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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
)	Hearing Date and Time: November 12,
)	2003 10:30 a.m.

MIRANT CORPORATION’S MOTION PURSUANT TO 11 U.S.C. §§ 365(a), (f) TO ASSUME AND ASSIGN TO MIRANT ASIA PACIFIC LIMITED ITS OBLIGATIONS AND RIGHTS UNDER (I) THE REIMBURSEMENT SHARING AGREEMENT BETWEEN KOREA ELECTRIC POWER CORPORATION AND MIRANT CORPORATION, AND (II) THE SHAREHOLDERS’ AGREEMENT RE KEPCO ILIJAN CORPORATION AMONG MIRANT CORPORATION AND OTHERS

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this motion (the “Motion”) for entry of an order pursuant to 11 U.S.C. §§ 365(a) and (f) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing Mirant to assume, pursuant to Bankruptcy Code section 365(a), and assign to Mirant Asia Pacific Limited (“MAPL”) (which is an indirect subsidiary of Mirant, but not a Debtor herein), pursuant to Bankruptcy Code section 365(f), Mirant’s obligations and rights

under (i) the Reimbursement Sharing Agreement dated November 9, 2000 (the “RSA”), and (ii) the Shareholders’ Agreement dated November 9, 2000 in relation to KEPCO Ilijan Corporation (the “SA”) (collectively, the “Contracts”).¹

1. The counterparty to the RSA is Korea Electric Power Corporation (“KEPCO”), an entity that is unrelated to the Debtors. The RSA is a prepetition executory contract which sets out the contingent obligation of Mirant to make certain contributions to KEPCO if KEPCO makes certain payments to a third party. The RSA does not entitle Mirant to any benefit (monetary or otherwise), but imposes potentially significant financial reimbursement obligations upon Mirant. Similarly, the SA is merely an agreement among Mirant and the shareholders of an entity called KEPCO Ilijan Corporation (which is a corporation that was formed to operate a gas-fired generating plant in the Philippines) relating to their rights vis-à-vis each other. Mirant is not a direct shareholder of KEPCO Ilijan Corporation, but merely executed the SA as a “Sponsor” to guarantee the payment obligations of Mirant Diamond Holding Corporation (“MDHC,” not a Debtor herein) under the SA. Mirant does not have any substantive rights under the SA.

2. The proposed assumption and assignment of the Contracts is the last of a number of assignments initiated by Mirant to transfer all of its obligations, rights and liabilities related to the Ilijan Project (defined below) to MAPL. The primary intent of such transfers is to ensure that Mirant’s Chapter 11 filing does not adversely impact the Ilijan Project, while at the same time preserving the value of Mirant’s indirect ownership interests in regard to that project for the estate. The first of such series of assignments, the assignment of a Funding Support Agreement, was effected prepetition on July 11, 2003 (described in more detail below). The proposed assignment of the Contracts is the second in the series of such assignments. Mirant’s

¹ The Contracts are voluminous and for that reason have not been served or filed with the Court. Any party in interest seeking copies of the Contracts (or other contracts referenced herein), may request a copy of same from Debtors’ counsel.

ownership interest in the Ilijan Project (through MAPL) will not be affected by the assumption and assignment of the Contracts requested herein.

I. JURISDICTION AND VENUE

3. 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

4. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), certain of the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended.² On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code (collectively, the "New Debtors"). 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"). The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered. A motion for joint administration of the cases of the New Debtors with the

² Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the Companies' Creditors Arrangement Act (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

Debtors' cases was filed with this Court on August 20, 2003 and an order approving same was entered on September 8, 2003. This Court also entered an order on September 8, 2003 which provides that certain orders entered in the chapter 11 cases of Mirant Corporation, *et al.* are applicable to the New Debtors' cases and the New Debtors. On October 6, 2003, the Debtors filed a motion requesting the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. Also on October 6, 2003, the Debtors filed a motion for the entry of an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors.

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

7. Mirant Corporation Equity Committee. 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 for Debtor Mirant (the "Equity Committee"). The appointment list of the members of the Equity Committee was filed in Debtor Mirant's Chapter 11 case on September 18, 2003.

