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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.	)	
	)	Date and Time: April 14, 2004,
	)	10:30 a.m.
	)	

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**DEBTORS' MOTION FOR APPROVAL OF (I) THE "SETTLEMENT AGREEMENT AND RELEASE" BETWEEN WILD GOOSE STORAGE, INC. AND MIRANT AMERICAS ENERGY MARKETING, LP; (II) REJECTION OF THE STORAGE SERVICES AGREEMENT, FIRM OFFER, PRECEDENT AGREEMENT AND RELATED CONTRACTS WITH WILD GOOSE STORAGE, INC.**

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

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this Motion (the "Motion") for approval of:

(i) the "Settlement Agreement and Release," dated February 19, 2004, (the "Settlement Agreement") between Mirant Americas Energy Marketing, LP ("MAEM") and Wild Goose Storage, Inc. ("Wild Goose") pursuant to Rule 9019 of the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”); and (ii) as part of the Settlement Agreement, for authority to reject (a) the “Storage Services Agreement” dated June 7, 2001, (b) a Base Load Storage Service Appendix BLS dated July 3, 2001, (c) an undated firm offer, and (d) a “Precedent Agreement” dated June 13, 2001 (collectively the “Storage Agreements”), pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq., as amended) (the “Bankruptcy Code”). In support thereof the Debtors represent as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**II. PROCEDURAL BACKGROUND**

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

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.

### **III. FACTUAL BACKGROUND**

#### **A. The Storage Agreements.**

5. The Storage Agreements, which are attached hereto as composite Exhibit A,<sup>1</sup> were originally procured in order to ensure reliable natural gas supply for Mirant's existing and future California assets. The Storage Agreements provided MAEM with 2,000,000 Dth of natural gas storage capacity at the Wild Goose underground natural gas storage facility near Gridley, California.

6. Prior to the Petition Date, on June 25, 2003, MAEM posted \$1,926,000 in cash as collateral (the "Collateral") for its obligations under the Storage Agreements. At the time the Collateral was posted, MAEM was in compliance with the Storage Agreements, such agreements were not in default, and no amount was owing under such agreements. Section 7(a) of the Precedent Agreement requires the posting of collateral by reference to the Wild Goose Tariff.

7. Under the Storage Agreements, Mirant is required to pay approximately \$160,500/month for demand charges. The term of the Storage Agreements is through March, 2009.

8. The Debtors have determined that the Storage Agreements are no longer necessary for their business operations. The Debtors originally anticipated a significant deployment and build-out of their California assets, necessitating the procurement of the Storage Agreements. However, the Debtors' plans in that regard have changed, rendering the Storage Agreements unnecessary. Moreover, general illiquidity in forward gas markets (among other

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<sup>1</sup> Not all parties were served with the Exhibits. Parties in interest may request a copy of the Exhibits by making a written request to the Debtors' counsel.

factors) will make it difficult for the Debtors to realize the full value of a gas storage facility.

The Debtors, in their business judgment, have determined that the Storage Agreements should be rejected under Bankruptcy Code section 365.

9. Rather than simply rejecting the Storage Agreements, the Debtors commenced negotiations with Wild Goose to liquidate and compromise the amount of Wild Goose's rejection damage claim against the Debtors' estates, as well as to establish the treatment of the Collateral. The Debtors have reached an agreement with Wild Goose, which is subject to this Court's approval, and is described below.

**B. Summary of Settlement Agreement.**

10. MAEM and Wild Goose have entered into a Settlement Agreement,<sup>2</sup> which is attached hereto as Exhibit B, the principle terms of which include:

- The Debtors will reject the Storage Agreements, effective upon approval by this Court of this Motion (provided such order is entered no later than April 30, 2004);
- In full and final satisfaction of all claims of Wild Goose arising under or in connection with the Storage Agreements, Wild Goose will receive: (a) a "Settlement Payment" of \$1,926,000, which shall be satisfied by resort to the Collateral, and (b) an allowed, unsecured, prepetition claim against MAEM's estate in the amount of \$874,000 (the "Claim Amount");
- The parties will mutually release all claims and potential claims relating to or arising from the Storage Agreements (including the rejection thereof), and any claims that might arise in relation to the Collateral.

**IV. RELIEF REQUESTED**

11. By this Motion, the Debtors hereby request approval of the Settlement Agreement under Bankruptcy Rule 9019. The Debtors also hereby seek approval of the rejection

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<sup>2</sup> Unless otherwise defined herein, capitalized terms have the same meanings ascribed to them in the Settlement Agreement.

of the Storage Agreements effective upon the date this Court approves the Motion.

12. The Debtors specifically direct this Court's attention to the fact that the Storage Agreements are ones over which the Federal Energy Regulatory Commission ("FERC") has certain jurisdictional authority. However, the Debtors submit that the rejection of the Storage Agreements pursuant to this Motion may, and should, be approved by this Court. This is because Wild Goose has blanket certificate authority to enter into the Storage Agreements pursuant to 18 C.F.R. Part 284, Subpart J of FERC's regulations, and, as such, the Storage Agreements did not require FERC approval prior to their effectiveness. Furthermore, FERC approval is not required in order to terminate the Storage Agreements because the blanket certificate authority granted to Wild Goose contains pre-granted automatic abandonment authority. 18 C.F.R. § 284.221(d).

13. Certainly, if the parties have the authority to enter into and terminate the Storage Agreements without seeking individual FERC approval due to Wild Goose's blanket certificate authorization, the Storage Agreements can be consensually rejected under Bankruptcy Code section 365, as requested herein. Moreover, FERC has been served with this Motion. In sum, the Debtors submit that there is no jurisdictional impediment to this Court granting the Motion.

## V. BASIS FOR RELIEF

### A. The Court Should Authorize the Debtors to Enter Into the Settlement Agreement Under Rule 9019.

14. Rule 9019(a) of the Bankruptcy Rules 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). 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.”).

15. 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. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (*citing 9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)).

16. Furthermore, a 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 settlements 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).

17. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors: (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (iii) all other factors bearing on the wisdom of the compromise. *See Cajun Electric*, 119 F.3d at 356 (citations omitted).

**B. The Rule 9019 Factors Are Satisfied.**

*(i) Probability of Success in the Litigation.*

18. The Debtors have determined that outright rejection of the Storage Agreements, after taking into account all reasonable efforts by Wild Goose to mitigate its damages, would result in a damages claim in excess of the Settlement Payment of \$1,926,000 (an amount which Wild Goose is holding as cash Collateral) plus the Claim Amount of \$874,000. The Settlement Agreement liquidates the amount of Wild Goose's damages to the Settlement Payment and the Claim Amount and establishes said amounts with certainty.

*(ii) Complexity, Likely Duration of the Litigation, and Expense.*

19. The Debtors believe that determining the amount of Wild Goose's rejection damage claim arising from the rejection of the Storage Agreements, and establishing the treatment of the Collateral, is beneficial to their estates. Pursuant to the Settlement Agreement, Wild Goose will agree to waive any claims against the Debtors' estates relating to or arising from the rejection of the Storage Agreements, other than resort to the Collateral and the Claim Amount. The Debtors believe that litigation of Wild Goose's rejection damage claim would have a detrimental impact on the Debtors' reorganization efforts because some of the Debtors' key personnel and management would be focused on managing such litigation rather than the Debtors' emergence from chapter 11. Therefore, the Debtors, in their business judgment, have determined that the terms of the Settlement Agreement are more beneficial to the Debtors than outright rejection of the Storage Agreements (or any other alternative).

*(iii) Other Factors Favoring Settlement.*

20. The Debtors and Wild Goose have entered into the Settlement Agreement only after both parties thoroughly analyzed their respective positions and jointly made significant movements and concessions in an effort to resolve the dispute. Pursuant to the Settlement

Agreement both the Debtors and Wild Goose will receive a release of claims arising out of or in connection with the Debtors' rejection of the Storage Agreements and the Collateral. Each of the foregoing factors favors granting the Motion.

21. The Debtors have analyzed whether the posting of the Collateral constitutes a preference under Bankruptcy Code section 547. If the Collateral is avoidable, outright rejection of the Storage Agreements may be preferable. No doubt, Wild Goose would assert every available potential defense to avoiding the transfer of the Collateral. This would cause the estates to expend money for the uncertain recovery inherent in any litigation. Accordingly, the Debtors have determined that it is in the best interests of the estate to settle the matter on the terms set forth herein.

**C. The Contracts Are Executory Contracts That Should Be Rejected.**

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

23. The Storage Agreements are executory contracts because they require (i) Wild Goose to provide MAEM with the on-going right to use the natural gas storage facility (and provide related services) and (ii) MAEM to pay for this right. Moreover, Wild Goose's failure to allow MAEM to use the storage facility in accordance with the Storage Agreements would constitute a material breach of the Storage Agreements, excusing the performance of the other party. Therefore, the Storage Agreements are undoubtedly executory contracts that may be

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

**D. Rejection Of the Storage Agreements Is Within the Debtors' Business**

**Judgment.**

24. As noted previously, rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved, provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision..."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith).

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

26. The Debtors have determined, in their reasonable business judgment, that the Storage Agreements should be rejected because they are uneconomical and an impediment to the Debtors' ongoing business operations. The Storage Agreements are no longer necessary for their intended purpose; to wit, storing natural gas to service the California assets and proprietary storage trading. Rejection of the Storage Agreements is well within the sound business judgment of the Debtors.

**VI. CONCLUSION**

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

Dated: March 19, 2004

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

By: /s/ Ian T. Peck  
Robin E. Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian T. Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
White & Case LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

**ATTORNEYS FOR THE DEBTORS AND  
DEBTORS IN POSSESSION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via first class U.S. mail, and the addressees set forth below via first class U.S. mail (with exhibits) on the 19<sup>th</sup> day of March, 2004.

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

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

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

Bruce R. Zirinsky  
Gregory Petrick  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, NY 10038

William R. Baldiga  
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One Financial Center  
Boston, MA 02111

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New York, NY 10017-3954

Edward S. Weisfelner  
Leslie H. Scharf  
Brown Rudnick Berlack Israels LLP  
120 West 45th Street  
New York, NY 10036

Wild Goose Storage, Inc.  
P.O. Box 2850  
Calgary, Alberta, Canada  
T2P 2S5  
Ben Ledene: Vice President, Marketing  
Development & Services

Paul N. Silverstein  
Andrews & Kurth, L.L.P.  
805 Third Avenue  
New York, NY 10022

Wild Goose Storage, Inc.  
3900, 421 – 7<sup>th</sup> Ave. SW  
Calgary, Canada  
T2P 4K9  
Attn: Vice President, Wild Goose  
Marketing

Jason S. Brookner  
Andrews & Kurth, L.L.P.  
1717 Main Street  
Suite 3700  
Dallas, TX 75201

Jason A. Dubchak  
Legal Counsel & Regulatory Advisor  
EnCana Gas Storage  
EnCana on 8th (Bankers Hall-East Tower)  
1800, 855-2nd Street S.W.  
P.O. Box 2850  
Canada T2P 2S5  
Calgary, Alberta

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

/s/ Ian T. Peck

# Exhibit A-1

**Wild Goose Storage Inc.**

**April 1, 2004 Expansion Open Season**

**Offer Sheet**

Term commencing at  and ending on

Inventory Capacity :  Dth.

