Unitil Settlement which is controlling. Capitalized terms not otherwise defined in this paragraph 12 shall have the same meanings ascribed to them in the Unitil Settlement.

- (d) MAEM and the Unitil Creditors agree that the Set-off Payment and the Withholding Payments together satisfy the requirement under section 365 of the Bankruptcy Code that MAEM cure all defaults under the Unitil Agreement prior to assumption thereof.
- (e) MAEM and the Unitil Creditors agree that, as adequate assurance of future performance and notwithstanding Section 8.3(e) of the Unitil Agreement, in the event that MAEM subsequently defaults under the Unitil Agreement, UES and UPC shall have the right to effect a triangular netting of the amounts due to either UES or UPC by MAEM against the amounts due from either UES or UPC to MAEM. In exchange for the covenant set forth in the preceding sentence, the Unitil Creditors will waive and release any and all rights, including, but not limited to, common law, bankruptcy or UCC rights to request adequate assurances in connection with the Unitil Agreement until May 1, 2006, or so long as UES and UPC shall have the ability to effect a triangular netting of the amount due to either UES or UPC by MAEM against amounts due from either UES or UPC to MAEM.
- (f) The Unitil Creditors will waive and release their rights, if any, to terminate the Unitil Agreement based on the filing of MAEM's chapter 11 case and retain all rights and security thereunder in the event of any subsequent default by MAEM.

2) *The FG&E Settlement*

13. Fitchburg Gas and Electric Light Company ("FG&E") is a subsidiary of Unitil Corporation, a New Hampshire corporation.

14. MAEM and FG&E are parties to a Base Contract for Short-Term Sale and Purchase of Natural Gas, dated June 1, 1998 (the "FG&E Agreement"). As a result of the commencement of MAEM's chapter 11 cases, FG&E declared a default and terminated the FG&E Agreement in accordance with section 556 of the Bankruptcy Code.

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15. In addition to terminating the FG&E Agreement, FG&E asserted that it was entitled to withhold payments otherwise due to MAEM under the FG&E Agreement based upon Section 14.1(ii) of the FG&E Agreement, which provides that “if an Event of Default occurs with respect to a party (the “Defaulting Party”)...the other party...may... withhold any payments due to Defaulting Party in respect of any transactions” (the “One-way Termination Provision”). MAEM disputes the enforceability of the One-way Termination Provision and asserts that it is owed approximately \$125,212 from FG&E as a result of the termination of the FG&E Agreement (the “Termination Payment Dispute”).

16. MAEM and FG&E wish to resolve the Termination Payment Dispute by entering into a Settlement Agreement, a copy of which is annexed hereto as Exhibit “B” (the “FG&E Settlement”). The following summarizes the pertinent terms of the FG&E Settlement:³

- (a) Within two (2) business days of approval of the FG&E Settlement, FG&E shall pay MAEM \$75,000 as a cash termination payment in immediately available funds (the “Termination Payment”).
- (b) Additionally, FG&E agrees to enter into certain agreements with MAEM (the “Enabling Agreements”), substantially in the form of: (i) the most recent standard North American Energy Standards Board Base Contract for Sale and Purchase of Natural Gas; and (ii) the Edison Electric Institute Master Power Purchase and Sale Agreement, including special provisions under either agreement as may be mutually acceptable to both parties, pursuant to which FG&E agrees to make a good faith effort to facilitate new transactions.
- (c) Upon (i) the execution of the FG&E Settlement, (ii) approval of the FG&E Settlement by the Court, and (iii) payment by FG&E to MAEM of the

³ This summary is qualified in its entirety by reference to the provisions of the FG&E Settlement which is controlling. Capitalized terms not otherwise defined in this paragraph 16 shall have the same meanings ascribed to them in the FG&E Settlement.

Termination Payment, each of MAEM and FG&E, for valuable consideration, for itself and its respective affiliates, principals, agents, employees, representatives, successors and assigns (collectively, the “Releasors”), agree that the FG&E Agreement is duly terminated and fully remises, releases, acquits, satisfies, and forever discharges the other party and its respective affiliates, principals, agents, employees, representatives, successors and assigns (collectively, the “Releasees”), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Releasors ever had, may have had, now has, or which the Releasors or their respective successors or assigns, hereinafter can, shall or may have, against the Releasees and their respective successors or assigns, for, upon or by reason of any claims arising under or related to the FG&E Agreement, payment or performance thereunder, FG&E’s termination of the FG&E Agreement and/or MAEM’s alleged Event of Default under the FG&E Agreement.

