

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
White & Case LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Haynes and Boone, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____)	Chapter 11 Case
In re)	
)	Case No. 03-46590(DML)11
MIRANT CORPORATION, <u>et al.</u> ,)	Jointly Administered
)	
Debtors.)	Hearing Date and Time: December 17,
_____)	2003, 10:30 a.m.

**DEBTORS' MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019 FOR APPROVAL OF SETTLEMENT AGREEMENT
AND RELEASE BETWEEN MIRANT AMERICAS ENERGY
MARKETING, LP AND AVISTA ENERGY, INC.**

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion (the “Motion”) pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure requesting an order allowing Debtor Mirant Americas Energy Marketing, LP (“MAEM”) to enter into a “Settlement Agreement and Release” (the “Settlement”) with Avista Energy, Inc. (“Avista”), attached hereto as Exhibit A. The Settlement resolves certain disputes between MAEM and Avista and provides for payment by Avista to MAEM of **\$6,738,000** after approval of the Settlement. The Settlement is fair and equitable and in the best interests of the Debtors’ estates and should be approved.

I. PROCEDURAL BACKGROUND

1. 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 (collectively, the “Initial 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 (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary 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”). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP; and (ii) Mirant Americas Energy Capital Assets, LLC (the “MAEC Debtors” and collectively with the Initial Debtors, the New Debtors, and the Wrightsville Debtors, the “Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, this Court entered an order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. On October 20, 2003, this

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (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 Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 20, 2003, this Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

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

II. FACTUAL BACKGROUND.

A. The Debtors' Business Operations.

4. 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.

5. 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.

MAEM's Agreements With Avista.

6. Prior to the Petition Date, MAEM and Avista entered into the following agreements:

- "Base Contract for Short-Term Sale and Purchase of Natural Gas," dated October 1, 1997 (the "GISB");
- "Master Electric Power Purchase and Sale Agreement," dated March 20, 1998 (the "MEPPSA");
- "Master Monthly Netting and Close-Out Netting Agreement," dated March 1, 1999 (the "Netting Agreement");
- "ISDA Master Agreement," dated April 1, 1999 (the "ISDA"); and
- MAEM and Avista are also parties to that certain Western Systems Power Pool Agreement, dated February 1, 2003, as amended from time to time (the "WSPP");

(collectively, the "Agreements").

7. In connection with the Agreements, Avista caused to be delivered to MAEM, as collateral, a letter of credit issued by BNP Paribas (Reference No. 91861570) naming MAEM as beneficiary, which as amended to date has an available amount of \$5,500,000 (the "Letter of Credit"). The Letter of Credit is in full force and effect as of the date hereof and is set to automatically expire by its terms on December 18, 2003.

Avista Purported to Terminate the ISDA and the Outstanding Transactions.

8. Avista contends that pursuant to the Netting Agreement, all transactions under the GISB, the MEPPSA and the WSPP terminated automatically immediately prior to the Petition Date. Moreover, on July 17, 2003, Avista exercised its rights to terminate the ISDA.²

9. At the time Avista purported to terminate the relevant transactions entered into under the Agreements, MAEM was “in the money” as to those transactions; to wit, after all appropriate netting of claims and amounts owing between the parties, a positive net amount was owing by Avista to MAEM as a result of the termination of the various transactions entered into under the Agreements. As required pursuant to the terms of the Agreements, a “termination settlement payment” owing by Avista to MAEM was calculated with respect to the various transactions entered into under the Agreements, and negotiations were thereafter conducted between the parties with respect to the amount of such termination settlement payment.

The Parties Have Reached an Agreement on the Termination Settlement Payment Owing.

10. As a result of the good faith negotiations that Avista and MAEM have conducted, Avista and MAEM have agreed to the following Settlement, which has been memorialized in the Settlement Agreement and Release (the “Agreement”) attached hereto as Exhibit A and which is subject to Bankruptcy Court approval:

- Not later than two business days following entry of an order pursuant to which the Court approves the Settlement, Avista shall pay to MAEM the sum of **\$6,738,000** (the “Payment”);
- Avista is required to maintain the continued existence of the Letter of Credit, and MAEM must not submit a draw thereunder, pending Bankruptcy Court approval of the Settlement;
- Upon timely receipt of the Payment, MAEM shall cause the Letter of Credit to be terminated;

² The Agreements and transactions thereunder are “safe harbor” contracts under Bankruptcy Code section 556.