Month	Maximum Daily Injection Quantity	Injection Demand Rate	Injection Demand Charge (A)	Inventory Demand Rate	Inventory Demand Charge (B)	Maximum Daily Withdrawal Quantity	Withdrawal Demand Rate	Withdrawal Demand Charge (C)	Monthly Storage Demand Charge (A)+(B)+(C)
	Dth/day/month	\$US/Dth/day/month	\$US/month	\$US/Dth/month	\$US/month	Dth/day/month	\$US/Dth/day/month	\$US/month	\$US/month
<b>Rack Rate:</b>		<b>3.00</b>		<b>0.03</b>			<b>2.00</b>		
April	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
May	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
June	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
July	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
August	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
September	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
October	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
November	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
December	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
January	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
February	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
March	20,000	3.00	60,000	0.03	60,000	25,000	2.00	50,000	\$ 170,000
<b>Total Storage Demand Charge (US\$)</b>									<b>\$ 2,040,000</b>

Injection Commodity Rate:  \$US/Dth  
 Withdrawal Commodity Rate:  \$US/Dth

Rack Rate  
 0.02 \$US/Dth  
 0.02 \$US/Dth  
 100% of Rack Rate

This offer is open for acceptance by Wild Goose Storage Inc. until 2:00 pm MST, Thursday June 28, 2001.

**Fax Offer Sheets to: 403-290-8192**

Attention: Ben Ledene

Company Name:

Par:

Name:

Title:



3900, 421 - 7th Avenue S.W.  
 Calgary, Alberta  
 Canada  
 T2P 4K9

# Exhibit A-2



## STORAGE SERVICES AGREEMENT

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THIS STORAGE SERVICES AGREEMENT MADE AS OF JUNE 7, 2001 BETWEEN:

**Mirant Americas Energy Marketing, L.P.**  
( "CUSTOMER" )

- and -

**WILD GOOSE STORAGE INC.**  
( "WILD GOOSE" )

**RECITALS:**

- A. Wild Goose has developed certain facilities known as the Wild Goose Storage Facility which permit Wild Goose to provide Storage Services to Customer;
- B. Customer wishes to use some or all of those Services; and
- C. This Storage Services Agreement establishes how those Services will be provided.

**WILD GOOSE AND CUSTOMER AGREE AS FOLLOWS:**

- 1. DEFINITIONS
  - 1.1 Defined terms used in the Storage Service Documents, including this Agreement, have the meaning given to them in Rule 1 of the Wild Goose Tariff.



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2. REPRESENTATIONS OF CUSTOMERS

2.1 Customer represents and warrants to Wild Goose as follows, and such representations and warranties shall survive for the benefit of Wild Goose and are ratified and confirmed upon entering into each and every Transaction under the Storage Service Documents.

- (a) Customer is duly formed and validly existing under the laws of its incorporating jurisdiction and is duly qualified to carry on business in all jurisdictions in which it carries on business;
- (b) the execution of this Agreement and the Storage Service Documents does not violate any law, regulation, or order or Customer's articles of incorporation or bylaws and does not breach any agreement to which Customer is a party; and
- (c) to the knowledge of Customer there are no action, claims or proceedings threatened against or affecting Customer which might materially affect any of the Transactions contemplated in this Agreement or the Storage Service Documents, or which might affect Customer's ability to meet its financial obligations under the Storage Service Documents.

3. TERM

3.1 This Storage Services Agreement, made effective as of the date first above written, creates the contractual relationship between Wild Goose and Customer for entering into Transactions utilizing the Services. From time to time there may be no Services provided, or no Transactions then in effect, in which case, this Storage Services Agreement will continue until either Party delivers a written termination notice to the other Party. That notice will be effective at the commencement of the second Gas Month following the date it was given; provided that, if a Transaction is then in effect between Wild Goose and Customer, this Storage Services Agreement shall only terminate after that Transaction is performed or terminated in accordance with its provisions.



4. WILD GOOSE STORAGE SERVICES

- 4.1 Wild Goose will provide and Customer will utilize those Services that the Parties agree to from time to time, as confirmed by an Appendix evidencing the Transaction entered into by the Parties.
- 4.2 When a Transaction is agreed to by the Parties, the terms of the applicable Service Schedule will apply to that Transaction, except to the extent expressly modified by the express terms and conditions of the Appendix in question.
- 4.3 Each Party consents to the recording of telephone conversations between the Parties concerning oral agreements for Transactions. Each Party hereby waives any objection based on the recording of such telephone conversations and to the admissibility of such a recording in a proceeding concerning the agreement before a court, arbitrator, mediator, or administrative agency.

5. GENERAL TERMS AND CONDITIONS / FLIGHTPATH

- 5.1 The General Terms and Conditions and the FlightPATH Customer Access Procedures apply to and are incorporated by reference into this Agreement and all Transactions which are entered into from time to time by Customer and Wild Goose.
- 5.2 The Storage Service Documents and every Transaction entered into thereunder, shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.
- 5.3 The Storage Service Documents will be governed by and interpreted in accordance with the laws in force in the State of California without regard for the choice of law provisions thereof; and the Parties irrevocably submit to the courts having jurisdiction in the State of California.



6. CONFLICT

- 6.1 Subject to section 4.2 hereof, if there is any conflict between the terms of this Storage Services Agreement and the terms of any of the FlightPATH Customer Access Procedures, the General Terms and Conditions or the terms of any Service Schedule then in effect between the Parties, the terms of this Storage Services Agreement shall prevail.
- 5.2 If there is any conflict between the terms of the FlightPATH Customer Access Procedures and the terms of the General Terms and Conditions or the terms of any Service Schedule then in effect between the Parties, the terms of the FlightPATH Customer Access Procedures shall prevail.
- 5.3 If there is any conflict between the terms of any Service Schedule then in effect between the Parties and the terms of the General Terms and Conditions, the terms of the Service Schedule shall prevail.

IN WITNESS WHEREOF, the Parties have executed this Storage Services Agreement as of the date first above written.

**MIRANT AMERICAS ENERGY  
MARKETING, L.P.**

**WILD GOOSE STORAGE INC.**

PER:

PER:

NAME:

**Chris McDonald**

NAME:

TITLE:

**Vice President Chief Commerical  
Officer - West Region**

TITLE:



# STORAGE SERVICES AGREEMENT

## NOTIFICATION SCHEDULE

This Notification Schedule is attached to and forms part of the Storage Services Agreement entered into between \_\_\_\_\_ and WILD GOOSE STORAGE INC. as of \_\_\_\_\_.