III. FACTUAL BACKGROUND

A. The Debtors' Business Operations.

8. Mirant and its direct and indirect subsidiaries 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.

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

B. Facts Specifically Relevant to the Motion.

- (i) *The Shareholders' Agreement and Mirant's Funding and Support and Reimbursement Sharing Agreements Relating To KEPCO Ilijan Corporation.*

10. In November 2000, Mirant (then called "Southern Energy, Inc."), through a related entity organized under the laws of the Republic of the Philippines, Mirant Diamond Holding Corp. ("MDHC"), acquired equity ownership of a portion of KEPCO Ilijan Corporation ("KEILCO"), which is also organized under the laws of the Philippines. KEILCO was established for the purpose of developing, constructing, owning and operating a 1251 megawatt natural gas-fired combined cycle generating plant with diesel fuel fire capability located in Ilijan, Batangas City, the Republic of Philippines (the "Ilijan Project").

11. Mirant Corporation indirectly owns MAPL, a non-Debtor, which indirectly owns part of non-Debtor MDHC, which in turns holds the equity interest of KEILCO described in the previous paragraph.

12. In connection with that ownership, Mirant (and others) executed a Shareholders' Agreement dated as of November 9, 2000 (the "SA"), which sets forth the rights and obligations of the parties thereto relating to the ownership interests in KEILCO. Mirant is

not a direct shareholder of KEILCO, but executed the SA as a “Sponsor” to guarantee the payment obligations of MDHC under the SA.³

13. On November 10, 2000, Mirant, MDHC and certain financial institutions providing project financing to the Ilijan Project entered into a Funding and Support Agreement (“FSA”), pursuant to which Mirant was jointly and severally liable with MDHC to make specified equity and cost contributions to the Ilijan Project.

14. Separately, KEPCO, another indirect owner of KEILCO, agreed to fund 100% of any draw on the performance security under a separate operation and maintenance agreement procured for the benefit of KEILCO so long as Mirant reimbursed KEPCO 30% of the amount funded by KEPCO pursuant to such operation and maintenance agreement. Accordingly, Mirant and KEPCO executed a separate Reimbursement Sharing Agreement also dated as of November 9, 2000 (“RSA”), providing for that reimbursement and capping Mirant’s maximum payments thereunder at \$21.6 million, in the aggregate. RSA § 2.1.

³ In particular, Mirant has agreed to cause MDHC to comply with its funding and other obligations described in the Shareholders’ Agreement and to fund certain amounts on behalf of MDHC (subject to certain caps) if MDHC fails to fund or otherwise fulfill its obligations as provided in the Shareholders’ Agreement (See Sections 3.01(h), 5.04(c), 5.05 and 10.02(g) of the Shareholders’ Agreement). In addition, even to the extent Mirant has not specifically agreed to fund certain amounts on behalf MDHC as described in the immediately preceding sentence, Mirant and Mitsubishi (the other equity owner of MDHC), have severally, absolutely, unconditionally and irrevocably guaranteed all of MDHC’s obligations under the Shareholders’ Agreement; provided that Mirant’s maximum liability with respect to amounts payable by MDHC under the Shareholders’ Agreement is limited to its then respective percentage ownership of MDHC multiplied by the amount payable by MDHC. Mirant and Mitsubishi are severally, but not jointly, liable for all expenses incurred by the Shareholders in enforcing any rights against Mirant and Mitsubishi, respectively.

15. The RSA contemplates the transfer of Mirant's rights and obligations under the RSA to a person to whom Mirant is permitted to transfer its rights and obligations under the FSA, without KEPCO's consent, provided that KEPCO is duly notified of such a transfer. RSA § 5.13. MAPL is a person to whom Mirant is permitted to transfer its rights and obligations under the FSA.

(ii) Prior to the Petition Date, Mirant and MAPL Commenced the Series of Necessary Assignments to MAPL.

16. The FSA also contemplates the transfer of Mirant's rights and obligations under the FSA to MAPL. As noted above, such transfer was effected on July 11, 2003, prior to the Petition Date, when an Assignment and Assumption Agreement ("FSA Assignment Agreement"), was executed assigning Mirant's obligations under the FSA to MAPL.