- Upon completion of the foregoing conditions, the Agreements shall be automatically terminated, other than the ISDA which was previously terminated by Avista;³
- Upon completion of the foregoing conditions, mutual releases of claims relating to the Agreements become effective and any guarantees executed in favor of MAEM or Avista shall be null and void and of no further legal force or effect as to existing and future transactions;
- The Settlement Agreement must be approved by the Court no later than December 31, 2003.

III. RELIEF REQUESTED.

11. The Debtors request an order of this Court pursuant to rule 9019(a) of the Federal Rules of Bankruptcy Procedure, in substantially the form of Exhibit B, authorizing MAEM to enter into the Settlement Agreement in substantially the form of Exhibit A hereto, and perform thereunder.

IV. APPLICABLE AUTHORITY.

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

13. Bankruptcy Rule 9019(a) empowers the Bankruptcy Court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *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

³ The Settlement Agreement specifically carves out of the definition of “Agreements” (i) the Gas Fixed Floating Swap Transaction dated April 11, 2001 between MAEM and Avista Corporation (a separate affiliate of Avista) and (ii) the Postpetition Assurance and Amendment Agreement dated August 11, 2003 between MAEM and Avista Corporation (the “Excluded Agreements”), both which agreements are unaffected by the Settlement.

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

14. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors:

- (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (c) all other factors bearing on the wisdom of the compromise.

See, Cajun Electric at 356 (citations omitted). Each of these factors will be discussed below:

A. Probability of Success in the Litigation.

15. While MAEM believes strongly in its case, the matter is not completely certain. The Agreements are complicated and subject to varying interpretations. This factor weighs in favor of settlement.

B. Complexity, Likely Duration of the Litigation, and Expense.

16. Because of the complexity of the Agreements, litigation regarding the termination settlement payment would obviously be complex and quite possibly involve expert testimony. The attorneys' fees and costs incurred by the parties would easily exceed the difference between the two amounts each party believes is owing. Given how close the parties are in their termination settlement payment calculations, the Debtors have determined that the immediate payment by Avista of the \$6,738,000 to MAEM significantly outweighs the fees and costs that would be incurred in connection with litigating the matter, especially given the attendant delay in payment of the termination settlement payment amount.

C. Other Factors Weigh in Favor of Approving the Settlement.

17. As noted, the Settlement provides for immediate payment to MAEM of \$6,738,000. This is a significant amount that will obviously benefit the Debtors' estates. The Settlement is clearly a good deal for the Debtors. Avista originally provided a lower termination settlement payment, but after negotiation, Avista agreed to pay MAEM a significant additional amount in order to settle the matter. The Debtors, in their business judgment, have determined that the Settlement is a good one and should be approved.

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.

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is entered into as of November 20, 2003, by and between Mirant Americas Energy Marketing, LP ("Mirant") and Avista Energy, Inc. ("Avista").

WITNESSETH:

WHEREAS, Mirant and Avista entered into the Base Contract for Short-Term Sale and Purchase of Natural Gas, dated October 1, 1997 (the "GISB"); the Master Electric Power Purchase and Sale Agreement, dated March 20, 1998 (the "MEPPSA"); the Master Monthly Netting and Close-Out Netting Agreement, dated March 1, 1999 (the "Netting Agreement"); and the ISDA Master Agreement, dated April 1, 1999 (the "ISDA"); and Mirant and Avista are parties to that certain Western Systems Power Pool Agreement, dated February 1, 2003, as amended from time (the "WSPP") (collectively, the "Agreements");

WHEREAS, in connection with the Agreements, Avista delivered to Mirant a letter of credit issued by BNP Paribas (Reference No. 91861570) naming Mirant as beneficiary, which as amended to date has an available amount of Five Million Five Hundred Thousand Dollars (\$5,500,000) (the "Letter of Credit");

WHEREAS, on July 14, 2003 (the "Petition Date"), Mirant filed a voluntary petition for relief with the United States Bankruptcy Court, Northern District of Texas, Fort Worth Division (the "Bankruptcy Court") (Case No. 03-46590) pursuant to chapter 11 of title 11 of the United States Code (the "Chapter 11 Proceeding");

