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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, <i>et al.</i> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS TO REJECT THE FIRM TRANSPORTATION
SERVICE AGREEMENT CONTRACT NO. 1712 BETWEEN MIRANT
AMERICAS ENERGY MARKETING, LP AND KERN RIVER GAS
TRANSMISSION COMPANY**

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 *et seq.*) (the "Bankruptcy Code") for authority to reject the Firm Transportation Service Agreement Contract No. 1712 (as amended from time to time, the "Contract") between Mirant Americas Energy Marketing, LP ("MAEM") and Kern

River Gas Transmission Company (“Kern River”), which is described below in greater detail and attached hereto as Exhibit B.¹ In support thereof the Debtors represent as follows:

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.

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 (the “Bankruptcy Code”).² 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

¹ Not all parties were served with the Contract. Any party may request a copy of the Contract by making a written request to the Debtors’ counsel.

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

“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.

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”).

RELIEF REQUESTED

2. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Contract listed below in paragraph 5 hereof, effective ten (10) business days from the date of service of this Motion.

BASIS FOR RELIEF

3. On August 14, 2003, the Court entered an amended order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

4. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

5. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Contract will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

- (a) **Title of the Contract:** Firm Transportation Service Agreement Contract No. 1712, dated May 29, 2001, as amended July 23, 2001 and April 5, 2002, between Kern River and MAEM.

Effective Date of Rejection:

December 18, 2003, subject to paragraph 6 hereof

Parties to the Contract:

Mirant Americas Energy Marketing, LP
Kern River Gas Transmission Company

Contact Information for Non-Debtors:

Kern River Gas Transmission Company
Attention: Kirk Morgan
2755 E. Cottonwood Parkway, Suite 300
Salt Lake City, Utah 84121

6. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contract, then the Contract shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Contract.

7. Pursuant to the Order, claims arising out of the rejection of the Contract must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Contract, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").

8. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contract who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in

these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

General Description Relating to the Contract.

9. Kern River and MAEM are parties to a transportation agreement for pipeline transportation capacity on the Kern River Transportation System of 90,000 MMBtu per day. MAEM entered into the Contract for the sole purpose of using the Kern River Transportation System to transport gas to two power plants MAEM planned to develop, APEX I and APEX II. MAEM subsequently developed APEX I, but has not developed APEX II. The Contract expires April 30, 2018.

The Contract May Be Rejected.

10. 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 has been defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *See In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994). The Contract is an executory contract because it requires (i) Kern River to provide MAEM with the on-going right to use the Kern River Transportation System and (ii) MAEM to pay for this right. Moreover, Kern River's failure to allow MAEM to use its Transportation System would constitute a material breach of the Contract, excusing the performance of the other party. Therefore, the Contract 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*

Elec. Power Coop., Inc., 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection Of The Contract is Within the Debtors' Business Judgment.

11. Rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

12. "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)). Since MAEM entered into the Contract, the Debtors' business operations have changed and, after due inquiry, the Debtors have determined that the Contract is burdensome to their estates.

13. The Debtors have determined, in their reasonable business judgment, that the Contract should be rejected as uneconomical and an impediment to their ongoing business operations. At the time MAEM entered into the Contract, MAEM intended to develop two power plants and contracted for firm transportation of 90,000 MMBtu per day, intending to use this capacity to supply both of the planned power plants. However, MAEM has developed a

single plant, APEX I, which requires only 30,000 MMBtu per day. Unless the Contract is rejected, MAEM projects a loss of approximately \$10.5 million during 2004 and 2005. Not only is MAEM paying for 60,000 MMBtu per day that it cannot use, but MAEM has determined that it can procure the 30,000 MMBtu per day of firm transportation required for the APEX I plant at current market rates, which are much more favorable than the contract rate. Therefore, the Debtors have determined that it is in their best interest to reject the Contract.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
December 4, 2003

Haynes and Boone, LLP
901 Main Street
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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-
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200 South Biscayne Blvd.
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(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 exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 4th day of December, 2003.

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Mark C. Taylor
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Kern River Gas Transmission Company
Attention: Kirk Morgan
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Salt Lake City, Utah 84121

Paul N. Silverstein
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Andrews & Kurth, L.L.P.
1717 Main Street
Suite 3700
Dallas, TX 75201

/s/ Meredyth A. Purdy

EXHIBIT A

U.S. BANKRUPTCY COURT,
NORTHERN DISTRICT OF TEXAS

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

ENTERED
TAWANA J. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

ORDERED that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

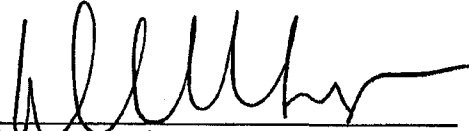
ORDERED that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

ORDERED that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

ORDERED that, to the extent that any provision contained in this Order is inconsistent with this Court's 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 Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2007



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Rejection Procedures

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

**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
Debtors.)	Jointly Administered
_____)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

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.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition 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 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 Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this 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.