17. Also prior to the Petition Date, Mirant was in the process of drafting an Assignment and Assumption Agreement (the "RSA Assignment Agreement") to assign Mirant's obligations under the RSA to MAPL, and a separate Assignment and Assumption Agreement (the "SA Assignment Agreement," together with the RSA Assignment Agreement, the "Assignment Agreements") to assign Mirant's obligations under the SA to MAPL. However, Mirant and the other Debtors filed their petitions for bankruptcy relief prior to execution of the Assignment Agreements. Copies of the proposed Assignment Agreements are attached hereto as Exhibits "A" and "B." MAPL has agreed to the form and substance of the proposed Assignment Agreements.

(iii) MAPL Agreed to Assume Mirant's Obligations Under the Contracts.

18. MAPL previously agreed to assume Mirant's obligations under the Contracts and the Debtors are informed and believe that MAPL's position has not changed.

19. MAPL is not a debtor in any case commenced under the Bankruptcy Code. MAPL is a well funded corporation with total consolidated assets (unaudited) of \$3.3 billion and total unrestricted cash and cash equivalents of approximately \$287 million as of August 31, 2003.

IV. RELIEF REQUESTED

20. The Debtors move the Court to enter an order pursuant to Bankruptcy Code sections 365(a) & (f) authorizing Mirant to assume its obligations and rights under the Contracts and assign such rights (and Contracts) to MAPL, approve the Assignment Agreements, and enter an order in the form of Exhibit C attached hereto. The Debtors also request that this Court waive the ten-day stay of Bankruptcy Rule 6006(d) such that the order granting the Motion is effective upon entry thereof.

A. The Court Should Authorize Mirant to Assume The Contracts.

21. The Court should permit Mirant to assume the Contracts under Section 365(a) of the Bankruptcy Code so that it may assign its obligations and rights thereunder. Section 365(a) of the Bankruptcy Code authorizes a debtor-in-possession to assume an executory contract subject to the Bankruptcy Court's approval. Section 365(a) of the Bankruptcy Code provides:

Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a). Mirant has not committed any default under the Contracts that must be cured under section 365(b)(1).

B. The Court Should Authorize Mirant to Assign the Contracts to MAPL.

22. Section 365(f) of the Bankruptcy Code authorizes the Debtors to assign a contract properly assumed under 365(a). Mirant seeks to assign its obligations and rights under the Contracts (and the Contracts themselves) to MAPL and execute the Assignment Agreements.

23. Section 365(f) of the Bankruptcy Code authorizes a debtor to assign executory contracts if certain conditions are satisfied. Specifically, section 365(f)(2) provides:

(2) The trustee may assign an executory contract or unexpired lease of the only if —

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

24. As noted above, MAPL is a well funded corporation with total consolidated assets (unaudited) of \$3.3 billion and total unrestricted cash and cash equivalents of approximately \$287 million as of August 31, 2003.

C. Assuming and Assigning the Contracts is within Mirant's Sound Business Judgment.

25. Once the statutory predicates to assumption and assignment are satisfied, as in the present case, Bankruptcy Courts permit assumption and assignment of an executory contract as long as the debtor exercised sound "business judgment" in moving for such. *In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir. 1993); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as "traditional"); *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) ("[a] debtor may assume or reject an unexpired lease in accordance with 11 USC § 365(a) in the exercise of its best business judgment."); *In re III Enterprises, Inc. V*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (citations omitted) ("A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment — a standard which we have concluded many times is not difficult to meet."). In making that determination, courts generally give great deference to the debtor's decision to assume or reject a contract. *In re III Enterprises, Inc. V*, 163 B.R. at 469 ("[g]enerally, a court will give great deference to a debtor's decision to assume or reject the contract.")

26. Here, the Debtors have determined that assumption and assignment of the Contracts is in the best interest of their respective estates and creditors. Such assumption and assignment will permit Mirant, under the RSA Assignment Agreement, to assign costly reimbursement obligations under the RSA to MAPL, to whom it has already assigned equity contribution obligations and rights connected with KEILCO under the FSA. The RSA does not

entitle Mirant to any benefit (monetary or otherwise), but merely imposes upon Mirant potential reimbursement obligations which could be as much as \$21.6 million. Similarly, under the SA, Mirant has no appreciable rights as a “Sponsor” but merely has burdensome funding obligations. However, in order to preserve the integrity of the various documents regarding the Ilijan Project to which Mirant is a party, it is necessary and appropriate for Mirant to assume the SA and assign such agreement to MAPL.