WHEREAS, pursuant to the Netting Agreement, it is Avista's contention that all transactions under the GISB, the MEPPSA and the WSPP automatically terminated immediately prior to the Petition Date;

WHEREAS, on July 17, 2003, Avista exercised its rights to terminate the ISDA;

WHEREAS, Avista subsequently calculated the settlement amount due to Mirant, and Mirant disputed such amount;

WHEREAS, the parties desire to avoid further expense and wish to resolve all matters and issues in controversy between them pursuant to this Settlement Agreement;

WHEREAS, the parties hereto will derive substantial benefit from this Settlement Agreement;

WHEREAS, pursuant to this Settlement Agreement and subject to certain conditions set forth herein, each party will release any and all claims against the other party under the Agreements; and

WHEREAS, Mirant and Avista each acknowledge and agree that they are receiving fair consideration and reasonably equivalent value for the exchanges and releases contemplated herein.

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by and among the parties to this Settlement Agreement as follows:

1. Maintenance of Credit Support. Until the earlier of the entry of the Approval Order by the Bankruptcy Court or 10 business days after the termination of this Settlement Agreement, Avista shall maintain the Letter of Credit for the benefit of Mirant, and Avista shall provide Mirant sufficient evidence that the expiration date of the Letter of Credit has been extended to a date that is consistent with the terms of this Settlement Agreement . Mirant agrees that it will not make any drawing under the Letter of Credit except as permitted hereunder.

2. Payment.

On the second business day following the entry of the Approval Order, Avista shall pay to Mirant the amount of Six Million Seven Hundred Thirty-Eight

Thousand Dollars (\$6,738,000) (the "Final Settlement Amount"). The Final Settlement Amount shall be made by wire transfer to the following Mirant account:

Bank of America, N.A.
Dallas, Texas
ABA #111000012
Account #3751003269.

Promptly following confirmation of payment of the Final Settlement Amount, Mirant shall surrender to Avista, or cause the cancellation of, the Letter of Credit. However, should Avista fail to timely pay the Final Settlement Amount as contemplated herein, Mirant shall have the right to immediately draw on the Letter of Credit. For purposes of this Settlement Agreement, the "Effective Time" shall be the first time as of which all of the following conditions have been and remain satisfied: (i) the Approval Order shall have been entered by the Bankruptcy Court, (ii) the Final Settlement Amount shall have been paid as contemplated above and (iii) the Letter of Credit shall have been surrendered or cancelled as contemplated above.

3. Termination of the Agreements. As of the Effective Time, the Agreements, and any and all amendments thereto, automatically and without further action by either party, shall be fully, completely, irrevocably and unequivocally terminated, and neither Avista nor Mirant shall have any further obligations to the other pursuant thereto. The parties hereto further acknowledge that the Gas Fixed Floating Swap Transaction entered into on April 11, 2001 between Mirant and Avista Corporation (the "Swap Agreement") and the Postpetition Assurance and Amendment Agreement, dated August 11 2003, between Mirant and Avista Corporation (the "Postpetition Agreement") are not terminated, released or otherwise affected by, or intended to be terminated, released or otherwise affected by, this Settlement Agreement, including without limitation, Paragraphs 3, 4 and 5 hereof.

4. Release of Avista. From and after the Effective Time, Mirant, for itself and for its partners, members, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of its parents, subsidiaries and affiliated entities, does hereby remise, release and forever discharge Avista and any and all of its parents, subsidiaries, affiliates, members and partners, and each of them, together with their respective directors, officers, employees, agents, attorneys, insurers, representatives, successors and assigns, from and against any and all claims, actions, cause and causes of action, suits, debts, sums of money, accounts, agreements, promises, undertakings, demands, fines, damages, penalties, sanctions, costs, or attorneys' fees, of any nature whatsoever, whether in law or equity, or any other form, whether now known, unknown, asserted, unasserted, foreseen, unforeseen, contingent, actual, liquidated, or unliquidated, in any way related to, connected to, or arising out of, the Agreements, any amendments thereto, or any aspect of the parties' prior business relationship; provided, however, that expressly excluded from this release are (a) any and all claims by Mirant to enforce any of its rights under the Settlement Agreement and (b) the obligations of Avista under this Settlement Agreement.

