

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**

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
)	Date and Time: January 28, 2004,
)	12:00 p.m.

DEBTORS' MOTION FOR APPROVAL OF (I) THE SETTLEMENT AGREEMENT WITH CHICOPEE MUNICIPAL LIGHTING PLANT PURSUANT TO RULE 9019 OF THE BANKRUPTCY RULES; AND (II) REJECTION OF THE POWER SUPPLY AGREEMENT FOR FIRM ENTITLEMENTS/STRIPS WITH CHICOPEE MUNICIPAL LIGHTING PLANT PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014

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

Mirant Corporation (“Mirant”) and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors and debtors-in-possession, file this motion (the “Motion”) for authorization to (i) enter into a settlement agreement (the “Settlement Agreement”) with Chicopee Municipal Lighting Plant (“Chicopee”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) reject the Power Supply Agreement For Firm Entitlements/Strips (the “Power Agreement”) between Chicopee

and debtor Mirant Americas Energy Marketing L.P. (“MAEM”) pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules.

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. 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.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”)

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.

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.

3. 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 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.

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

III. FACTUAL BACKGROUND

A. The Debtors’ Business Operations.

5. 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 enough electric generating capacity to power several of the world's largest cities. Mirant owns or controls 23 power generation plants in countries, including power generation plants in the United States.

6. Mirant employs thousands of employees worldwide. 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 Power Agreement.*

7. On September 21, 2001, Chicopee and MAEM entered into the Power Agreement pursuant to which MAEM sells and delivers monthly blocks of firm, off-peak and on-peak electricity to any delivery point designated by Chicopee effective from January 1, 2002 through December 31, 2006.

8. The monthly quantity and price for off-peak and on-peak energy during the contract term are listed on Appendixes A.1 and A.2, respectively, to the Power Agreement.

9. MAEM's obligations under the Power Agreement are secured by a letter of credit (the "LC") in the aggregate amount of \$5.15 million issued by Wachovia Bank, National Association on May 13, 2003 for the benefit of Chicopee. The LC is in full force and effect as of the date hereof and is set to automatically expire by its terms on April 30, 2004 (the "LC Expiration Date").

10. The Debtors commenced negotiations with Chicopee over a compromise that would benefit both the Debtors' estates and Chicopee. The goal of these negotiations was to settle the amount of Chicopee's rejection damage claim against the Debtors' estates. The parties have successfully reached such a compromise, as discussed below.

(ii) *Summary of Settlement Agreement.*²

11. MAEM and Chicopee have entered into the Settlement Agreement (which is subject to Court approval), a copy of which is attached hereto as Exhibit “A,” the principle terms of which include:

- The Debtors will immediately reject the Power Agreement.
- Chicopee will draw the aggregate sum of \$5.15 million on the LC (the “LC Draw”). If Chicopee makes the LC Draw before the Court approves the rejection of the Power Agreement, the cash proceeds received by Chicopee from the LC Draw will be held as collateral until this Court approves the Settlement Agreement and rejection of the Power Agreement.
- Chicopee will be entitled to an allowed, general, unsecured prepetition claim in an amount not to exceed \$3.97 million (the “Claim”) against MAEM’s estate, provided however, a proof of claim in the amount of the Claim must be filed by Chicopee no later than thirty (30) calendar days after the entry of the order approving the Settlement Agreement.
- The LC Draw together with the Claim will satisfy any and all claims by Chicopee against the Debtors for any damages arising from the rejection of the Power Agreement.
- Chicopee will release the Debtors of all claims and potential claims—other than the Claim—relating to or arising from any proposed amendment, rejection, breach of, or default under the Power Agreement that occurred on or prior to the date of the Settlement Agreement.
- The Debtors will release Chicopee of all claims and potential claims relating to or arising from the LC Draw and the application, if any, of the cash proceeds from the LC Draw.

IV. RELIEF REQUESTED

12. By this Motion, the Debtors hereby request that this Court enter an order, in the form of the order attached hereto, authorizing MAEM to enter into the Settlement Agreement and perform its obligations thereunder. As part of the Settlement Agreement,

² Not all parties that were served this Motion were served with copies of the exhibit. Parties in interest may request copies of the exhibit by making a request to the Debtors’ counsel.