RELIEF REQUESTED

17. By this Motion, the Debtors respectfully request entry of an order pursuant to sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Unutil Settlement and the FG&E Settlement.

APPLICABLE AUTHORITY

A. The Court Should Authorize the Debtors to Enter into the Unutil Settlement and the FG&E Settlement.

18. 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.

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R. Bankr. P. 9019(a). Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” In re Cajun Electric Power Cooperative, Inc., 119 F.3d 349, 355 (5th Cir. 1997); see also, In re Zale Corp., 62 F.3d 746, 754 (5th Cir. 1995) (stating that “the ‘fair and equitable’ determination does not give the 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 or 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. 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.” 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).

19. A court will consider the following factors when determining whether a settlement is fair and equitable: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. See Cajun Electric, 119 F.3d at 356.

20. A key aspect of the Unitil Settlement is MAEM’s assumption of the Unitil Agreement. Section 365 of the Bankruptcy Code provides that a chapter 11 debtor, subject to

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Bankruptcy Court approval, may assume or reject executory contracts at any time prior to plan confirmation. 11 U.S.C. §§ 365(a) and (d)(2). The debtor's decision to assume or reject an executory contract is an exercise of the debtor's business judgment. See Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985). The business judgment test is not a strict standard, but merely requires a showing that either assumption or rejection of the contract at issue will benefit the debtor's estate. See In re Bildisco, 682 F.2d 72, 79 (3d Cir. 1982), aff'd sub nom., NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984).

21. Although, absent an order of the Court, a debtor is not required to decide whether to assume or reject an executory contract until plan confirmation, the Debtors, after a careful evaluation, determined that the Unitil Agreement is a profitable contract and, if provided with certain concessions from the Unitil Creditors, assumption of the Unitil Agreement at this time would be warranted. Thus, the Debtors entered into extensive negotiations with the Unitil Creditors to reach a consensual agreement regarding the Unitil Motion, including the terms of a potential assumption of the Unitil Agreement, and to resolve certain pending disputes among the Debtors, the Unitil Creditors and their affiliates.

22. As a result of such negotiations, the Debtors and the Unitil Creditors were able to consensually resolve the Unitil Motion and all pending disputes, which resolution is reflected in the Unitil Settlement and the FG&E Settlement. The Debtors have determined in their business judgment that the settlements embodied in the Unitil Settlement and FG&E Settlement, respectively and collectively, including assumption of the Unitil Agreement, are fair and reasonable and benefit the Debtors' estates. Importantly, the Unitil Settlement expressly reserves the Debtors' right to further assign the contract pursuant to section 365 of the

Bankruptcy Code. Accordingly, the Debtors may continue to receive the benefits of the Unitil

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Agreement presently while preserving their option to assign and novate the Unitil Agreement in the event that the circumstances surrounding the Debtors' business change.

23. Furthermore, although no litigation currently exists with respect to the FG&E dispute, the threat of litigation exists in light of the assertions by FG&E that it is entitled to withhold certain payments owing to MAEM as a result of MAEM's bankruptcy filing and FG&E's subsequent termination of the FG&E Agreement. In addition to resolving consensually the Termination Payment Dispute, FG&E has agreed to use good faith efforts to facilitate new transactions with MAEM, which may result in an added benefit to MAEM prospectively. Accordingly, given the uncertainties associated with litigating the Termination Payment Dispute and the benefits enuring to the Debtors' estates through the immediate payment of the Termination Payment and facilitation of new transactions, the proposed compromise is in the best interest of the estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (i) approving the Unitil Settlement and the FG&E Settlement and (ii) granting such other and further relief as the Court may deem just and proper.

Dated: Fort Worth, Texas
November 14, 2003

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-and-

By: /s/ Michelle C. Campbell
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ATTORNEYS TO THE DEBTORS
AND DEBTORS-IN-POSSESSION

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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 (1) on the Limited Service List and (2) identified below, via United States first class mail, postage prepaid, on the 14th day of November, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Michelle C. Campbell

Unitil Power Corp.
6 Liberty Lane West
Hampton, NH 03842-1720

Unitil Energy Systems, Inc.
6 Liberty Lane West
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