### NOTICES TO WILD GOOSE

#### NOTICES

Wild Goose Storage Inc.  
3900, 421 - 7th Ave. SW  
Calgary, CANADA  
T2P 4K9  
Attn: Vice President, Wild  
Goose Marketing  
Telephone:  
(403) 691-8815  
  
Fax:  
(403) 266-9736

#### REQUESTS AND NOMINATIONS

Wild Goose Storage Inc.  
3900, 421 - 7th Ave. SW  
Calgary, CANADA  
T2P 4K9  
Attn: Gas Control  
  
Telephone:  
(403) 691-8815  
After hours:  
(403) 691-8815  
Fax:  
(403) 266-9736

#### PAYMENTS

Bank of Nova Scotia  
240 - 8th Avenue S.W.  
Calgary, CANADA  
T2P 2N7  
Account No.: CDN 000-020-8  
US 400-382-8  
GST Registration No.:  
R121756936

### NOTICES TO CUSTOMER

#### NOTICES

Address:  
Mirant Americas Energy  
Marketing, L.P.  
C/O West Gas Region  
11558 Perimeter Center West  
Atlanta, GA 30338-5416  
  
Attention: Rick Wadle  
Telephone: 678.579.3463  
Fax: 678.579.5766

#### CONFIRMATIONS

Address:  
Mirant Americas Energy  
Marketing, L.P.  
C/O West Gas Region  
11558 Perimeter Center West  
Atlanta, GA 30338-5416  
  
Attention: Rick Wadle  
Telephone: 678.579.3463  
Fax: 678.579.5766

#### PAYMENTS

Bank:  
Bank Of America, N.A.  
Dallas, TX  
  
\_\_\_\_\_  
ABA # 111000012  
  
Account number: 3751003269  
GST number: \_\_\_\_\_

### REQUEST TIMES & NOMINATION TIMES

All times are Pacific Clock Time

REQUEST TIME (FOR BLS SERVICE)	REQUEST TIME (FOR STS SERVICE)	NOMINATION TIME	EFFECTIVE TIME
09:00	09:00	09:30	07:00 (next day)
15:30	15:30	16:00	07:00 (next day)
06:00 (next day)	06:30 (next day)	08:00 (next day)	15:00 (next day)
12:00 (next day)	14:30 (next day)	15:00 (next day)	19:00 (next day)

# Exhibit A-3

## PRECEDENT AGREEMENT

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This Precedent Agreement made as of the 13th day of June, 2001

- between -

**MIRANT AMERICAS ENERGY MARKETING, LP**  
(hereinafter referred to as "Mirant")

- and -

**WILD GOOSE STORAGE INC.**  
(hereinafter referred to as "Wild Goose")

WHEREAS pursuant to D.96-08-058, Wild Goose was granted a Certificate of Public Convenience and Necessity (the "CPCN") by the Public Utilities Commission of the state of California (the "Commission") to construct, own and operate an underground natural gas storage facility located near Gridley, California, (the "Wild Goose Facility"), and to provide storage services in accordance with the provisions of the Tariff of Service in the form approved from time to time by the Commission (the "Wild Goose Tariff");

AND WHEREAS Wild Goose has applied to the Commission to amend its CPCN to expand the Wild Goose Facility (the "Wild Goose Expansion") and to provide storage services at the expanded facility in accordance with the Wild Goose Tariff;

AND WHEREAS Wild Goose has, in an open season conducted by it (the "Open Season") invited potential customers to commit to contracting for Base Load Storage Service capacity at the expanded Wild Goose Facility;

AND WHEREAS subject to the terms and conditions of this Precedent Agreement, Wild Goose and Mirant have entered into a Base Load Storage Service Agreement for service at the expanded Wild Goose Facility;

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WILD GOOSE STORAGE INC. PRECEDENT AGREEMENT RELATED TO



AND WHEREAS upon fulfillment of all conditions set forth herein, Wild Goose will construct the facilities required to provide service to Mirant on the terms and conditions herein provided for;

NOW THEREFORE THIS PRECEDENT AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. In addition to the words and phrases defined in the recitals to and elsewhere in this Precedent Agreement, the following definitions are made:
  - (a) "Amended CPCN" means the CPCN issued Wild Goose by the Commission approving the Wild Goose Expansion.
  - (b) "Customer Conditions Precedent" means those conditions precedent set forth in Section 4 hereto;
  - (c) "Customer's Expansion Service" means BLS Storage Service in accordance with the Wild Goose Tariff, the particulars of which are set forth on the Appendix BLS executed by Mirant and attached as Schedule "A" hereto, subject to adjustment as provided for herein;
  - (d) "commenced construction" means Wild Goose has taken delivery of substantially all the necessary pipe to build the pipeline lateral from a point near its Remote Facility Site to a point near the Delevan Compressor Station on the Pacific Gas and Electric Company backbone system, as such pipeline lateral is described in the Wild Goose Application and Wild Goose has begun preparation of the requisite right of way.
  - (e) "Expansion Customers" means Mirant and all other customers who have contracted for BLS storage service related to the Wild Goose Expansion.
  - (f) "In-Service Date" means the effective date on which Wild Goose notifies the Commission that the Wild Goose Expansion has been placed into service pursuant to the Amended CPCN.



- (g) "Other Required Approvals" means such certificates, permits, licenses, concessions and other authorizations from the Commission and such other regulatory and governmental authorities which Wild Goose, acting reasonably, determines are necessary or of advantage in constructing and operating the Wild Goose Expansion, but does not include the Wild Goose Application;
- (h) "Phase-In Period" means the period beginning on the In-Service Date and ending 12 months later.
- (i) "Wild Goose Application" means the application filed by Wild Goose with the Commission to amend the CPCN to allow the expansion of the Wild Goose Facility.
- (j) "Wild Goose Conditions Precedent" means those conditions precedent set forth in Section 3 hereto;

All words and phrases which are defined in the Wild Goose Tariff or the Storage Service Agreement for BLS Service including Schedule "A" hereto, have the same meanings when used herein.