5. Release of Mirant. From and after the Effective Time, Avista, for itself and its partners, members, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of their parents, subsidiaries and affiliated entities, do hereby remise, release and forever discharge Mirant, and any and all of its parents, subsidiaries, affiliates, members and partners, and each of them, including, but not limited to, Mirant Corporation, together with their respective directors, officers, employees, agents, attorneys, insurers, representatives, successors and assigns, from and against any and all claims, actions, cause and causes of action, suits, debts, sums of money, accounts, agreements, promises, undertakings, demands, fines, damages, penalties, sanctions, costs, or attorneys' fees, of any nature whatsoever, whether in law or equity, or any other form, whether now known, unknown, asserted, unasserted, foreseen,

unforeseen, contingent, actual, liquidated, or unliquidated, in any way related to, connected to, or arising out of the Agreements, any amendments thereto, or any aspect of the parties' prior business relationship; provided, however, that expressly excluded from this release are (a) any and all claims by Avista to enforce any of its rights under this Settlement Agreement, and (b) all obligations of Mirant under this Settlement Agreement.

6. Release of Guarantors.

(a) Avista hereby acknowledges and agrees that, as of the Effective Time, any payment or performance guaranty issued to Avista in respect of Mirant prior to the Petition Date is null and void and of no further legal force or effect, as to both existing and future transactions, and that any and all guarantors under any such guaranty are, as of the Effective Time, hereby released and discharged from any and all liabilities or obligations under such guarantees. Without limiting the generality of the foregoing, it is further agreed that, provided the Effective Time occurs hereunder, that certain guarantee dated April 27, 1999 issued to Avista by The Southern Company (in favor of Southern Company Energy Marketing L.P., n/k/a Mirant Americas Energy Marketing, LP) is released and discharged effective as of July 15, 2003, with the provisions of the immediately preceding sentence being effective with respect to such guarantee as of July 15, 2003.

(b) Mirant hereby acknowledges and agrees that, as of the Effective Time, any payment or performance guaranty issued to Mirant in respect of Avista prior to the Petition Date is null and void and of no further legal force or effect, as to both existing and future transactions, and that any and all guarantors under any such guaranty are, as of the Effective Time, hereby released and discharged from any and all liabilities or obligations under such guarantees. Without limiting the generality of the foregoing, it is further agreed that, provided the Effective Time occurs hereunder, that certain Guarantee Agreement dated May 4, 1999 issued to Mirant by Avista Capital, Inc. is released and

discharged as of July 15, 2003, with the provisions of the immediately preceding sentence being effective with respect to such Guarantee Agreement as of July 15, 2003.

7. Confidentiality.

(a) Each of the parties, for itself and for their respective accountants, attorneys, and others acting for them, represents and agrees that it shall keep confidential the terms of the Agreements, and any transactions thereunder, and that they shall not disclose the same to any persons or in any proceedings, except to the extent such disclosure is required as a result of any legal or administrative rules, regulations, or positions (including compliance with any U.S. Securities and Exchange Commission and/or insurance regulatory reporting obligations), or as ordered by a court or in response to a subpoena, or as required to provide necessary information to accountants, attorneys or financial advisors for the parties; provided, however, Mirant shall be permitted to disclose the Agreements, and any transactions thereunder, to the official committees of creditors and the official committee of equity holders appointed in its Chapter 11 Proceeding who have a need to know such information and have agreed to keep such information confidential. In no event, except as required by law, shall either party disclose the terms of the Agreements in response to a subpoena or in any public filing or other public disclosure without giving the other party at least five (5) business days prior written notice during which the other party may object to such disclosure.

(b) The parties acknowledge and agree that this Settlement Agreement is subject to approval by the Bankruptcy Court. To obtain said approval, Mirant must file a motion with the Bankruptcy Court under Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking approval of this Settlement Agreement (the "9019 Motion"). A copy of this Settlement Agreement shall be attached as an exhibit to the 9019 Motion. As such, the parties acknowledge and agree that this Settlement Agreement shall not remain confidential.