BASIS FOR RELIEF

5. On _____, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.
6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".
7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:
Effective Date of Rejection:
Parties to the Lease/Contract
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
_____, 2003

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

By _____

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
Michelle C. Campbell
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(305) 371-2700

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

EXHIBIT B

**FIRM TRANSPORTATION SERVICE AGREEMENT
CONTRACT NO. 1712**

THIS AGREEMENT is made and entered into this 29 day of May 2001, by and between **KERN RIVER GAS TRANSMISSION COMPANY**, a Texas general partnership ("Kern River") and **MIRANT AMERICAS ENERGY MARKETING, L.P.** a Delaware limited partnership. ("Shipper").

WHEREAS, Shipper has acquired or intends to acquire a supply of Natural Gas which can be delivered to Transporter's pipeline system and redelivered by Transporter to Shipper or for Shipper's account at Delivery Points on Transporter's system; and

WHEREAS, Shipper desires Transportation service from Transporter as described in the Precedent Agreement dated January 31, 2001, in accordance with Transporter's Rate Schedule KRF-1, on file with the FERC, as amended from time to time; and

WHEREAS, Transporter is willing to render such Transportation service subject to Transporter's receipt and acceptance of the authorizations requested in its future certificate application with FERC;

NOW, THEREFORE, in consideration of the mutual covenants and agreements as herein set forth, the parties hereto agree as follows:

ARTICLE I – GAS TO BE TRANSPORTED

- 1.1 Subject to the terms, conditions and limitations hereof, Transporter agrees to receive, on a firm basis, from Shipper for Transportation at the Receipt Point(s) specified in Exhibit "A" hereto, as amended from time to time, and to transport and deliver Thermally Equivalent Quantities to Shipper at the Delivery Point(s) specified in Exhibit "A" hereto, as amended from time to time, Quantities of Natural Gas, exclusive of Quantities required for fuel used and lost and unaccounted-for Gas, up to Shipper's Maximum Daily Quantity, which shall be 90,000 Dth per day.
- 1.2 Shipper shall reimburse Transporter for fuel used and lost and unaccounted-for Gas on an in-kind basis at the factors applicable to incrementally-priced, long-term firm Transportation, pursuant to the General Terms and Conditions of Transporter's Tariff as filed with the FERC to be effective on the date Transporter commences service, and as amended from time to time.

ARTICLE II - APPLICABLE RATE SCHEDULE

- 2.1 Shipper agrees to pay Transporter for all Natural Gas Transportation service rendered under the terms of this Agreement in accordance with Transporter's Rate Schedule KRF-1, as filed with the FERC to be effective on the date Transporter commences service, and as

amended from time to time. This Agreement shall be subject to the provisions of such Rate Schedule and the General Transportation Terms and Conditions applicable thereto on file with the FERC and as amended from time to time, which by this reference are incorporated herein and made a part hereof.

- 2.2 Shipper's rates for Transportation service shall be in accordance with Transporter's effective Rate Schedule KRF-1 for incrementally-priced, 10-year term, firm Transportation subject to the parties' understanding and agreement that Transporter may change the rates from time to time in accordance with the Natural Gas Act.
- 2.3 Notwithstanding Section 5.5 of the General Terms and Conditions in Transporter's FERC Gas Tariff, and subject to any negotiated credit, Shipper shall make payment of the Monthly Reservation Charge pursuant hereto in full irrespective of (but without prejudice to the rights otherwise of Shipper with respect to) any dispute relative to the amount invoiced, and shall not be entitled to any abatement of such payment or any set-off against it, including but not limited to, abatement or set-off due or alleged to be due by reason of any past, present or future claims or other rights of Shipper against Transporter or any other person or entity, whether in connection herewith or any unrelated transaction.

ARTICLE III - TERM OF AGREEMENT

- 3.1 Except as provided in this Article, this Agreement shall become effective on the date of execution and shall remain in full force and effect for a term of 10 years from the commencement date, which shall be defined as the later of May 1, 2003 or the "In-service Date." In-service Date is defined as the first day that expansion capacity is available for Transporter to perform Transportation service under this Agreement.
- 3.2 If Transporter has not received and accepted a final certificate order from FERC by December 31, 2002, authorizing construction of expansion facilities required to provide service under this Agreement, Transporter has the option to terminate this Agreement upon 10 days written notice to Shipper.

ARTICLE IV - NOTICES

Any notice called for in this Agreement shall be given in writing and shall be considered as having been given if delivered personally, by confirmed facsimile or by mail with all postage and charges prepaid to either Shipper or Transporter at the place designated below. Routine communications shall be considered as duly delivered when mailed by ordinary mail. Normal operating instructions can be made by telephone, electronic media or confirmed facsimile. Unless changed, the addresses of the parties are as follows:

Transporter: Kern River Gas Transmission Company
Attention: Marketing Services Department
295 Chipeta Way
P.O. Box 58900
Salt Lake City, Utah 84158-0900
Fax No.: (801) 584-6444

Shipper: Mirant Americas Energy Marketing, L.P.
Attention: Rob Schaefer
1155 Perimeter Center West
Atlanta, GA 30338-5416
FAX: (678) 579-5896