2. Mirant agrees that it will support Wild Goose's efforts to amend its CPCN pursuant to the Wild Goose Application and to secure all Other Required Approvals.
3. The following conditions precedent are for the sole benefit of Wild Goose, which in its sole and absolute discretion, may waive any one or more of them at any time, but no later than five (5) business days from the date the condition was to have been met, in whole or in part, without prejudice to its rights to rely on and enforce or to waive any of the other Wild Goose Conditions Precedent:
  - (a) On or before October 31, 2001 Wild Goose shall have elected to include Customer's Expansion Service in the Wild Goose Expansion and given Mirant written notice to such effect. Such one time election, if made, shall not be deemed a waiver of any of the other provisions of this Agreement, including any other Wild Goose Conditions Precedent. For greater certainty the parties acknowledge and agree that such notice may be given selectively to Mirant and/or one or more Expansion Customers



according to the impact of such customer's expansion service upon the economic value of the Wild Goose Expansion, as determined by Wild Goose in its sole discretion.

- (b) On or before September 1, 2002, Wild Goose shall have given Mirant written notice that it has obtained and, in its sole and absolute discretion, accepted the Amended CPCN granted by the Commission pursuant to the Wild Goose Application.
  - (c) Wild Goose shall have given notice to Mirant no later than April 30, 2003 that it has obtained and, in its sole and absolute discretion accepted all Other Required Approvals and having regard for the factors referenced in Section 8 hereof, that it has commenced construction of the Wild Goose Expansion.
4. The following conditions precedent are for the sole benefit of Mirant, which in its sole and absolute discretion, may waive any one or more of them, at any time, but no later than five (5) business days from the date the condition was to have been met, in whole or in part, without prejudice to its rights to rely on and enforce or to waive any of the other Customer Conditions Precedent:
- (a) Wild Goose shall have given notice to Mirant no later than April 30, 2003 that it has commenced construction of the Wild Goose Expansion.
  - (b) Wild Goose has given notice to Mirant of the In-Service Date for the Wild Goose Expansion which In-Service Date shall be no later than April 1, 2005.
5. Each party will use all reasonable efforts to satisfy its respective conditions precedent with the goal of having an In-Service Date for Wild Goose Expansion on or before April 1, 2004. If any conditions precedent are not satisfied or waived within the time stipulated this Precedent Agreement shall lapse and be of no further force and effect.
6. The obligation of Wild Goose to provide Customer's Expansion Service and of Mirant to pay Demand Charges shall commence on the latest of the Service Commencement Date stipulated in the Appendix BLS attached hereto and the In-Service Date.



- 
- (a) If the In-Service Date is earlier than April 1, 2004, Mirant shall have the option to increase the term of Customer's Expansion Service by advancing the Service Commencement Date to such In-Service Date. To exercise such option Mirant must give notice to such effect to Wild Goose no later than 5 business days following Wild Goose's notice.
- (b) If the In-Service Date is later than April 1, 2004, Mirant shall have the option to extend the term of Customer's Expansion Service by extending the Service Termination Date by a period of time equivalent to the period of time by which the In-Service Date is later than April 1, 2004. To exercise such option Mirant must give notice to such effect to Wild Goose no later than 10 business days following Wild Goose's notice of the In-Service Date.
- (c) The Service Commencement Date will not fall on any date between October 1<sup>st</sup>, 2004 and February 28<sup>th</sup>, 2005, unless otherwise agreed by Mirant.
7. Mirant acknowledges and agrees that Wild Goose has made and throughout the term of this Precedent Agreement will continue to make substantial commitments of time, effort and money in satisfying the Conditions Precedent and constructing and placing the Wild Goose Expansion in service.
- (a) Throughout the term of this Precedent Agreement, Mirant shall adhere to the provisions of Rule 6 of the Wild Goose Tariff. Notwithstanding the provisions of 3.2 (a) of that Rule 6, the amount of such assurances shall be equal to one year's Demand Charges.
- (b) Should Mirant fail to meet its obligations under this Agreement, Mirant's failure will be considered a Triggering Event and if Wild Goose shall elect to serve Mirant with an Early Termination Notice, Mirant shall pay Wild Goose Early Termination Damages pursuant to the Wild Goose Tariff. The parties specifically agree that the Early Termination Damages shall be calculated for a period that begins on the later of April 1, 2004 and the In-Service Date, if any, announced by Wild Goose prior to its serving such Early Termination Notice, and that ends upon the end of the Term provided for pursuant to the Appendix BLS attached hereto.



8. Due to factors not reasonably foreseeable by Wild Goose or beyond its reasonable control, Wild Goose may be unable to technically or economically build the Wild Goose Expansion in a manner that such facilities could be expected to perform as planned. Wild Goose and Mirant acknowledge and agree that in such circumstances, Wild Goose shall not be obliged to construct the Wild Goose Expansion or, having constructed such facilities, its obligation to provide Customer's Expansion Service shall be adjusted as provided herein. Wild Goose shall consult with Mirant as regards the ongoing progress of the Wild Goose Expansion and shall promptly advise Mirant of any factors of which Wild Goose becomes aware that may result in such difficulties being experienced.
- (a) Subject only to the foregoing provisions of this Section 8 and the timely satisfaction or waiver of the Wild Goose Conditions Precedent, Wild Goose shall be obliged to construct the Wild Goose Expansion and put such facilities into service.
  - (b) Subject to the other provisions of this Section 8, in order to allow Wild Goose to properly commission the Wild Goose Expansion, Wild Goose may phase-in Customer's Expansion Service during the Phase-In Period, as the performance of the Wild Goose Expansion allows and the Demand Charge payable by Mirant shall be adjusted rateably. Therefore, the parties agree that from time to time during the Phase-In Period, as Wild Goose Expansion capacity becomes available, Wild Goose shall give notice thereof to Mirant; *provided that*:
    - (i) If Wild Goose offers Mirant less than 50% of Customer's Expansion Service, Mirant shall have the option to refuse to accept such service;
    - (ii) If Wild Goose offers Mirant 50% or more of Customer's Expansion Service, Mirant shall accept such service;
    - (iii) after Mirant has accepted service pursuant to subsection (i) or (ii) of this Section, Wild Goose may phase-in additional increments of Wild Goose Expansion Service in increments no less than 25% and Mirant shall accept such service;
    - (iv) Nothing in this Section 8(b) shall relieve Wild Goose from its obligation to allocate capacity equitably among all Expansion Customers.