27. Assignment of the Contracts will not affect Mirant’s indirect ownership interests MDHC and KEILCO as the original chain of ownership will be preserved. MDHC will continue to be indirectly owned in part by MAPL, and MAPL will continue to be indirectly owned by Mirant. Thus, Mirant’s ultimate and indirect ownership interest (and all the rights associated therewith) in KEILCO and the Ilijan Project will not change if the Motion and granted and the Assignment Agreements are executed.

V. CONCLUSION

28. WHEREFORE, the Debtors respectfully request the Court to grant this Motion and enter an order substantially in the form attached as Exhibit C and grant such other and further relief as is just and proper.

Dated: Fort Worth, Texas
October 13, 2003

HAYNES AND BOONE, LLP
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Suite 3100
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(214) 651-5000

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

-and-

Thomas E Lauria
State Bar No. 11998025
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Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 13, 2003, he provided true and correct copies of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List via U.S. mail, and the addressees set forth below via overnight mail.

Korea Electric Power Corporation
Attn: Mr. Jong-Seok Park, Vice President
and General Manager, International Co-
operation and Business Division
167 Samsung-Dong
Kangnam-Gu
Seoul 135-791
Korea

KEPCO International Philippines, Inc.
Attn: President
Suite 2501-A 25/F
Tektite Tower 1, Exchange Road
Ortigas Centre, Pasig City

Southern Diamond Holding Corp.
Attn: Mr. Shimon Tokuyama
Deputy General Manager
Power Systems Export Dept.
Mitsubishi Corporation
6-3 Marunouchi 2-Chome
Chiyoda-ku, Tokyo 100-8086
Japan

Southern Energy Asia-Pacific Limited
Attn: CFO, and Loan Administration Officer
18/F., Hongkong Telecom Tower
Taikoo Place, 979 King's Road
Quarry Bay
Hong Kong

Kyuden Iijian Holding Corporation
Attn: President
c/o USA & Co.
Philippine Stock Exchange Center
26/F Suite 2603 CD West Tower
Exchange Road, Ortigas Center
1605 Pasig City, Philippines

Kyuden Iijian Holding Corporation
c/o Kyuden International Corporation
1-82 Watanabe-Dori, 2 Chome
Chuo-ku Fukuoka, 810-8720
Japan

Korea Electric Power Corporation
Attn: Mr. Sun Ki Min
Deputy Project Manager
Iijian Project Team
Korea Electric Power Corporation
167 Samsung-Dong, Kangnam-Gu
Seoul 135-791, Republic of Korea

Mitsubishi Corporation
Attn: Mr. Shimon Tokuyama
Deputy General Manger
Power Systems Export Dept.
Mitsubishi Corporation
6-3, Manrunouchi 2-Chome, Chiyoda-Ku
Tokyo 100-8086, Japan

Southern Energy, Inc.
Attn: Treasurer, and Manager
Loan Administration
Southern Energy, Inc.
1155 Perimeter Centre West
Suite 100
Atlanta, GA 30338
U.S.A.

Southern Energy Asia-Pacific Limited
Attn: CFO, and Loan Administration Officer
18/F., Hongkong Telecom Tower
Taikoo Place, 979 King's Road
Quarry Bay
Hong Kong

Kyushu Electric Power Co., Inc.
Attn: Mr. Kenji Tsugami
Deputy General Manger
Business Development Department
Kyushu Electric Power Co., Inc.
1-82 Watanabe-Dori, 2 Chome
Chuo-ku Fukuoka, 810-8720, Japan

KEPCO Ilijan Corporation
Attn: President
Suite 2501-A 25/F
Tektite Tower 1, Exchange Road
Ortigas Centre, Pasig City

Mirant Asia-Pacific Limited
Attn: Treasurer, with a copy to Corporate
Finance Manager
Suites 2706-11, 27th Floor
One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Mirant Asia-Pacific Limited
Attn: Treasurer, with a copy to Corporate
Finance Manager
18/F PCCW Tower, Taikoo Place
979 King's Road, Quarry Bay
Hong Kong

/s/ Robin Phelan

EXHIBIT A

Draft: July 24, 2003

ASSIGNMENT AND ASSUMPTION AGREEMENT

Re: Reimbursement Sharing Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), dated as of [?], 2003, by and among **MIRANT CORPORATION** (formerly known as Southern Energy, Inc.), a company organized and existing under the laws of the State of Delaware (the “**Assignor**”) and **MIRANT ASIA-PACIFIC LIMITED** (formerly known as Southern Energy Asia-Pacific Limited), a company organized and existing under the laws of Bermuda (the “**Assignee**”).