Chicopee has agreed to settle the amount of its rejection damage claim arising from the Power Agreement against the Debtors' estates. The Debtors hereby seek approval of the Settlement Agreement under Rule 9019 of the Bankruptcy Rules. The Debtors also hereby seek approval of the rejection of the Power Agreement under section 365 of the Bankruptcy Code and Rules 6006 and 9014 of the Bankruptcy Rules effective as of December 31, 2003.

V. BASIS FOR RELIEF

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

13. 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).

14. Rule 9019(a) empowers a bankruptcy court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *See also In re Zale Corp.*, 62 F.3d 746, 754 (5th Cir. 1995) (stating that “the ‘fair and equitable’ determination does not give the bankruptcy court jurisdiction over settlement conditions that do not bear on the court’s duties to preserve the estate and protect creditors.”). A decision to accept or reject a compromise or settlement is within the sound discretion of the Court. *See 9 Collier on Bankruptcy* ¶ 9019.02 (15th ed. Rev. 2001). “Compromises are favored in bankruptcy” because they minimize the costs of litigation and further the parties’ interest in expediting administration of a bankruptcy estate. *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (*citing 9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the

process of evaluating proposed settlements, 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).

15. 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, 119 F.3d at 356 (citations omitted).

B. The Rule 9019 Factors Are Satisfied.

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

16. While MAEM believes strongly in its case in regard to Chicopee’s prepetition claim, the matter is not completely certain. The Power Agreement is complicated and subject to varying interpretations. This factor weighs in favor of settlement.

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

17. Because of the complexity of the Power Agreement, litigation regarding the rejection damage claim would obviously be complex and quite possibly involve expert testimony. Moreover, litigation of Chicopee’s rejection damage claim may 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 Mirant’s emergence from chapter 11. This factor also weighs in favor of settlement.

18. The Debtors, accordingly, believe that settling the amount of Chicopee's rejection damage claim arising from the Power Agreement is beneficial to their estates. Pursuant to the Settlement Agreement, Chicopee will agree to waive any and all claims—other than the Claim—against the Debtors relating to or arising from the rejection of the Power Agreement. The Debtors, in their business judgment, have determined that the Settlement Agreement is a good one and should be approved.

C. **The Power Agreement is an Executory Contract that Should Be Rejected.**

19. 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. *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).

20. The Power Agreement is an executory contract because it requires MAEM to sell and deliver monthly blocks of firm, off-peak and on-peak electricity to Chicopee on an ongoing basis, and Chicopee is required to pay for such energy. Moreover, MAEM’s failure to continue to provide such energy—or Chicopee’s failure to pay for such energy—would constitute a material breach of the Power Agreement, excusing the performance of the other party. Therefore, the Power Agreement is undoubtedly an executory contract 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 Power Agreement Is Within the Debtors' Business Judgment.

21. 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. *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). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *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).

22. "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)).

23. In this case, the rejection of the Power Agreement is well within the sound business judgment of the Debtors. The Debtors have determined that rejection of the Power Agreement is necessary because the Power Agreement is significantly "out of the money" as to MAEM, and MAEM will incur losses if deliveries of power under the Power Agreement commence on or after January 1, 2004. By rejecting the Power Agreement now, the Debtors can

avoid such losses. The Power Agreement is not essential to the Debtors' operations. The foregoing is reasonable and justified under the circumstances. This Motion should be granted.

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: Fort Worth, Texas
December 31, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By /s/ Meredyth A. Purdy
Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Meredyth A. Purdy
State Bar No. 24007882

-and-

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, Florida 33131
(305) 371-2700

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibit) via U.S. mail, and the addressees set forth below via overnight mail (with exhibit) on the 31st day of December, 2003.

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

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

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

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

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

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

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

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

Mark Thompson
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Chicopee Municipal Lighting Plant
Attn: Barry W. Soden
P.O. Box 405
Chicopee, MA 01021-0405
Telephone: (413) 598-8311
Facsimile: (413) 594-5507

David T. Cohen, Esq.
Warner, Stevens & Doby, L.L.P.
1700 City Center Tower II
301 Commerce Street
Fort Worth, TX 76102
Fax: (817) 810-5255
dcohen@wsdlaw.com

Kenneth M. Barna, Esq.
Rubin & Rudman, LLP
50 Rowes Wharf
Boston, MA 02110-3319
Fax: (617) 439-9556
kbarna@rubinrudman.com

/s/ Meredyth A. Purdy

EXHIBIT A

AGREEMENT AND RELEASES

This Agreement and Releases ("Agreement") is entered into this 30th day of December, 2003 between and among Chicopee Municipal Light Plant ("Chicopee") and Mirant Americas Energy Marketing, LP ("MAEM") and its affiliated debtors (collectively, the "Mirant Parties" and with Chicopee, the "Parties").