- (c) Notwithstanding anything express or implied by the foregoing provisions of Subsection (b) of this Section 8, Wild Goose shall advise Mirant by notice in writing given no later than 30 days following the end of the Phase-In Period as to the total Inventory Capacity, Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity that Wild Goose is able to provide Mirant for the balance of the term of Customer's Expansion Service.
- (d) Upon serving Mirant with the notice pursuant to Section 8(c) hereof, the Appendix BLS attached hereto shall be amended to reflect the revised Inventory Capacity, Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity as set out in such notice, and the Demand Charge payable by Mirant shall be adjusted rateably.
- (e) In allocating storage capacity under this Section 8, Wild Goose shall treat all Expansion Customers equitably and in such a manner so as to preserve the relationship among Inventory Capacity, Maximum Daily Injection Quantity and Maximum Daily Withdrawal Quantity as provided for in their respective Appendices BLS. If pursuant to Section 8(c) hereof, Wild Goose allocates to any Expansion Customer less than 100% of that customer's expansion service, all Expansion Customers shall be allocated the same percentage and Wild Goose shall not offer expansion service to any other customers until existing Expansion Customers have received 100% of their expansion service for the remainder of their respective terms.
9. The parties acknowledge and agree that the provisions of the Wild Goose Tariff shall apply to this Precedent Agreement unless and to the extent that the provisions of this Precedent Agreement expressly amend or vary the Wild Goose Tariff and such amendment or variance is approved by the Commission.
10. This agreement shall be governed by the laws of the state of California. To resolve any dispute arising hereunder, the parties irrevocably submit to the exclusive jurisdiction of the courts of the state of New York.
11. If any provision of this Precedent Agreement shall be found to be invalid, illegal or unenforceable, then this Precedent Agreement shall, only to the extent



necessary to cure such invalidity, illegality or unenforceability be amended without the requirement for any action on the part of the parties and the validity, legality and enforceability of the other provisions of this Precedent Agreement shall be unaffected.

12. No amendment nor variation of the provisions of this Precedent Agreement will be effective or binding upon the parties unless it is set forth in writing and duly executed on behalf of each of the parties by their respective proper officers or authorized representatives in that behalf.
13. This Precedent Agreement, including its attachments and the documents incorporated by reference, constitutes the entire agreement between the parties relative to the matters herein provided for or contemplated, and there are no other written, verbal, express or implied representations, warranties, conditions or covenants in respect thereto. This Precedent Agreement supercedes all prior or contemporaneous discussions, negotiations, representations or agreements relating to the subject matter of this Precedent Agreement.
14. Time is of the essence of each and every term, condition, obligation and provision hereof.
15. References to "sections" or "Schedules" are references to sections and Schedules of this Precedent Agreement, including the documents attached hereto or incorporated herein by reference. Words such as "hereunder", "hereto" and "herein" and similar expressions will refer to the whole of this Precedent Agreement and not to any particular Section or Schedule hereof.

**IN WITNESS WHEREOF** the parties hereto have duly executed and delivered this Precedent Agreement under the signatures of their respective proper officers duly authorized in that behalf as of the day, month and year first above written.



WILD GOOSE STORAGE INC.

MIRANT AMERICAS ENERGY  
MARKETING, L.P.

FOR: Richard Dentel  
NAME: Richard Dentel  
TITLE: President

FOR: Chris McDonald  
NAME: Chris McDonald  
TITLE: Vice President & Chief Commercial  
Officer - West Region

# Exhibit A-4

## BASE LOAD STORAGE SERVICE

### APPENDIX BLS

Wild Goose Storage Inc. ("Wild Goose") and MIRANT AMERICAS ENERGY MARKETING, L.P. ("Customer") hereby adopt Service Schedule BLS, along with their previously executed Storage Services Agreement, FlightPATH Customer Access Procedures and General Terms and Conditions and agree to the additional provisions contained in this Appendix BLS:

1. Terms: April 1, 2004 to March 31, 2009, subject to the provisions of Service Schedule BLS  
 Hub Account: MAEMHUB001  
 Inventory Capacity: 2,000,000 Dth

Month	Max Daily Injection Quantity Dth/day/month	Injection Demand Rate \$/Dth/day/month	Injection Demand Charge (A) \$/month	Inventory Demand Rate \$/Dth/month	Inventory Demand Charge (B) \$/month	Max Daily Withdrawal Quantity Dth/day/month	Withdrawal Demand Rate \$/Dth/day/month	Withdrawal Demand Charge (C) \$/month	Monthly Storage Demand Charge (A)+(B)+(C) \$/month
Apr-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
May-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jun-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jul-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Aug-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Sep-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Oct-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Nov-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Dec-2004	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jan-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Feb-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Mar-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Apr-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
May-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jun-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jul-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Aug-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Sep-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Oct-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Nov-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Dec-2005	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jan-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Feb-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Mar-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Apr-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
May-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jun-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jul-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Aug-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Sep-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Oct-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Nov-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Dec-2006	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jan-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Feb-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Mar-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Apr-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
May-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jun-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00

Month	Max Daily Injection Quantity Dth/day/month	Injection Demand Rate \$/Dth/day/month	Injection Demand Charge (A) \$/month	Inventory Demand Rate \$/Dth/day/month	Inventory Demand Charge (B) \$/month	Max Daily Withdrawal Quantity Dth/day/month	Withdrawal Demand Rate \$/Dth/day/month	Withdrawal Demand Charge (C) \$/month	Monthly Storage Demand Charge (A)+(B)+(C) \$/month
Jul-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Aug-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Sep-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Oct-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Nov-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Dec-2007	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jan-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Feb-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Mar-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Apr-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
May-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jun-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jul-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Aug-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Sep-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Oct-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Nov-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Dec-2008	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Jan-2009	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Feb-2009	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00
Mar-2009	18,500	\$3.0000	\$55,500.00	\$0.0300	\$60,000.00	22,500	\$2.0000	\$45,000.00	\$160,500.00