W I T N E S S E T H :

WHEREAS, pursuant to the Reimbursement Sharing Agreement, dated as of November 9, 2000 (the “**Reimbursement Sharing Agreement**”), between the Assignor and Korea Electric Power Corporation (“**KEPCO**”), the Assignor shall have the right to assign and transfer all of its rights and obligations under the Reimbursement Sharing Agreement without KEPCO's consent to a Person to whom the Assignor is permitted to transfer its rights and obligations under the Funding and Support Agreement to which it is a party;

WHEREAS, in compliance with the requirements of the Reimbursement Sharing Agreement, the Assignor desires to assign its rights, powers and privileges and all of its duties and obligations under the Reimbursement Sharing Agreement to the Assignee, and the Assignee

wishes to accept such an assignment from the Assignor upon the terms and conditions of this Agreement; and

WHEREAS, the Assignor has transferred its rights and obligations under the Funding and Support Agreement to the Assignee on July 11, 2003.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ASSIGNMENT, ASSUMPTION AND ACCEPTANCE

Section 1.1 Definitions. Any capitalized term used but not defined herein has the meaning ascribed to it in the Reimbursement Sharing Agreement.

Section 1.2 Assignment and Assumption. Pursuant to and in accordance with the Reimbursement Sharing Agreement, as of the date hereof, (i) the Assignor hereby assigns, transfers and conveys to the Assignee, and the Assignee hereby accepts and assumes, all of the Assignor's rights, powers and privileges under the Reimbursement Sharing Agreement and (ii) the Assignor hereby assigns to the Assignee, and the Assignee hereby accepts, assumes and agrees to perform, all of the Assignor's duties and obligations under the Reimbursement Sharing Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Assignee Representations and Warranties. Each of the parties hereto makes to each other each of the representations and warranties contained in Section 4 of the Reimbursement Sharing Agreement as of the date hereof.

ARTICLE III
MISCELLANEOUS

Section 3.1 Further Assurances. Each of the parties hereto shall execute such additional documents and instruments and take such further action as may be reasonably required or desirable to carry out the provisions hereof.

Section 3.2 Amendments and Waivers. This Agreement shall not be amended, supplemented or otherwise modified, except by a written instrument which has been duly executed and delivered by each party hereto.

Section 3.3 Notices. Section 5.1 (*Notice*) of the Reimbursement Sharing Agreement shall apply *mutatis mutandis* to this Agreement; *provided* that the Assignee's "Address for Notices" shall be as set forth on the signature page hereto.

Section 3.4 Assignment. No party hereto may assign or transfer any of its respective rights or obligations under this Agreement.

Section 3.5 Successors; No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors. The agreements contained herein are made solely for the benefit of the parties hereto, and shall not be construed as having been intended to benefit any third party.

Section 3.6 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

Section 3.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

Section 3.8 Governing Law. Section 5.8 (*Governing Law*) and Section 5.9 (*Arbitration*) of the Reimbursement Sharing Agreement shall be incorporated by reference into this Agreement as if set out herein.

Section 3.9 Payment of Expenses, Etc. Each of the parties hereto shall be responsible for its own legal cost and other expenses arisen from or in connection with the negotiation, drafting and execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed as of the date first written above.

MIRANT CORPORATION

By: _____
Name:
Title:

MIRANT ASIA-PACIFIC LIMITED

By: _____
Name:
Title:

Attn: Treasurer, with a copy to Corporate Finance
Manager

Address for Notices:
18/F PCCW Tower, Taikoo Place
979 King's Road, Quarry Bay
Hong Kong
(expected to be valid up to August 3, 2003)

Suites 2706-11, 27th Floor
One International Finance Centre
1 Harbour View Street

Central
Hong Kong
(expected to be valid from August 4, 2003 onwards)