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

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 365 AND FEDERAL RULE
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Upon consideration of the motion dated November 14, 2003 (the “Motion”) of Mirant Corporation and its affiliated debtors, as debtors and debtors-in-possession (collectively, the “Debtors”), for the entry of an order pursuant to sections 105(a) and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving (A) the Settlement Agreement by and between Mirant Americas Energy Marketing, LP, Unitil Power Corp. and Unitil Energy Systems, Inc. in Connection with the Motion of Unitil Power Corp. and Unitil Energy Systems, Inc. for an Order (1) Setting a Deadline by which the Debtor Must Assume or Reject Agreement and (2) Granting Adequate Assurance Pending Assumption or Rejection and (B) the Settlement Agreement by and between Mirant Americas Energy Marketing, LP and Fitchburg Gas and Electric Light Company in Connection with a Dispute Relating to the Calculation of a Termination Payment; 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 **ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 365 AND FEDERAL RULE OF BANKURPTCY PROCEDURE 9019 APPROVING (A) THE SETTLEMENT AGREEMENT WITH UNITIL POWER CORP. AND UNITIL ENERGY SYSTEMS, INC. AND (II) THE SETTLEMENT AGREEMENT WITH FITCHBURG GAS AND ELECTRIC LIGHT COMPANY**

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 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 enter into, and perform in accordance with, the Unitil Settlement, and are authorized to take any and all actions necessary to effectuate the Unitil Settlement; and it is further

ORDERED that the Debtors are authorized to enter into, and perform in accordance with, the FG&E Settlement, and are authorized to take any and all actions necessary to effectuate the FG&E Settlement; and it is further

ORDERED that the Debtors are authorized to assume the Unitil Agreement in accordance with section 365 of the Bankruptcy Code subject to the terms set forth in the Unitil Settlement; and it is further

ORDERED that the Debtors' right to assign the Unitil Agreement pursuant to section 365 of the Bankruptcy Code are expressly reserved; and it is further

ORDERED that, upon entry of this Order, the Unitil Creditors shall promptly withdraw the Unitil Motion with prejudice; and it is further

ORDERED that this Order is effective immediately upon its entry; and it is further

ORDERED that the Court shall retain sole and exclusive jurisdiction to hear and determine all matters relating to or arising under the Unitil Settlement, the FG&E Settlement and/or this Order.

Dated: Fort Worth, Texas
December ____, 2003

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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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**

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

**SETTLEMENT AGREEMENT BY AND BETWEEN MIRANT AMERICAS
ENERGY MARKETING, LP, UNITIL POWER CORP. AND UNITIL
ENERGY SYSTEMS, INC. IN CONNECTION WITH THE MOTION OF
UNITIL POWER CORP. AND UNITIL ENERGY SYSTEMS, INC. FOR AN
ORDER (1) SETTING A DEADLINE BY WHICH THE DEBTOR MUST
ASSUME OR REJECT AGREEMENT AND (2) GRANTING ADEQUATE
ASSURANCE PENDING ASSUMPTION OR REJECTION**

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

Mirant Americas Energy Marketing, LP (“MAEM”), Unitil Power Corp.
 (“UPC”) and Unitil Energy Systems, Inc. (“UES” and, together with UPC, the “Unitil
 Creditors”) enter into this Settlement Agreement (the “Settlement Agreement”) resolving the
 Unitil Creditors’ Motion for an Order (1) Setting a Deadline by Which the Debtor Must Assume
 or Reject Agreement and (2) Granting Adequate Assurance Pending Assumption or Rejection

(the "Motion").

RECITALS

1. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the "Petition Date"), Mirant Corporation and certain of its affiliated debtors, including MAEM (collectively, the "Initial Debtors"), filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Court") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code").¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors" and, together with the Initial Debtors, the "Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors").

2. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 21, 2003, the Court entered the order approving joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On

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 in the Court of Queen's Bench of Alberta Judicial District of Calgary (the

November 5, 2003, the Court granted the motion for an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to those of the Wrightsville Debtors. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. 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 the Debtors (the "Mirant Committee") and the other for Mirant Americas Generation, LLC (the "MAGI Committee" and, together with the Mirant Committee, the "Creditors' Committees").

4. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the Official Committee of Equity Security Holders of Mirant Corporation (the "Equity Committee" and, collectively with the Creditors' Committees, the "Committees"). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

5. The Unitil Creditors are wholly-owned subsidiaries of Unitil Corporation, a New Hampshire corporation.

6. MAEM and the Unitil Creditors are parties to a Portfolio Sale and Assignment and Transition Service and Default Service Supply Agreement, dated February 25, 2003 (the "Unitil Agreement"), whereby (i) UPC agreed to sell, or sell and assign, to MAEM, and MAEM agreed to purchase, or purchase and take assignment, from UPC of UPC's entitlements under certain power supply agreements; and (ii) MAEM agreed to sell and deliver to UES, and UES agreed to buy and receive from MAEM, wholesale power supplies to enable UES

"Canadian Court") pursuant to the *Companies' Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

to meet its obligations to its customers. Under the Unitil Agreement, MAEM pays the power suppliers (the "Suppliers") directly for power purchased from such Suppliers. If MAEM fails to pay the Suppliers, UPC remains obligated to pay such amounts.

7. On September 23, 2003, the Unitil Creditors filed a motion with the Court seeking an order requiring MAEM to assume or reject the Unitil Agreement by December 1, 2003, and granting adequate assurances pending assumption or rejection. Unitil asserts that MAEM should be required to assume or reject the Unitil Agreement in order to allow UES to ensure that its retail customers continue to receive adequate, reliable and reasonably-priced electric service. On October 3, 2003, the New Hampshire Office of the Consumer Advocate filed a joinder in support of Unitil's motion.

8. UPC asserted that it had a claim against MAEM which it estimated to be \$5,312,712 (the "UPC Claim") because, as a result of its bankruptcy filing, MAEM failed to pay the Suppliers for their prepetition deliveries of electric power for which UPC remained liable to the Suppliers. UPC withheld approximately \$560,000 of amounts owed MAEM under the Unitil Agreement for the prepetition period (the "UPC Holdback") on account of the UPC Claim. UPC asserts a right to set-off the UPC Holdback against the UPC Claim.

9. UES asserts a right to offset amounts owed by UES to MAEM against amounts UES will be required to pay UPC on account of MAEM's failure to pay the UPC Suppliers. UES withheld approximately \$4,752,712 of amounts owed MAEM for the prepetition period (the "UES Holdback"). UES asserts that it has a right to withhold the UES Holdback, based upon its obligations to UPC under a System Agreement dated October 1, 1986, between UPC and UES, as amended (the "Amended System Agreement"). According to the Unitil Creditors, the Amended System Agreement is a wholesale rate schedule, approved by the

Federal Energy Regulatory Commission, under which UES is obligated to reimburse UPC for costs incurred by UPC in disposing of its portfolio of power supply agreements to MAEM, including the costs of the UPC Claim.

10. MAEM asserts that UES is not entitled to holdback the \$4,752,712 amount owed because Section 8.3(e) of the Unitil Agreement provides that “in no event shall...UES be permitted to set-off against amounts due by it to [MAEM] any amounts due by MAEM to UPC, nor shall UPC be permitted to set-off against any amounts due it by [MAEM] any amounts due by [MAEM] to UES.”

11. A bona fide dispute exists as to whether UES may hold back amounts owed MAEM for the prepetition period in light of Section 8.3(e) of the Unitil Agreement and UES's obligations under the Amended System Agreement.

AGREEMENT

MAEM and the Unitil Creditors desire to settle the Motion and therefore agree that:

1. Upon the execution of this Settlement Agreement MAEM shall seek prompt approval of this Settlement Agreement by the Court. Upon approval of this Settlement Agreement by the Court, MAEM shall assume the Unitil Agreement pursuant to section 365 of the Bankruptcy Code. As consideration for MAEM's assumption of the Unitil Agreement, and to resolve the Motion, within two (2) business days of approval of this Settlement Agreement by the Court, UES shall return to MAEM \$3.6 million of the UES Holdback in immediately available funds.

2. The Unitil Creditors will be allowed to set-off \$1,712,712 of the remaining UPC Holdback and the UES Holdback against the UPC Claim, adjusted for any

reconciliations as provided for in paragraph 3 below, (the “Set-off Payment”). Additionally, MAEM and the Unitil Creditors agree that, upon approval of this Settlement Agreement by the Court, UPC is authorized to withhold from amounts otherwise due MAEM under the Unitil Agreement the amount of \$900,000 per month for the four months immediately following the assumption of the Unitil Agreement by MAEM (collectively, the “Withholding Payments”).