WHEREAS, on September 21, 2001, MAEM and Chicopee executed a Firm Entitlement/Strip Agreement (the "Power Agreement"); and

WHEREAS, the Power Agreement provides for Chicopee to hold as collateral for the Mirant Parties' obligations a letter of credit (the "LC") in the amount of \$5,150,000, that will expire on April 30, 2004 (the "LC Expiration Date"); and

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

WHEREAS, the Mirant Parties have expressed a desire to reject the Power Agreement pursuant to section 365 of the Bankruptcy Code and Chicopee has indicated that it will assert claims in the Proceeding against the Mirant Parties for any damages it would incur as a result of the proposed rejection of the Power Agreement; and

WHEREAS, the Parties desire to settle any claims that Chicopee would have as a result of any proposed amendment, rejection, or breach of the Power Agreement; and

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is herewith acknowledged, the Parties hereby agree as follows:

I. The Rejection of the Power Agreement and the Letter of Credit Draw: The Mirant Parties will immediately reject the Power Agreement so as to permit Chicopee, in partial satisfaction of its damages resulting from the rejection, to draw the aggregate sum of \$5,150,000 (the "LC Draw") on the LC before the LC Expiration Date; provided, however, if (i) the rejection of the Power Agreement has not been approved by the bankruptcy court in the Proceeding, and (ii) the Mirant Parties fail to notify Chicopee at least thirty (30) days in advance of the expiration of the LC that the LC will be renewed, then Chicopee will have the right to proceed with the LC Draw. The Mirant Parties acknowledge that Chicopee is permitted under the Power Agreement to effectuate the LC Draw, and the Mirant Parties authorize Chicopee to make whatever certifications to the issuer it deems necessary to effectuate the LC Draw in accordance with this section. In the event the LC Draw occurs prior to the bankruptcy court's approval of the rejection of the Power Agreement in accordance with the first sentence of this Section, then, unless and until the bankruptcy court in the Proceeding approves this Agreement and the rejection, cash proceeds received by the Chicopee from the LC Draw under this section will be held as collateral just as though the Mirant Parties had originally posted cash to support its margin obligations.

2. Waiver of the Automatic Stay: The Mirant Parties acknowledge and agree that Chicopee is entitled to the automatic and absolute lifting of any applicable automatic stay (including specifically, any stay imposed by Section 362 of the Bankruptcy Code) as to the LC Draw. In the event Chicopee is holding the cash proceeds from the LC Draw as collateral in accordance with the third sentence of Section 1 of this Agreement, the Mirant Parties acknowledge and agree that, after entry of an order(s) by the bankruptcy court in the Proceeding approving this Agreement and the rejection of the Power Agreement, Chicopee is entitled to the automatic and absolute lifting of any applicable automatic stay (including specifically, any stay imposed by Section 362 of the Bankruptcy Code) as to Chicopee's application of the cash proceeds thereof in partial satisfaction of Chicopee's claim for rejection damages (the "Application"). The Mirant Parties hereby consent to the immediate lifting of any such automatic stay as to the LC Draw and the Application, if any, and will not contest, or object to, the LC Draw and/or the Application, if any.

3. Chicopee's Claim: Chicopee will be entitled to an allowed, unsecured prepetition claim in the amount of \$3,970,000 (the "Claim") against MAEM's estate; provided, however, a proof of claim in the amount of the Claim will be filed by Chicopee no later than thirty (30) calendar days after the entry of the order approving this Agreement. The Parties agree that, consistent with the terms of Section 6, below, deliveries of power under the Power Agreement will not commence on or after January 1, 2004, and the amount of the Claim includes all damages related to rejection of the agreement and non-deliveries of power from January 1, 2004. The LC Draw (and the Application, if any) together with the Claim will satisfy any and all claims by Chicopee against the Mirant Parties for any damages arising from the rejection of the Power Agreement. Chicopee will waive any and all additional claims against the Mirant Parties for damages relating to and arising from the rejection of the Power Agreement. Additionally, Chicopee will not be entitled to offset or recoup the Claim from any and all future obligations, if any, owed by any of the Mirant Parties to Chicopee.