Total Storage Demand Charge: \$9,630,000.00

- Service Commencement Point: WILD GOOSE  
Service Commencement Point Price Index: CITYGATE  
Connecting Pipeline at Service Commencement Point: PGE  
Designated Transportation Account at Service Commencement Point: WG0030M
- Service Termination Point: WILD GOOSE  
Service Termination Point Price Index: CITYGATE  
Connecting Pipeline at Service Termination Point: PGE  
Designated Transportation Account at Service Termination Point: WG0030R
- Injection Commodity Rate: \$0.02 /Dth  
Withdrawal Commodity Rate: \$0.02 /Dth

The parties have entered into this Appendix BLS effective April 1, 2004.

Important Note:

This Appendix BLS will be filed and binding in accordance with Article 1 of Service Standard BLS unless Customer objects by notice in writing by 5:00 PM Pacific Coast Time on the 15th Business Day following the day of the filing of this Appendix BLS. Signatures are not required to affect the binding nature of the transaction set forth in this Appendix BLS. The agreement of the Parties, as evidenced by this Appendix BLS, shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction.

MIRANT AMERICAS ENERGY MARKETING, L.P.

WILD GOOSE STORAGE INC.

PER:

*Chris McDonald*

NAME:

*VP Chief Commercial Officer - West Region*

TITLE:

WILD GOOSE STORAGE INC.

PER:

*Richard Daniel*

NAME:

*Richard Daniel*

TITLE:

*President*

# **Exhibit B**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement"), entered into as of February 19, 2004, is by and between Mirant Americas Energy Marketing, LP ("Mirant") and Wild Goose Storage Inc. ("WILD GOOSE"). WILD GOOSE and Mirant shall hereinafter sometimes be referred to separately as "Party" or collectively as "Parties."

**WHEREAS**, on July 14, 2003 (the "Petition Date") and continuing into the morning of July 15, 2003, Mirant and a number of its affiliates (the "Debtors") filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") for relief under chapter 11 of title 11 of the United States Code, Case No. 03-46590 (DML) (the "Proceeding");

**WHEREAS**, the Debtors have the right, after notice and approval of the Court in the Proceeding, to reject executory contracts under Section 365 of the U.S. Bankruptcy Code;

**WHEREAS**, WILD GOOSE and Mirant are Parties to a Storage Services Agreement dated June 7, 2001, a Base Load Storage Service Appendix BLS dated July 3, 2001, a firm offer, which is not dated, and a Precedent Agreement dated June 13, 2001 (collectively, the Storage Agreements"), which provide for 2,000,000 Dth of natural gas storage capacity located near Gridley, California, and certain associated services with a term from April 1, 2004 to March 31, 2009;

**WHEREAS**, to insure payment to WILD GOOSE for obligations due and owing in connection with the Storage Agreements, Mirant, posted cash collateral in the amount of \$1,926,000 (the "Collateral") to WILD GOOSE;

**WHEREAS**, Mirant expressed a desire to reject the Storage Agreements pursuant to section 365 of the Bankruptcy Code and WILD GOOSE indicated that it would assert claims in the Proceeding against the Debtors for any damages they would incur as a result of the proposed rejection of the Storage Agreements;

**WHEREAS**, the Parties desire to settle any and all claims that any Party would have, or otherwise compromise all disputed or potentially disputed issues, arising from or related to (i) the Storage Agreements, including rejection of the Storage Agreements, assertion of rejection damages arising under the Storage Agreements, and (ii) the Collateral (the "Disputed Issues");

**WHEREAS**, the Parties have agreed to resolve the Disputed Issues, including the rejection of the Storage Agreements, the amount of rejection damages and the form, timing, and payment of such damages; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, WILD GOOSE and Mirant, each for itself and for its successors and permitted assigns, hereby agree to as follows:

1. **Settlement Payment and Prepetition Claim.** In full and final satisfaction of all claims of WILD GOOSE arising under or in connection with the Storage Agreements, (i) Mirant shall pay WILD GOOSE the amount of \$1,926,000 (the "Settlement Payment") and (ii) WILD GOOSE shall have an allowed, prepetition claim against Mirant, as a result of the rejection of the Storage Agreements, in an amount equal to \$874,000 (the "Allowed Claim"). WILD GOOSE and Mirant agree that payment of the Settlement Payment shall be made and satisfied solely through WILD GOOSE's application of the Collateral. Mirant agrees that (i) WILD GOOSE is entitled to apply the Collateral for the Settlement Payment due hereunder and (ii) the Settlement Payment is immediately due and owing on the Effective Date without any notice or grace period.

2. **Bankruptcy Court Approval; Effective Date.** The receipt of Bankruptcy Court approval of this Agreement is a condition precedent to the effectiveness of this Agreement. In the event the Parties are unable to obtain such approvals on or before April 16, 2004, this Agreement will be deemed null and void without prejudice to the rights of either Party. The Parties agree, however, to work cooperatively and in good faith to obtain that approval promptly. The Effective Date of this Agreement will be the date that the Bankruptcy Court issues an order approving this Agreement, provided such order is issued no later than April 30, 2004.

3. **Release of Claims by Mirant.** Upon the Effective Date of this Agreement, Mirant, on behalf of itself and its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, does hereby release, acquit and forever discharge WILD GOOSE, its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, parents, affiliates, subsidiaries, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, of and from any and all, joint and/or several claims, charges, demands, damages, actions, causes of action, suits in equity, expenses, executions, judgments, levies, liabilities, losses, attorneys' fees, liquidated or unliquidated, fixed, contingent, direct or indirect, whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to the Parties, relating to or arising out of the Disputed Issues.

