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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-11
)	Jointly Administered
Debtors.)	HEARING DATE AND TIME:
_____)	November 12, 2003 at 10:30 a.m.

**DEBTORS' MOTION TO ENFORCE THE AUTOMATIC STAY AND FOR
CONTEMPT**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, file this Motion to Enforce the Automatic Stay (the "Motion") against the Bonneville Power Administration ("BPA"). In support of the relief requested in the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the standing order of reference of the district court. 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.

BACKGROUND

2. The Bankruptcy 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 (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced Chapter 11 cases under the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. Separate official unsecured creditors’ committees have been appointed for Mirant Corporation and for Mirant Americas Generation, LLC.

3. On July 14, 2003, the Court entered its Interim Order Authorizing the Debtors to (i) Comply with Terms of Pre-Petition Trading Contracts, (ii) Enter into Post-Petition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming Interim Order and Authorizing Assumption of Pre-Petition Trading Contracts (the “Trading Contracts Motion”). On August 28, 2003, the Court entered its Final Order regarding the Trading Contracts Motion.

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 “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

4. The Termination Letter. On July 30, 2003, the BPA mailed a letter (the “Termination Letter”) to the Debtors pursuant to which BPA purported to terminate all transactions between the Debtors and BPA under the Agreement to Enable Future Purchases, Sales and Exchanges of Power and Other Services (the “Agreement”) because of the commencement of the Debtors’ bankruptcy cases. The Termination Letter stated, “As a result of this Event of Default, and in accordance with 11 U.S.C. 556, BPA hereby terminates all transactions under the Agreement including the Existing Confirmation Agreement.” See attached *Exhibit A*.

5. Pursuant to the Termination Letter, BPA assessed a termination payment (“Termination Payment”) against the Debtors in the amount of \$1,085,040, placed an administrative hold on the payment that BPA owed to the Debtors for July purchases by BPA, and requested payment of the “net amount” of \$533,026. The Termination Letter also stated that BPA had received \$523,389 from the Debtors as further assurance of payment and that BPA would release those funds to the Debtor if the Debtors paid the “net amount.” BPA did not move this Court for relief from stay before sending the Termination Letter.

6. In response to the Termination Letter, on August 7, 2003, the Debtors, through their attorney Gerard Uzzi of White & Case, sent a letter to Matthew Troy of the United States Department of Justice, Civil Division, advising BPA that BPA is not a “forward contract merchant” under Bankruptcy Code section 556 and that BPA’s purported termination of the Agreement violated sections 362 and 365 of the Bankruptcy Code and demanding that BPA immediately withdraw its purported termination. See attached *Exhibit B*. Mr. Troy responded to Mr. Uzzi’s letter on September 24, 2003, again notifying Mirant of BPA’s refusal to withdraw the termination and pay its outstanding balance. See attached *Exhibit C*.

RELIEF REQUESTED AND BASIS THEREFOR

7. By this Motion, the Debtors request that the Court enter an Order pursuant to § 105(a) of the Bankruptcy Code and rule 9020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”): (1) holding BPA in civil contempt for having violated the automatic stay of § 362 of the Bankruptcy Code; (2) allowing BPA to cure the contempt by immediately withdrawing its purported termination of the Agreement; and (3) assessing appropriate compensatory payments for this civil contempt, including, but not limited to, the costs and attorneys fees associated with bringing this Motion.

8. Stay Violations. By purporting to terminate the Agreement, BPA has violated the automatic stay imposed by section 362. Section 362 operates as a stay, applicable to all entities of:

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

...

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor

...

11 U.S.C. § 362(a)(3), (7).

9. By purporting to terminate the Agreement and assessing a “Termination Payment,” BPA has committed an act to obtain possession of property of the estate and to exercise control over property of the Debtors’ estates and thus violated section 362(a)(3). Prior to the filing of the bankruptcy case, the Debtors held an interest in the Agreement. Upon the filing of the bankruptcy petition, the estate succeeded to those rights. Upon the filing of the bankruptcy petition, the automatic stay prohibited any action against the Debtors and estate property, including the rights associated with the contracts in which the Debtors had an interest.