3. MAEM and the Unitil Creditors agree that the amount of the UPC Claim was based upon estimates of amounts owed to Suppliers for prepetition deliveries of electric power, and that such estimates should be reconciled with the actual amounts billed. Based upon such reconciliations to date, the Unitil Creditors agree to pay MAEM the difference between the estimated UPC Claim and the amounts paid by UPC to Suppliers for prepetition deliveries of electric power within two (2) business days of the approval of this Settlement Agreement by the Court. MAEM and the Unitil Creditors agree that further reconciliations may be required to reflect revised billings for amounts owed to Suppliers for the prepetition period and that such reconciliations will be reflected as credits or charges on future billing invoices.

4. MAEM and the Unitil Creditors agree that the Set-off Payment and the Withholding Payments together satisfy the requirement under section 365 of the Bankruptcy Code that MAEM cure all defaults under the Unitil Agreement prior to assumption thereof.

5. MAEM and the Unitil Creditors agree that, notwithstanding Section 8.3(e) of the Unitil Agreement, in the event that MAEM subsequently defaults under the Unitil Agreement, UES and UPC shall have the right to effect a triangular netting of the amounts due to either UES or UPC by MAEM against the amounts due from either UES or UPC to MAEM. In exchange for the covenant set forth in the preceding sentence, the Unitil Creditors hereby waive and release any and all rights, including, but not limited to, common law, bankruptcy or UCC

rights to request adequate assurances in connection with the Unitil Agreement until May 1, 2006, or so long as UES and UPC shall have the ability to effect a triangular netting of the amount due to either UES or UPC by MAEM against amounts due from either UES or UPC to MAEM. Furthermore, the Unitil Creditors hereby waive and release their rights, if any, to terminate the Unitil Agreement based on the filing of MAEM's chapter 11 case and retain all rights and security thereunder in the event of any subsequent default by MAEM.

6. This Settlement Agreement shall not constitute a waiver of the Debtors' right to assign the Unitil Agreement pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect thereto are expressly reserved.

7. Except to the extent necessary to enforce this Settlement Agreement, this Settlement Agreement shall not be admissible in any other proceeding or litigation.

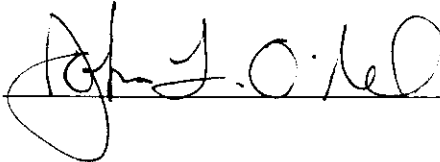
8. The Court shall retain sole and exclusive jurisdiction with respect to any matters relating to this Settlement Agreement.

9. The Settlement Agreement shall be effective only upon approval by the Court.

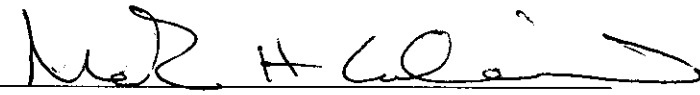
MIRANT AMERICAS ENERGY MARKETING,
LP, Debtor

By: Mirant Americas Development, Inc.
Its General Partner

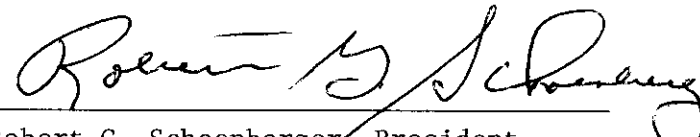
EM/SE

By:  _____

UNITIL POWER CORP.

By:  _____
Mark H. Collin, Treasurer

UNITIL ENERGY SYSTEMS, INC.

By:  _____
Robert G. Schoenberger, President

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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**

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

**SETTLEMENT AGREEMENT BY AND BETWEEN MIRANT AMERICAS
ENERGY MARKETING, LP AND FITCHBURG GAS AND ELECTRIC
LIGHT COMPANY IN CONNECTION WITH A DISPUTE RELATING TO
THE CALCULATION OF A TERMINATION PAYMENT**

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

Mirant Americas Energy Marketing, LP (“MAEM”) and Fitchburg Gas and Electric Light Company (“FG&E” and, together with MAEM, the “Parties”) enter into this Settlement Agreement (the “Settlement Agreement”) in connection with a dispute relating to the calculation of a termination payment under a terminated gas sale and purchase agreement.

RECITALS

1. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the "Petition Date"), Mirant Corporation and certain of its affiliated debtors, including MAEM (collectively, the "Initial Debtors"), filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Court") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code").¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors" and, together with the Initial Debtors, the "Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors").

2. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 21, 2003, the Court entered the order approving joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 5, 2003, the Court granted the motion for an order directing that certain orders entered

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 in the Court of Queen's Bench of Alberta Judicial District of Calgary (the

in the cases of the Initial Debtors be made applicable to those of the Wrightsville Debtors. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. 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 the Debtors (the "Mirant Committee") and the other for Mirant Americas Generation, LLC (the "MAGI Committee" and, together with the Mirant Committee, the "Creditors' Committees").

4. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of the Official Committee of Equity Security Holders of Mirant Corporation (the "Equity Committee" and, collectively with the Creditors' Committees, the "Committees"). The appointment list of the members of the Equity Committee was filed in the chapter 11 case of Mirant Corporation on September 18, 2003.

5. FG&E is a subsidiary of Unitol Corporation, a New Hampshire corporation. MAEM and FG&E are parties to a Base Contract for Short-Term Sale and Purchase of Natural Gas, dated June 1, 1998 (the "FG&E Agreement"). As a result of the commencement of MAEM's chapter 11 cases, FG&E declared an Event of Default² and terminated the FG&E Agreement in accordance with section 556 of the Bankruptcy Code.

6. In addition to terminating the FG&E Agreement, FG&E asserted that it was entitled to withhold payments otherwise due to MAEM under the FG&E Agreement based upon Section 14.1(ii) of the FG&E Agreement, which provides that "if an Event of Default

"Canadian Court") pursuant to the *Companies' Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the FG&E Agreement.

occurs with respect to a party (the “Defaulting Party”)...the other party...may... withhold any payments due to Defaulting Party in respect of any transactions” (the “One-way Termination Provision”).

7. A bona fide dispute exists as to whether the One-way Termination Provision is unenforceable as an *ipso facto* clause under section 365(e)(1) of the Bankruptcy Code, notwithstanding section 556 of the Bankruptcy Code (the “Termination Payment Dispute”).

AGREEMENT

The Parties desire to settle the Termination Payment Dispute and therefore agree that:

1. Within two (2) business days of approval of this Settlement Agreement by the Court, FG&E shall pay MAEM \$75,000 as a cash termination payment in immediately available funds (the “Termination Payment”).

2. Additionally, FG&E agrees to enter into certain agreements with MAEM (the “Enabling Agreements”), substantially in the form of: (i) the most recent standard North American Energy Standards Board Base Contract for Sale and Purchase of Natural Gas; and (ii) the Edison Electric Institute Master Power Purchase and Sale Agreement, including special provisions under either agreement as may be mutually acceptable to both parties, pursuant to which FG&E agrees to make a good faith effort to facilitate new transactions.

3. Upon (i) the execution of this Settlement Agreement, (ii) approval of this Settlement Agreement by the Court, and (iii) payment by FG&E to MAEM of the Termination Payment, each of the Parties, for valuable consideration, for itself and its respective affiliates, principals, agents, employees, representatives, successors and assigns (collectively, the

“Releasers”), hereby agree that the FG&E Agreement is duly terminated and fully remises, releases, acquits, satisfies, and forever discharges the other Party and its respective affiliates, principals, agents, employees, representatives, successors and assigns (collectively, the “Releasees”), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Releasers ever had, may have had, now has, or which the Releasers or their respective successors or assigns, hereinafter can, shall or may have, against the Releasees and their respective successors or assigns, for, upon or by reason of any claims arising under or related to the FG&E Agreement, payment or performance thereunder, FG&E’s termination of the FG&E Agreement and/or MAEM’s alleged Event of Default under the FG&E Agreement.

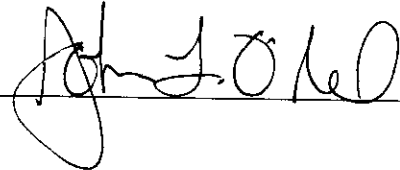
4. Except to the extent necessary to enforce this Settlement Agreement, this Settlement Agreement shall not be admissible in any other proceeding or litigation.

5. The Court shall retain sole and exclusive jurisdiction with respect to any matters relating to this Settlement Agreement.

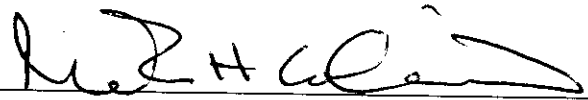
6. The Settlement Agreement shall be effective only upon approval by the Court.

MIRANT AMERICAS ENERGY MARKETING,
LP, Debtor
By: Mirant Americas Development, Inc.
Its General Partner

EM/SE

By: _____

FITCHBURG GAS AND ELECTRIC LIGHT
COMPANY

By: _____
Mark H. Collin, Treasurer