4. **Release of Claims by WILD GOOSE.** Upon the Effective Date of this Agreement, WILD GOOSE, on behalf of itself and its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, does hereby release, acquit and forever discharge Mirant, its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, parents, affiliates, subsidiaries, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, of and from any and all, joint and/or several claims, charges, demands, damages, actions, causes of action, suits in equity, expenses, executions, judgments, levies, liabilities,

losses, attorneys' fees, liquidated or unliquidated, fixed, contingent, direct or indirect, whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to the Parties, relating to or arising out of the Disputed Issues.

5. **Rejection of the Transportation and Storage Agreements.** WILD GOOSE hereby agrees not to oppose the rejection of the Storage Agreements. Mirant shall promptly move for the approval of this Agreement by the Bankruptcy Court, and WILD GOOSE shall cooperate with and support Mirant in such application.

6. **Surviving Claims.** Except as expressly provided herein, nothing in this Agreement compromises, discharges or otherwise affects any other matters between the Debtors and WILD GOOSE.

7. **Settlement Not an Admission.** Nothing contained in this Agreement shall be deemed an admission of any kind, whether of guilt, liability, or fact, by or against the Parties or their directors, officers, shareholders, agents, employees, representatives, principals, successors, predecessors, assigns, and heirs. Whether or not this Agreement is consummated or approved, neither this Agreement nor evidence regarding any of the events or negotiations leading up to it shall be admissible in any action or proceeding for any purpose other than enforcement of this Agreement.

8. **Representations, Warranties and Covenants.** Each Party represents and warrants to each other and agrees with each other as follows:

- a. Each Party to this Agreement has received independent legal advice from attorneys of its own choosing with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by each Party, that Party's attorneys reviewed this Agreement at length, and made all desired changes.
- b. Except as expressly stated in this Agreement, no Party to this Agreement has made any statement or representation to any other Party to this Agreement regarding any fact relied upon by such other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation, or promise of the other Party in executing this Agreement, except as expressly stated in this Agreement.
- c. There are no other agreements or understandings related to the Disputed Issues between the Parties except as stated in this Agreement.
- d. Each Party to this Agreement, together with its attorneys, has made such investigation of the facts pertaining to this Agreement, and of all the matters pertaining thereto, as it deems necessary.
- e. The terms of this Agreement are contractual, not a mere recital, and this Agreement is the result of negotiations between the Parties to this Agreement.

each of which has participated in the drafting of this Agreement through its respective attorneys. No Party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against any Party as the drafter.

- f. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by each person executing this Agreement.
- g. Each Party to this Agreement has the power and authority to enter into and perform this Agreement, and the execution and performance of this Agreement has been duly authorized by all requisite corporate action.
- h. Each Party to this Agreement agrees that such Party will not take any action that would interfere with the performance of this Agreement by any other Party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.
- i. In entering into this Agreement, each Party recognizes that no facts or representations are ever absolutely certain; accordingly, except as specifically provided in this Agreement, each Party to this Agreement assumes the risk of any mistake, and if any Party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such Party shall not be entitled to set aside this Agreement by reason thereof. This Agreement is intended to be final and binding between and among the Parties, regardless of any mistake of fact, mistake of law, or any other circumstances whatsoever. Each Party relies on the said finality of this Agreement as a material factor inducing that Party's execution of this Agreement.
- j. No Party to this Agreement has heretofore assigned or transferred or purported to assign or transfer to any person, firm, or corporation whatsoever any actions, causes of action, debts, dues, liabilities, controversies, claims, or demands herein released. Each Party hereto agrees to indemnify and hold harmless the other Party hereto against any actions, causes of action, debts, dues liabilities, controversies, claims, counterclaims, crossclaims, third-party claims or demands based on, arising out of, or in connection with any such transfer or assignment or purported transfer or assignment, including all attorneys' fees and costs incurred in connection therewith.

**9. Integration.** This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the Parties to this Agreement relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party to this Agreement, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement may not be supplemented or changed orally.

**10. Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND SUBJECT TO, THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY LAWS WHICH RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**11. Mobile-Sierra.** This Agreement shall not be subject to change through any unilateral application by any Party, to any governmental authority, including the Federal Energy Regulatory Commission ("FERC") pursuant to the Natural Gas Act, without the prior mutual written agreement of the Parties. Subject to the foregoing sentence, each Party hereby irrevocably waives any right it may or can have to unilaterally seek any change, or to support any application, complaint, or action by any other party or governmental authority seeking a change to this Agreement.

ABSENT THE AGREEMENT OF THE PARTIES TO ANY PROPOSED CHANGES TO THIS AGREEMENT, THE STANDARD OF REVIEW FOR CHANGES TO THIS AGREEMENT PROPOSED BY A PARTY, A NON-PARTY OR FERC ACTING SUA SPONTE SHALL BE THE "PUBLIC INTEREST" STANDARD OF REVIEW SET FORTH IN UNITED GAS PIPE LINE CO. V. MOBILE GAS SERVICE CORP., 350 U.S. 332 (1956) AND FEDERAL POWER COMMISSION V. SIERRA PACIFIC POWER CO., 350 U.S. 348 (1956).

**12. Severability.** It is understood and agreed that if any one or more of the provisions contained within this Agreement shall later be found to be void, voidable, ineffective or unenforceable, that finding shall have no affect on the remainder of the Parties' agreements undertakings or considerations which shall remain in full force and effect.

**13. Written Amendment.** No modification of the terms and provisions of this Agreement shall be made except by the execution by all Parties of a written agreement.

**14. Execution in Counterparts.** This Agreement may be executed in as many counterparts as deemed necessary and when so executed shall have the same effect as if the Parties had executed the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate originals by their duly authorized officers as of the date first written above.

**WILD GOOSE STORAGE INC.**

By: *Richard C. Daniel*

Name: Richard C. Daniel

Title: President and Director

**MIRANT AMERICAS ENERGY MARKETING, LP**

By Mirant Americas Development, Inc.

Its general partner

By: \_\_\_\_\_

Name: John L. O'Neal

Title: Vice President and Chief Commercial Officer,  
North America