See Hutchins v. Fordyce Bank & Trust Co., FBT (In re Hutchins), 216 B.R. 1, 7 (Bankr. E.D. Ark. 1997). Until such time as the executory contract is assumed, rejected, or determined to be unassumable, it is protected by the automatic stay. *Id.* (citing *In re Computer Communications, Inc.*, 824 F.2d 725, 729 (9th Cir. 1987)). Thus, terminating the Agreement would deprive the Debtors' estates of their contract rights in the Agreement and violate the automatic stay.

10. In addition, by assessing a "Termination Payment," and attempting to set off such Termination Payment, as discussed below, BPA has committed an act to obtain possession of property of the estates. The Debtors, by BPA's own admission, had paid BPA \$523,389 as further assurance of payment and were performing in accordance with the Agreement. Still, BPA seeks to assess a Termination Payment against the Debtors for BPA's own actions. The Termination Payment is a debt created by BPA for the purpose of obtaining property of the Debtors' estates and violates section 362(a).

11. By the Termination Letter, BPA attempts the setoff of a debt owing to the Debtor that arose before the commencement of the Debtors' bankruptcy cases against a claim against the Debtors. BPA is attempting to offset its July purchases, a debt of which part arose prepetition, against their alleged claim for the Termination Payment. As BPA should not be allowed to terminate the Agreement, no Termination Payment is due BPA, BPA has no right to setoff and any attempted setoff by BPA violates §362(a)(7).

12. Violation of 11 U.S.C. § 365. BPA's purported termination of the Agreement also violates section 365 of the Bankruptcy Code. Section 365(a)(e) provides:

Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

By its own admission, BPA purported to terminate the Agreement solely because the Debtors had filed for bankruptcy. *See Exhibit A.* Thus, BPA's actions are in violation of section 365.

13. BPA is not protected under 11 U.S.C. § 556. BPA asserts that it is acting "in accordance with 11 U.S.C. 556." But BPA's reliance on the safe harbor afforded "forward contract merchants" under section 556 is misplaced. BPA is not a forward contract merchant.

14. The unambiguous language of section 101(26) states that a "forward contract merchant" means a **person** whose business consists in whole or in part of entering into forward contracts . . ." 11 U.S.C. § 101 (26). A " 'person' includes individual, partnership, and corporation, but does not include governmental unit . . ." except for a few exceptions not applicable here. 11 U.S.C. § 101 (41).

15. Despite this unambiguous language defining forward contract merchant, BPA justifies its stay violation by citing the historical and statutory notes. *See BPA Limited Objection ¶ 15 n. 5.* Those notes regarding the definition of "person" state:

The exclusion of governmental units is made explicit in order to avoid any confusion that may arise if, for example, a municipality is incorporated and thus is legally a corporation as well as a governmental unit.

It does not state that a government entity is a "person" for purposes of defining forward contract merchant.

16. BPA also relies on the definition in the Agreement of "forward contract merchant." That reliance is misplaced. The Agreement cannot alter the definition of a term

when that term is defined in the applicable statute. *See e.g. In re Stonebridge Techs., Inc.*, 291 B.R. 63, 71 (Bankr. N.D. Tex. 2003) (looking to parties' definition of "security deposit" only after noting that neither the Bankruptcy Code nor the comments thereafter provide a definition). The draftsmen of the Agreement cannot alter the statutory definition.

17. Instead, proper statutory construction requires that where "the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *In re Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1981) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 566 (1994). Even if the BPA could find "express support" in the legislative history to support its position, which it has not done, where that legislative history is "clearly to the contrary of the statutory language, it is unpersuasive." *In re Pro-Snax Distrib., Inc.*, 157 F.3d 414 (5th Cir. 1998).

18. The Bankruptcy Code's applicable sections and definitions of "forward contract merchant," "person," and "governmental unit" are unambiguous and should be applied as written, not as BPA thinks these terms should be interpreted based upon its questionable reading of the historical and statutory notes, nor as defined in the Agreement.

19. Contempt. By (i) purporting to terminate the Agreement with knowledge of the automatic stay and knowledge that termination would violate the automatic stay; and (ii) refusing to withdraw the Termination Letter, BPA is in contempt of this Court for its willful violation of the automatic stay. This Court has the power to conduct civil contempt proceedings and issue orders in accordance with those proceedings pursuant to section 105 of the Bankruptcy Code. *Placid Refining Co.. v. Terrebonne Fuel & Lube , Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108

F.3d 609, 613 (5th Cir. 1997). The enforcement of the automatic stay by contempt-type proceedings constitutes a core matter over which this Court has jurisdiction to enter a final order. *In re Abercrombie*, 156 B.R. 782, 783 (Bankr. N.D. Tex. 1993).