4. Chicopee's Waiver: The LC Draw (and the Application, if any) together with the Claim will satisfy any and all claims by Chicopee against the Mirant Parties for any damages arising from the proposed amendment, rejection, or breach of the Power Agreement. Chicopee will waive any and all additional claims against the Mirant Parties for damages relating to and arising from the proposed amendment, rejection, or breach of the Power Agreement.

5. The Mirant Parties' Waiver: The Mirant Parties hereby waive (on behalf of their estates and any future trustee) any preference, fraudulent transfer, post-petition transfer, or similar claim they may have against Chicopee regarding the issuance of the LC, the LC Draw or any other matter relating to the LC.

6. Bankruptcy Court Approval: On or before December 31, 2003, the Mirant Parties will file a motion requesting that the bankruptcy court in the Proceeding approve (i) this Agreement; and (ii) the rejection of the Power Agreement. The Parties will each use their best efforts to obtain approval of this Agreement by the bankruptcy court in the Proceeding. Notwithstanding the actual date on which the rejection of the Power Agreement is approved by

by the bankruptcy court or is otherwise deemed effective, the Parties agree, as between themselves, that the effective date for rejection shall be December 31, 2003.

7. Condition Precedent: 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 approval, this Agreement will be deemed null and void without prejudice to the Parties' rights and obligations with respect to the rejection of the Power Agreement prior to entering into this Agreement.

8. Release in Favor of the Mirant Parties: Chicopee executes the following release in favor of the Mirant Parties, their respective agents, attorneys, insurers, assigns, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees (the "Mirant Releasees"):

a. This Release is made and executed by Chicopee, as of the date set forth above. For and in consideration of the terms of this Agreement, Chicopee, acting for itself, its predecessors, assigns, agents, attorneys, insurers, successors, subsidiaries, affiliates, shareholders, officers, directors and employees, do hereby compromise, settle, and fully release and forever discharge the Mirant Releasees and any person, organization, corporation, or entity in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action which Chicopee had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from any proposed amendment, rejection, or breach of, or default under the Power Agreement that occurred on or prior to the date of this Agreement.

b. Chicopee states and warrants that it is the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that Chicopee has unqualified authority, by the signatory immediately below, to release the same.

c. Chicopee will hold harmless the Mirant Releasees, and any person, persons, or organizations in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action relating to or arising from any proposed amendment, rejection, or breach of, or default under the Power Agreement that occurred on or prior to the date of this Agreement by any person or organization claiming an interest in the claims, demands, actions, or causes of action which Chicopee has or may have against the Mirant Releasees with respect to the matters that are the subject of this Release.

d. Chicopee states and warrants that its execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by Chicopee against the Mirant Releasees relating to or arising from any proposed amendment, rejection, or breach of, or default under the Power Agreement that occurred on or prior to the date of this Agreement.

e. In entering into and executing this Agreement, Chicopee has not relied upon any statement or representation pertaining to this matter made by any representative, agent or employee of the Mirant Releasees, or any person firm, organization or corporation hereby released, or by any person or persons representing them; but Chicopee has relied upon attorneys of its own independent choosing and have determined this Agreement is in its best interest.

f. Chicopee states and warrants that, except as provided in Section 6 of this Agreement, it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by Chicopee and constitutes valid and binding obligations of Chicopee.

9. Release in Favor of Chicopee: The Mirant Parties execute the following release in favor of Chicopee, its agents, attorneys, insurers, assigns, predecessors, successors, subsidiaries, affiliates shareholders, officers, directors and employees (the "Chicopee Releasees"):

a. This Release is made and executed by the Mirant Parties, as of the date set forth above. For and in consideration of the terms of this Agreement, each of the Mirant Parties, acting for themselves and each of their respective predecessors, assigns, agents, attorneys, insurers, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees, does hereby compromise, settle and fully release and forever discharge Chicopee, and any person, organization, corporation, or entity in privity with the Chicopee Releasees, of and from any and all claims, demands, actions, or causes of action which the Mirant Parties had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from the LC Draw and and/or the Application.

b. The Mirant Parties state and warrant that they are the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that the Mirant Parties have unqualified authority, by the signatories immediately below, to release the same.

c. The Mirant Parties will hold harmless the Chicopee Releasees, and any person, persons, or organizations in privity with the Chicopee Releasees, of and from any and all claims, demands, actions, or causes of action relating to or arising from the rejection of the Power Agreement by any person or organization claiming an interest in the claims, demands, actions, or causes of action which the Mirant Parties have or may have against the Chicopee Releasees with respect to the matters that are the subject of this Release.