ARTICLE V - SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No assignment or transfer by either party hereunder shall be made without the written consent of the other party. Such consent shall not be unreasonably withheld. No such consent of Transporter or Shipper shall be required when an assignment by Shipper or Transporter is the result of, and part of, a corporate acquisition, merger or reorganization. Nothing contained herein shall prevent either party from pledging, mortgaging or assigning its rights hereunder as security for its indebtedness and either party may assign to the pledgee or mortgagee (or to a trustee for the holder of such indebtedness) any money due or to become due under this Agreement. As between the parties hereto, such assignment shall become effective on the first day of the Month following written notice that such assignment has been effectuated. Upon request of either party, the other party shall acknowledge in writing any permitted assignment described herein and the right of any permitted assignee (and any assignee upon enforcement of any assignment made as security for indebtedness) to enforce this Agreement against such other party, and shall also deliver such certificates, copies of corporate documents and opinions of counsel as may be reasonably requested by such permitted assignee relating to such party, this Agreement and any other matters relevant thereto. No permitted assignment shall relieve the assigning party from any of its obligations under this Agreement that arose out of circumstances occurring prior to such Assignment. Shipper hereby confirms that the rights of Transporter under the Agreement that may be assigned include any right given or reserved to Transporter in the Agreement to consent to any assignment or transfer by Shipper of its rights and obligations thereunder.

ARTICLE VI - GOVERNMENTAL BODIES

Notwithstanding any other provision hereof, this Agreement shall be subject to all laws, statutes, ordinances, regulations, rules and court decisions of governmental entities now or hereafter having jurisdiction.

ARTICLE VII - MISCELLANEOUS PROVISIONS

- 7.1 This Agreement shall be amended only by an instrument in writing executed by both parties hereto.
- 7.2 No waiver by any party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.
- 7.3 No liability for any act or omission of Transporter shall be incurred by, or asserted against, either Kern River Acquisition Corporation, Williams Western Pipeline Company, or any person or company which is a partner in Kern River Gas Transmission Company, or any owners, subsidiaries or affiliates of the partners. Any recourse for any liability of Transporter shall be against Transporter only.
- 7.4 The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the meaning or construction thereof.
- 7.5 This Agreement shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

MIRANT AMERICAS ENERGY MARKETING, L.P.
(Shipper)

KERN RIVER GAS TRANSMISSION
COMPANY (Transporter)

By: /s/ _____

By: /s/ _____

Name: Chris McDonald

Name: Lynn Dahlberg

Title: CCO, West Region

Title: Manager, Marketing Services

**FIRM TRANSPORTATION SERVICE AGREEMENT
CONTRACT 1712**

EXHIBIT "A"

TO TRANSPORTATION SERVICE AGREEMENT

DATED: May 29, 2001

BETWEEN
MIRANT AMERICAS ENERGY MARKETING, L.P.
AND
KERN RIVER GAS TRANSMISSION COMPANY

<u>Primary Receipt Point(s)</u>	<u>Meter Number</u>	<u>Maximum Receipt Point Quantity (Dth)</u>	<u>Minimum Receipt Pressure Psig</u>
Opal	014001	90,000 Dth/d	712

<u>Primary Delivery Point(s)</u>	<u>Meter Number</u>	<u>Maximum Delivery Point Quantity (Dth)</u>	<u>Maximum Delivery Pressure Psig</u>
Wheeler Ridge-SoCal Gas	025011	12,897 Dth/d	535
Daggett-PG&E	024011	77,103 Dth/d	650

**FIRST AMENDMENT TO
FIRM TRANSPORTATION SERVICE AGREEMENT
CONTRACT NO. 1712**

THIS AMENDMENT ("Amendment") is made and entered into this 23rd day of July, 2001, between KERN RIVER GAS TRANSMISSION COMPANY ("Transporter") and MIRANT AMERICAS ENERGY MARKETING LP ("Shipper").

WITNESSETH

WHEREAS, Transporter and Shipper are parties to that certain Firm Transportation Service Agreement Contract No. 1712, dated May 29, 2001 ("Agreement"); and

WHEREAS, Shipper has requested to extend the terms of this Agreement from 10 years to 15 years from the commencement date.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, Transporter and Shipper do hereby agree as follows:

1. Article III, section 3.1 of this Agreement is deleted in its entirety and replaced with the following:

3.1 This Agreement shall become effective on the date of execution and shall remain in full force and effect for a term of 15 years from the commencement date, which shall be defined as the later of May 1, 2003, or the "In service Date." In -service Date is defined as the first day that expansion capacity is available for Transporter to perform Transportation service under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed in duplicate originals as of the date first written above.

MIRANT AMERICAS ENERGY
MARKETING LP ("Shipper")

KERN RIVER GAS TRANSMISSION
COMPANY ("Transporter")

By: /s/ _____
Name: Rob Schaefer
Title: VP Business Development &
Marketing West Region

/s/ _____
Lynn Dahlberg
Manager, Marketing Services