20. A willful violation of the stay does not require a specific intent to violate the automatic stay. It is sufficient that the creditor knew of the automatic stay and that the creditor's actions were intentional. *Nissan Motor Acceptance Corp. v. Baker*, 239 B.R. 484, 488 (Bankr. N.D. Texas 1999); *see also Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 191 (9th Cir. 1995). Knowledge of the bankruptcy filing is the legal equivalent of knowledge of the automatic stay because, once a party is informed of a bankruptcy filing, that party is under an affirmative duty to seek further information, which would reveal the scope and applicability of the automatic stay. *Coats v. Vawter (In re Coats)*, 168 B.R. 159, 166 (Bankr. S.D. Tex. 1993).

21. Cure. The Debtors request that the Court enter an Order that provides that BPA may cure this civil contempt by immediately withdrawing the Termination Letter.

22. Compensatory Payments. The Debtors may seek costs and attorneys' fees in connection with bringing this Motion. *See In re San Angelo Pro Hockey Club, Inc.*, 292 B.R. 118, 124 (Bankr. N.D. Tex. 2003) (award of damages in favor of a corporate debtor allowed under section 105 as it "may provide an incentive for debtors to prosecute violations of the stay and for creditors to observe the limits imposed by the automatic stay"); *In re Abacus Broad. Corp.*, 150 B.R. 925 (Bankr. W.D. Tex. 1993) (corporate debtor may seek costs and attorneys' fees pursuant to the court's contempt powers under 11 U.S.C. § 105(a)). Pursuant to this Court's equitable powers under section 105(a), the Court should order BPA to pay all of the Debtors' costs and reasonable attorneys' fees incurred in connection with this Motion. BPA had actual knowledge of the Debtors' bankruptcy filings and the automatic stay, sent the Termination Letter

to the Debtors purporting to terminate the Agreement, and has refused to withdraw the Termination Letter. Accordingly, the Court should order BPA to bear the economic consequences of forcing the Debtors to pursue this Motion, including payment of the Debtors' costs and reasonable attorneys' fees.

CONCLUSION

Because BPA is a governmental unit, BPA is neither a person nor a forward contract merchant as defined by the plain language of the Bankruptcy Code. As a result, BPA cannot avail itself of the statutory protections provided in section 556. Thus, under sections 362 and 365 of the Bankruptcy Code, BPA is prohibited from terminating the Agreement, assessing a Termination Payment, and attempting to offset such Termination Payment. Based on the foregoing, BPA and its counsel have violated the automatic stay, and therefore, are in contempt of this Court.

WHEREFORE, the Debtors respectfully request that this Court enter an order:

1. Holding BPA in civil contempt for having violated and disregarded the automatic stay;
2. Directing BPA to remedy its violations of the automatic stay by immediately withdrawing the Termination Letter;
3. Assessing appropriate compensatory payments for BPA's willful violation of the automatic stay including, but not limited to, reimbursing the Debtors for their reasonable attorneys' fees and costs in connection with the enforcement of the automatic stay; and
4. Granting the Debtors such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED THIS 17TH DAY OF OCTOBER, 2003.

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By /s/ Robin E. 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
Gerard Uzzi
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ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service upon the parties listed below and upon all persons on the Limited Service List via United States first class mail, postage prepaid on the 17th day of October 2003:

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Lawrence E. Kitchen
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/s/ Robin E. Phelan



Department of Energy

Bonneville Power Administration
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POWER BUSINESS LINE

July 30, 2003

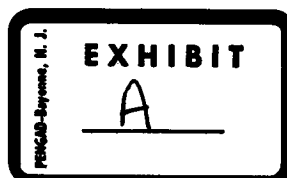
In reply refer to: PT-5

Mr. Greg Oetting, Manager
Mid Market Trading
Mirant Americas Energy Marketing L.P.
1155 Perimeter Center West Drive
Atlanta, Georgia 30338

Dear Mr. Oetting:

The Bonneville Power Administration (BPA) has been notified that Mirant Americas Energy Trading L.P., formerly Southern Energy Marketing L.P. (Mirant) has filed in the United States Bankruptcy Court for the Northern District of Texas. This action by Mirant constitutes an Event of Default under Confirmation Agreement No. 01PB42000 (Existing Confirmation Agreement) entered into between BPA and Mirant under our Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services (Agreement), Contract No. 99PB10588 as described in section 22.1(c) of Attachment C of the Agreement. Per Section 35 of Attachment C of the Agreement, Mirant and BPA agreed that each is a forward contract merchant, and the Agreement and Existing Confirmation Agreement are forward contracts, for purposes of 11 U.S.C. 556.

As a result of this Event of Default, and in accordance with 11 U.S.C. 556, BPA hereby terminates all transactions under the Agreement including the Existing Confirmation Agreement. BPA has calculated a Termination Payment as prescribed by section 22.3 of Attachment C of the Agreement. The amount of the Termination Payment is \$1,085,040. A summary of this calculation is attached. BPA currently has accounts payable with Mirant under Confirmation Agreements completed in July with an outstanding balance of \$552,014. BPA will withhold payment for those obligations at this time. The net amount due from Mirant to BPA is \$533,026. Pursuant to Attachment C of the Agreement, this amount is due within three (3) business days of receipt of this letter. If this amount is paid, BPA will release the \$523,389 paid by Mirant to BPA on July 7, 2003, as further assurance of performance.



This termination letter constitutes a contracting officer's final decision pursuant to section 605 of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601 *et seq.* The Contract Disputes Act specifies you may appeal this decision within ninety days from date of receipt of this letter at the Department of Energy Contract Board of Appeals, pursuant to 41 U.S.C. § 607, or within twelve months from date of receipt of this letter at the United States Court of Federal Claims, pursuant to 41 U.S.C. § 609.

For any further questions regarding the calculation of these payments, please contact me at 503 230-5458.

Sincerely,



Lawrence E. Kitchen
Senior Account Executive/Contracting Officer

cc:

Mr. John O'Neal, Chief Commercial Officer
Mr. Jim Shandalov, Director Marketing & Development
Mr. Steve Brown, Director, Credit and Counterparty Risk
Mr. Stephen Fischer, Senior Marketing Mgr., Western Region
Emily B. Tindel, Senior Credit Analyst
✓ Matthew Troy, Department of Justice

Summary of Termination Payment

Existing Confirmation Agreement

Market Quotes for Replacement Transactions on July 30, 2003

Avista \$1.05 bid and \$1.65 offered

Constellation \$1.25 bid and \$2.25 offered

Termination Payment = $(\$1.65 \times 3 \text{ years} \times 8760 \text{ hours/year} \times 25 \text{ MW}) + (\$1.65 \times 24 \text{ hours} \times 25 \text{ MW}) = \$1,085,040$

Administrative hold for July Purchases by BPA = \$552,014

Net Amount Due by Mirant to BPA = \$533,026

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of August 2003 a true and correct

copy of the foregoing pleading was served via facsimile as follows:

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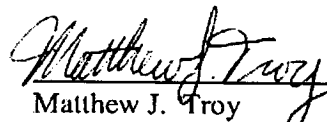
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August 7, 2003

BY FAX (203) 307-0494 AND FIRST CLASS MAIL

Matthew Troy, Esq.
United States Department of Justice
Civil Division
Room 1006
1100 L Street NW
Washington, DC 20530

Re: Agreement to Enable Future Purchases, Sales and Exchanges of Power and Other Services between Mirant Americas Energy Trading L.P. and Bonneville Power Administration – PT-5.

Dear Mr. Troy:

We are in receipt of a letter dated July 30, 2003, from the Bonneville Power Administration ("BPA"), purporting to terminate the Agreement to Enable Future Purchases, Sales and Exchanges of Power and Other Services between BPA and Mirant Americas Energy Marketing, L.P. ("MAEM") (the "Agreement") and the Confirmation Agreement No. 01PB42000 between BPA and MAEM (collectively with the Agreement, the "BPA Agreement") as a result of the commencement of the chapter 11 case of MAEM. We represent MAEM in its chapter 11 case.