8. Approval Order.

(a) This Settlement Agreement shall be binding on Mirant and Avista as of the date hereof, subject to the entry of the Approval Order. For purposes of this Settlement Agreement, the "Approval Order" shall mean an order, mutually agreed to by Mirant and Avista, substantially in the form of Exhibit A attached hereto, that has been entered by the Bankruptcy Court, after notice and hearing, approving this Settlement Agreement.

(b) Mirant shall use commercially reasonable efforts to obtain the entry of the Approval Order, and Avista shall use commercially reasonable efforts to cooperate with and support Mirant's efforts to obtain entry of the Approval Order. In the event the Approval Order is not entered by the Bankruptcy Court by December 31, 2003, or by such later date that the parties agree to in writing, this Settlement Agreement shall be deemed to have terminated and be null and void and neither party shall have any obligations to the other party arising out of this Settlement Agreement, except for the obligations and/or provisions set forth in Paragraphs 7, 12 and 17 hereof, which provisions are intended to survive the expiration or termination of this Agreement.

9. No Prior Representation. All prior discussions, understandings, representations, conditions, warranties, covenants, negotiations, agreements and all other communications between or among the parties pertaining to the subject matter of this Settlement Agreement are hereby superseded and merged herein. The parties represent and acknowledge that in executing this Settlement Agreement they do not rely and have not relied upon any representation or statement not set forth herein with regard to the subject matter, basis, or effect of this Settlement Agreement or otherwise.

10. Entire Agreement. This Settlement Agreement, including the recitals, represents the entire agreement of the parties with respect to the subject matter hereof. This Settlement Agreement may not be modified, changed, amended, supplemented or rescinded except pursuant to a written instrument duly executed by all of the parties. Each party acknowledges and agrees that it shall not make any claim, at

any time, that this Settlement Agreement has been orally altered or modified in any respect whatsoever.

11. Severability. The provisions of this Settlement Agreement are severable, and if any provision of this Agreement is found to be invalid or unenforceable, then such provision shall be deemed to be deleted to the extent that it is found to be invalid or unenforceable. Such an invalid or unenforceable provision shall not affect the validity of the remainder of this Settlement Agreement, and the remaining provisions shall continue in full force and effect.

12. No Admission of Liability. This Settlement Agreement is not an admission of any liability but is a compromise and settlement and this Settlement Agreement shall not be treated as an admission of liability. All communications (whether oral or in writing) between and/or among the parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Settlement Agreement, or the matters covered hereby and thereby, shall be governed and protected in accordance with the Federal Rule of Evidence 408 and [insert reference to applicable state rule] to the fullest extent permitted by law.

13. No Party Deemed Drafter. The parties shall jointly be deemed to be the drafters of this Settlement Agreement and the rule that any ambiguity in a document shall be construed against the party drafting the document shall not apply to this Settlement Agreement.

14. Headings. The paragraph headings in this Settlement Agreement are included for convenience only, and do not in any way define, limit, alter, affect or control the matters contained in this Settlement Agreement, or the paragraphs that they encaption.

15. No Waiver. No waiver or indulgence of any breach or series of breaches of this Settlement Agreement shall be deemed a waiver of any other breach of

this Settlement Agreement or any of its provisions or affect the enforceability of the remainder of this Settlement Agreement.

16. Notice. Notice by a party to any other party shall be delivered in writing and shall be deemed to have been duly given if delivered personally, delivered by courier, sent by facsimile transmission during normal business hours to the facsimile transmission numbers set forth below, or sent by mail in a registered or certified postage prepaid envelope, return receipt requested, addressed as follows:

To Mirant:

Mirant Americas Energy Marketing, LP
1155 Perimeter Center West
Atlanta, GA 30338-5416
Attn: Legal Department
Facsimile No.: 678-579-5981

To Avista:

Avista Energy, Inc.
1411 East Mission Avenue
Spokane, WA 99252
Attn: Jeff Smith/Pete Wojda
Facsimile No.: 509-495-8725

or to such other address for notice of which the parties have advised or may advise each other in writing in accordance with the provisions of this paragraph. Notice shall be deemed to have been delivered only upon actual delivery to the foregoing addresses (by hand delivery, courier or facsimile transmission with written confirmation of receipt), or two (2) business days after deposit in the United States mail, postage prepaid, addressed to the foregoing addresses.