EXHIBIT B

Draft: September 9, 2003

ASSIGNMENT AND ASSUMPTION AGREEMENT

Re: Shareholders' Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), dated as of [?], 2003, by and among **MIRANT CORPORATION** (formerly known as Southern Energy, Inc.), a company organized and existing under the laws of the State of Delaware (the “**Assignor**”), **MIRANT ASIA-PACIFIC LIMITED** (formerly known as Southern Energy Asia-Pacific Limited), a company organized and existing under the laws of Bermuda (the “**Assignee**”), **KEPCO INTERNATIONAL PHILIPPINES, INC.**, a company organized and existing under the laws of the Republic of the Philippines, **MIRANT DIAMOND HOLDING CORPORATION**, a company organized and existing under the laws of the Republic of the Philippines, **KYUDEN ILIJAN HOLDING CORPORATION**, a company organized and existing under the laws of the Republic of the Philippines, **KOREA ELECTRIC POWER CORPORATION**, a company organized and existing under the laws of the Republic of Korea, **MITSUBISHI CORPORATION**, a company organized and existing under the laws of Japan, **KYUSHU ELECTRIC POWER CO., INC.**, a company organized and existing under the laws of Japan, and **KEPCO ILIJAN CORPORATION**, a company organized and existing under the laws of the Republic of the Philippines.

W I T N E S S E T H :

WHEREAS, the parties hereto (other than the Assignee) had entered into a Shareholders' Agreement on November 9, 2000 (the “**Shareholders’ Agreement**”) and in particular the Assignor had entered into the Shareholders' Agreement only in respect of Articles 13, 14 and 15 and Sections 3.01(h), 3.01(i), 5.03, 5.04, 5.05, 5.11, 5.12, 5.13, 9.11 and 10.02(g) thereof;

WHEREAS, the Assignor has transferred its rights and obligations under the Funding and Support Agreement to which it is a party to the Assignee on July 11, 2003; and

WHEREAS, consequent to the transfer referred to in the last paragraph, the Assignor desires to assign its rights, powers and privileges and all of its duties and obligations under the Shareholders' Agreement to the Assignee, and the Assignee wishes to accept such an assignment from the Assignor upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ASSIGNMENT, ASSUMPTION AND ACCEPTANCE

Section 1.1 Definitions and Interpretation. Any capitalized term used but not defined herein has the meaning ascribed to it in the Shareholders' Agreement. References herein to the Assignor's rights and obligations under the Shareholders' Agreement shall mean the Assignor's rights and obligations under Articles 13, 14 and 15 and Sections 3.01(h), 3.01(i), 5.03, 5.04, 5.05, 5.11, 5.12, 5.13, 9.11 and 10.02(g) of the Shareholders' Agreement only.

Section 1.2 Assignment and Assumption. As of the date hereof, (i) the Assignor hereby assigns, transfers and conveys to the Assignee, and the Assignee hereby accepts and assumes, all of the Assignor's rights, powers and privileges under the Shareholders' Agreement and (ii) the Assignor hereby assigns to the Assignee, and the Assignee hereby accepts, assumes and agrees to perform, all of the Assignor's duties and obligations under the Shareholders' Agreement.

ARTICLE II

CONSENT, ACKNOWLEDGEMENT AND RELEASE

Each of the parties hereto (other than the Assignor and the Assignee) consents to the assignment hereunder and acknowledges that, as of the date hereof, the Assignor has assigned its rights and obligations under the Shareholders' Agreement to the Assignee and hereby releases the Assignor from the Shareholders' Agreement and agrees that the Assignor shall no longer have any obligation to any party thereto under the Shareholders' Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Section 3.1 Assignee Representations and Warranties. As an inducement to the other parties to enter into this Agreement, each party hereto (other than the Assignor) makes to each other each of the representations and warranties contained in Section 12.01 of the Shareholders' Agreement (except that references to "this Agreement" shall be deemed to include this Agreement) as of the date hereof (except for representations which relate only to an earlier date or to a later or specified date).

ARTICLE IV
MISCELLANEOUS

Section 4.1 Guarantor. For the avoidance of doubt, the Assignee shall replace the Assignor in the definition of "Guarantor" under Section 15.01 of the Shareholders' Agreement as of the date hereof.

Section 4.2 Further Assurances. Each of the parties hereto shall execute such additional documents and instruments and take such further action as may be reasonably required or desirable to carry out the provisions hereof.

Section 4.3 Amendments and Waivers. This Agreement shall not be amended, supplemented or otherwise modified, except by a written instrument which has been duly executed and delivered by each party hereto.