Please be advised that BPA is not a "forward contract merchant" as such term is used in section 556 of title 11 of the United States Code (the "Bankruptcy Code"). Therefore, BPA's purported termination of the BPA Agreement violates sections 362 and 365 of the Bankruptcy Code.

Section 556 of the Bankruptcy Code expressly limits the right to exercise a contractual right to cause the liquidation of a forward contract because of the kind of condition specified in section 365(e)(1) of the Bankruptcy Code to forward contract merchants. The definition of a forward contract merchant is set forth in section 101(26) and is limited to "persons." A "person" as such term is defined under section 101(41) includes an individual, partnership, and corporation, but not a governmental unit (subject to a few non-applicable exceptions provided



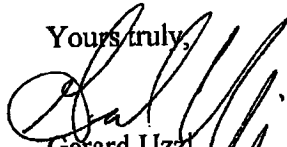
WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Matthew Troy, Esq.
Page 2

therein). The term "governmental unit" is defined under section 101(27) as: "United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." Plainly, BPA is a "governmental unit" and therefore is neither a person nor forward contract merchant.

Accordingly, MAEM demands that BPA immediately withdraw the purported termination of the BPA Agreement and perform all obligations owed MAEM under the BPA Agreement including payment of all outstanding amounts owed MAEM.

Yours truly,



Gerard Uzzi

(Admitted in New York)

cc: Lawrence E. Kitchen (by fax 503-230-3314)
Sonnet Edmonds, Esq. (by fax (678) 579-5890)



U.S. Department of Justice
Civil Division

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MATTHEW J. TROY
Chief Attorney

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September 24, 2003

VIA FACSIMILE (305) 358-5744

Erika Ruiz
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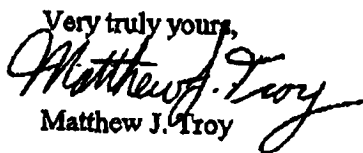
Re: In re Mirant Corporation et al.
Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other
Services, Contract No. 99PB10588

Dear Ms. Ruiz:

This responds to Mr. Uzzi's August 7 letter to me and your September 16 letter to Lawrence B. Kitchen of the Bonneville Power Administration ("BPA").

For the reasons stated in BPA's August 19, 2003 Response to Certain Objections to Debtor's Motion for Interim Order Authorizing the Debtors to (i) Comply with Terms of Prepetition Trading Contracts, (ii) Enter into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre and Postpetition Trading Contracts, and (iv) Authorizing the Assumption of Prepetition Trading Contracts filed in Mirant's bankruptcy, BPA disagrees with Mirant's contentions that (i) BPA is not a forward contract merchant as such term is used in section 556 of the title 11 of the Bankruptcy Code and (ii) BPA's July 30, 2003 termination of the Agreement violates the automatic stay of section 362.

Accordingly, BPA's termination of the Agreement is valid and will not be withdrawn. Moreover, for the reasons stated in its July 30 termination letter, BPA will not pay the alleged outstanding balance demanded in your letter.

Very truly yours,

Matthew J. Troy



**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-11
)	Jointly Administered
Debtors.)	
)	

ORDER GRANTING DEBTORS’MOTION TO ENFORCE THE AUTOMATIC STAY

Upon the motion, dated October 17, 2003 (the “Motion”), of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for an order (i) holding the Bonneville Power Administration (“BPA”) in civil contempt for having violated and disregarded the automatic stay; (ii) directing BPA to remedy its violations of the automatic stay by immediately withdrawing the Termination Letter (as defined by the Motion); (iii) assessing appropriate compensatory payments for its willful violation of the automatic stay, including, but not limited to, reimbursing the Debtors for their reasonable attorneys’ fees and costs in connection with the enforcement of the automatic stay; and (iv) granting the Debtors such other and further relief as may be just and proper; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Certificate of Service accompanying the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion; and it is further

ORDERED that, the Motion is **GRANTED**; and it is further

ORDERED that BPA is held in civil contempt for having violated and disregarded the automatic stay; and it is further

ORDERED that BPA is directed to remedy its violations of the automatic stay by immediately taking all actions necessary to withdraw the Termination Letter and ceasing all of their actions to terminate the Agreement and it is further

ORDERED that BPA is assessed compensatory payments, including reimbursement of the Debtors' costs and reasonable attorneys fees incurred in connection with this Motion, in the amount of _____.

DATED: _____

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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