17. Choice of Law. This Settlement Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of New York without regard to its internal conflicts of law principles.

18. Counterparts. This Settlement Agreement may be executed in two or more counterparts and/or by facsimile, each of which shall be deemed an original and any set of which, when taken together, shall constitute one and the same instrument and be sufficient proof of the instrument so constituted. Notwithstanding the foregoing, if a signature page is transmitted by facsimile, the party so transmitting shall deliver the original signature page to the other parties as soon as reasonably possible after facsimile transmission.

19. Benefit of Successors. This Settlement Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, partners, members, assigns, divisions, parents, affiliates and subsidiaries.

20. Authority To Execute. Each person signing this Settlement Agreement represents and warrants that he/she has read and understands the terms of the Settlement Agreement and that he/she has full power and authority to execute this Settlement Agreement on behalf of the real party in interest for which he/she is signing and to bind that real party in interest legally to the terms of this Settlement Agreement; provided, however that the parties acknowledge that the enforceability of this Settlement Agreement is subject to the entry of the Approval Order.

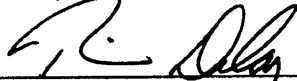
THE PARTIES FURTHER STATE THAT THEY HAVE CAREFULLY READ THIS SETTLEMENT AGREEMENT, WHICH INCLUDES A RELEASE BY THEM OF CLAIMS, THAT THEY HAVE HAD SUFFICIENT TIME TO REVIEW THE SETTLEMENT AGREEMENT AND CONSULT WITH SUCH ADVISORS AS THEY DEEM APPROPRIATE, THAT THEY FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THE SETTLEMENT AGREEMENT, THAT THE ONLY PROMISES MADE ARE THOSE STATED HEREIN AND THAT THEY ARE SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING

**CERTAIN OF THE OTHER PARTIES IN THE MANNER DESCRIBED
HEREIN.**

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date written above.

**MIRANT AMERICAS ENERGY
MARKETING, LP**

By: **MIRANT AMERICAS DEVELOPMENT,
INC., Its General Partner**

By: 



Its: Vice-President

AVISTA ENERGY, INC.

By: _____

Its: _____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date written above.

**MIRANT AMERICAS ENERGY
MARKETING, LP**

**By: MIRANT AMERICAS DEVELOPMENT,
INC., Its General Partner**

By: _____

Its: _____

AVISTA ENERGY, INC.

By: *Dennis P. Vermillion*

**DENNIS VERMILLION
PRESIDENT & COO**

EXHIBIT B

**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 GRANTING DEBTORS' MOTION PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019 FOR APPROVAL OF SETTLEMENT
AGREEMENT AND RELEASE BETWEEN MIRANT AMERICAS ENERGY
MARKETING, LP AND AVISTA ENERGY, INC.**

Upon the motion, dated November 21, 2003 (the "Motion"), of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for an order approving the "Settlement Agreement and Release" (the "Settlement Agreement") between Mirant Americas Energy Marketing, LP ("MAEM") and Avista Energy, Inc. ("Avista"); and it appearing that the Court has jurisdiction over this matter; 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;¹ it is further

ORDERED, that the Settlement Agreement attached to the Motion is approved and MAEM is authorized to perform as required thereunder; it is further

¹ Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

ORDERED, that not later than two (2) business days after entry of this Order, Avista shall pay, by wire transfer, to MAEM the sum of \$6,738,000 (the "Payment"); it is further

ORDERED, that not later than two (2) business days after the Payment is received by MAEM, MAEM shall surrender to Avista, or cause the cancellation of, the Letter of Credit; it is further

ORDERED, that, upon the making of the Payment and the cancellation of the Letter of Credit, (i) the Agreements (which specifically do not include the Excluded Agreements) shall be automatically and without further action by either party, terminated and neither Avista nor MAEM shall have any further obligations with respect thereto; and (ii) the releases set forth in the Settlement Agreement shall be automatically effective; it is further

ORDERED, that MAEM shall not submit a draw upon the Letter of Credit unless the Payment is not received as required pursuant to the terms of the Settlement Agreement.

Dated: December ____, 2003

D. Michael Lynn,
United States Bankruptcy Judge