d. The Mirant Parties state and warrant that their execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by the Mirant Parties against the Chicopee Releasees relating to or arising from the LC Draw and/or the Application.

e. In entering into and executing this Agreement, the Mirant Parties have not relied upon any statement or representation pertaining to this matter made by any representative,

agent or employee of the Chicopee Releasees, or any person firm, organization or corporation hereby released, or by any person or persons representing them; but the Mirant Parties have relied upon attorneys of their own independent choosing and has determined this Agreement is in their best interest.

f. The Mirant Parties state and warrant that, except as provided in Section 6 of this Agreement, they have full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by or on behalf of the Mirant Parties and constitutes the valid and binding obligation of the Mirant Parties.

10. Surviving Claims: Except as provided herein, nothing in this Agreement compromises, discharges or otherwise affects any other dispute between the Mirant Releasees and the Chicopee Releasees.

11. Miscellaneous:

a. This Agreement may be amended, modified or supplemented only by written agreement executed by the Parties.

b. All disputes relating to or arising out of this Agreement will be governed by the laws of the State of Georgia, excluding its choice-of-law rules. The United States Bankruptcy Court for the Northern District of Texas will retain jurisdiction over the terms and application of this Agreement.

c. This Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

d. If any material term or provision of this Agreement is found by a final, non-appealable judicial order in any situation in any jurisdiction to be invalid or unenforceable, this entire Agreement will automatically terminate *nunc pro tunc* without prejudice to the Parties' rights and obligations with respect to the rejection of the Power Agreement prior to entering into this Agreement.

e. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the settlement and releases and related transactions contemplated herein. There are no restrictions, promises, representations, warranties, covenants or undertakings between the parties with respect to the transactions contemplated herein, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings, written or oral, between the parties with respect to such transactions.

f. The releases affected hereby will be limited to the claims expressly set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers or representatives as of the date set forth above.

CHICOPEE MUNICIPAL LIGHT PLANT

By BARRY W. SODEN

Name: BARRY W. SODEN

Title: GENERAL MANAGER

Address: 725 FRONT ST.
CHICOPEE, MA. 01021-0405

MIRANT AMERICAS ENERGY
MARKETING, LP

BY: MIRANT AMERICAS
DEVELOPMENT, INC.,
ITS GENERAL PARTNER

By CURTIS A. MORGAN

Name: Curtis A. Morgan

Title: President & Chief Executive Officer

Address: 1155 Perimeter Center West
Atlanta, GA 30338

MIRANT CORPORATION

By CURTIS A. MORGAN

Name: Curtis A. Morgan

Title: Executive Vice President

Address: 1155 Perimeter Center West
Atlanta, GA 30338

**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 FOR APPROVAL OF (I) THE
SETTLEMENT AGREEMENT WITH CHICOPEE MUNICIPAL LIGHTING PLANT
PURSUANT TO RULE 9019 OF THE BANKRUPTCY RULES; AND (II) REJECTION
OF THE POWER SUPPLY AGREEMENT FOR FIRM ENTITLEMENTS/STRIPS
WITH CHICOPEE MUNICIPAL LIGHTING PLANT
PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014**

Upon the Motion, dated December 31, 2003, filed by Mirant Corporation and its affiliated debtors (collectively, the “Debtors”) for the entry of an order for authorization to (i) enter into a settlement agreement (the “Settlement Agreement”) with Chicopee Municipal Lighting Plant (“Chicopee”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) reject the Power Supply Agreement For Firm Entitlements/Strips (the “Power Agreement”) between Chicopee and debtor Mirant Americas Energy Marketing L.P. (“MAEM”) pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules; 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 as set forth herein; it is further

ORDERED, that the Power Agreement is rejected effective as of December 31, 2003; 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

ORDERED, that the releases set forth in the Settlement Agreement will be automatically effective as of the date hereof; it is further

ORDERED, that Chicopee's proof of claim (the "Proof of Claim") in an amount not to exceed \$3.97 million will be filed no later than thirty (30) calendar days after the entry of this Order; it is further

ORDERED, that upon timely filing the Proof of Claim, Chicopee will have an allowed, general, unsecured prepetition claim in an amount not to exceed \$3.97 million against MAEM's estate.

Dated: January ____, 2004

D. Michael Lynn,
United States Bankruptcy Judge