Section 4.4 Notices. Section 14.04 of the Shareholders' Agreement shall apply *mutatis mutandis* to this Agreement; *provided* that the Assignee's "Address for Notices" shall be as set forth on the signature page hereto.

Section 4.5 Assignment. No party hereto may assign or transfer any of its respective rights or obligations under this Agreement.

Section 4.6 Successors; No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors. The agreements contained herein are made solely for the benefit of the parties hereto, and shall not be construed as having been intended to benefit any third party.

Section 4.7 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

Section 4.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as

possible in an acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

Section 4.9 Governing Law. Section 13.01 through Section 13.06 of the Shareholders' Agreement shall be incorporated by reference *mutatis mutandis* into this Agreement as if set out herein.

Section 4.10 Payment of Expenses, Etc. Each of the parties hereto shall be responsible for its own legal cost and other expenses arisen from or in connection with the negotiation, drafting and execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be duly executed as of the date first written above.

MIRANT CORPORATION

By: _____
Name:
Title:

MIRANT ASIA-PACIFIC LIMITED

By: _____
Name:
Title:

Attn: Treasurer, with a copy to Corporate Finance
Manager

Address for Notices:
Suites 2706-11, 27th Floor
One International Finance Centre
1 Harbour View Street
Central
Hong Kong

MIRANT DIAMOND HOLDING
CORPORATION

By: _____
Name:
Title:

KOREA ELECTRIC POWER CORPORATION

By: _____
Name:
Title:

KEPCO INTERNATIONAL PHILIPPINES, INC.

By: _____
Name:
Title:

KEPCO ILIJAN CORPORATION

By: _____
Name:
Title:

KYUDEN ILIJAN HOLDING CORPORATION

By: _____
Name:
Title:

KYUSHU ELECTRIC POWER CO., INC.

By: _____
Name:
Title:

mitsubishi CORPORATION

By: _____
Name:
Title:

EXHIBIT C

**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. 03-46591(DML)
)	Jointly Administered
Debtors.)	
)	

ORDER APPROVING MIRANT CORPORATION’S MOTION PURSUANT TO 11 U.S.C. §§ 365(a), (f) TO ASSUME AND ASSIGN TO MIRANT ASIA PACIFIC LIMITED ITS OBLIGATIONS AND RIGHTS UNDER (I) THE REIMBURSEMENT SHARING AGREEMENT BETWEEN KOREA ELECTRIC POWER CORPORATION AND MIRANT CORPORATION, AND (II) THE SHAREHOLDERS’ AGREEMENT RE KEPCO ILIJAN CORPORATION AMONG MIRANT CORPORATION AND OTHERS

Upon the motion, dated October 13, 2003 (the “Motion”), of Mirant Corporation (“Mirant”) and its affiliated debtors, as debtors-in-possession (collectively, the “Debtors”), for an order authorizing Mirant to assume, pursuant to Bankruptcy Code section 365(a), and assign to Mirant Asia Pacific Limited, pursuant to Bankruptcy Code section 365(f), Mirant’s obligations and rights under (i) the Reimbursement Sharing Agreement dated November 9, 2000 (the “RSA”), and (ii) the Shareholders’ Agreement dated November 9, 2000 in relation to KEPCO Ilijan Corporation (the “SA”) (collectively, the “Contracts”); and it appearing that the Court has jurisdiction over this matter; and it appearing that all the statutory requirements necessary to grant the Motion have been satisfied; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

It is hereby:

ORDERED, that the Motion is hereby GRANTED; it is further

ORDERED, that Mirant is authorized to assume the Contracts (and Mirant’s rights and

obligations thereunder) pursuant to Bankruptcy Code section 365(a) and assign the Contracts to Mirant Asia Pacific Limited, pursuant to Bankruptcy Code section 365(f); it is further

ORDERED, that the Debtors are not in default under the Contracts and there are no defaults by the Debtors that must be cured under Bankruptcy Code section 365(b)(1); it is further

ORDERED, that the ten-day stay of this Order authorizing assignment of the Contracts set forth in Federal Rule of Bankruptcy Procedure 6004(d) is waived and this Order is effective upon entry thereof.

Dated: November ____, 2003

D. Michael Lynn,
United States Bankruptcy Judge