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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: December 3,
)	2003; 10:30 a.m.

**DEBTORS' MOTION FOR APPROVAL OF (1) SETTLEMENT AGREEMENT UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, (2) REJECTION OF
CERTAIN AGREEMENTS AND (3) ASSUMPTION OF CERTAIN OTHER
AGREEMENTS WITH NATURAL GAS PIPELINE COMPANY OF AMERICA**

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") for authorization to enter into a settlement agreement, the principal terms of which include (1) the release of certain claims of the Debtors against Natural Gas Pipeline Company of America ("NGPL"), (2) the rejection of a Negotiated Rate FTS Agreement No. 119394 (the "FTS Agreement") and two Discounted Rate IBS Agreements, Nos. 119413 and 119465 (the "IBS Agreements") with NGPL with rejection damages to be satisfied through a draw on an existing letter of credit, and (3) the assumption of the Negotiated Rate ITS Agreement No. 119412 (the

“ITS Agreement”) with NGPL (collectively, the “Agreements”). The settlement agreement (the “Settlement Agreement”) is appended hereto as Exhibit 1, and its key terms are summarized herein.

I. PROCEDURAL BACKGROUND

1. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C. (the “Wrightsville Plant”); and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, the Court entered the order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. Also on September 8, 2003, the Court granted the motion for an order directing that orders entered in the cases of the Initial Debtors be made applicable to those of the New Debtors. On October 21, 2003, the Court

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 Queens 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.

entered an order approving joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. Also on November 5, 2003, the Court entered an order directing that certain orders entered in the cases of the Initial Debtors be made applicable to the Wrightsville Debtors.

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

II. FACTUAL BACKGROUND

A. The Debtors' Business Operations.

4. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

5. Mirant employs thousands of employees worldwide, some of whom are based at Mirant's corporate headquarters in Atlanta and most of whom are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and

depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. MAEM's Agreements with NGPL.

6. Effective July 30, 2001, MAEM and NGPL entered into the Agreements. MAEM entered into the Agreements to provide the Wrightsville Plant with certain, negotiated rates for natural gas transportation and related balancing services to be provided by NGPL. To secure the payments due under the Agreements, the Debtors procured a \$3.535 million letter of credit issued by Wachovia Bank, N.A. in favor of NGPL.

7. As a result of depressed market conditions, it is not economically prudent to keep the Wrightsville Plant in a ready-run state. Accordingly, the facility will be “mothballed,” meaning that it will largely be shut-down except for the minimal services necessary to avoid deterioration, until market conditions improve. While in this “mothball” state, MAEM will only provide limited amounts of gas to the Wrightsville Plant and can most efficiently provide such gas under the ITS Agreement.

8. The ITS Agreement is not linked to the FTS Agreement or the Discounted Rate IBS Agreement, No. 119465. While the Discounted Rate IBS Agreement, No. 119413 was entered into to provide balancing service for the ITS Agreement, this service is not needed for the “mothballed” facility. The ITS Agreement provides the most efficient mechanism by which fuel can be transported to the Wrightsville Plant.

C. The Debtors' Business Judgment Analysis.

9. Soon after the commencement of these cases, the Debtors began analyzing a number of their executory contracts with the goal of identifying unprofitable contracts that they should reject within their business judgment. Among those contracts were the FTS, IBS and ITS Agreements. With respect to the FTS and IBS Agreements, the Debtors determined that ultimately those contracts were of no benefit to the estates and could not be assigned to a third party. The Debtors made this decision based upon their determination that a variety of factors,

including depressed market conditions and transmission constraints, require that the Wrightsville Plant be “mothballed” for an undetermined period. Moreover, the FTS and IBS Agreements have no asset-related trading value to the Debtors. Finally, the FTS and IBS Agreements have no stand-alone trading value and cannot be assigned to a third party because there is no market for the gas at the delivery point provided for in those agreements, other than the Wrightsville Plant.

10. On the other hand, MAEM determined that the ITS Agreement benefits the estates and should be assumed because the agreement provides the most efficient mechanism by which fuel can be transported to the Wrightsville Plant.

11. Recognizing that there is value in the ITS Agreement and that the FTS and IBS Agreements are of no benefit to the estates, MAEM commenced negotiations with NGPL regarding a global compromise that would benefit both the Debtors’ estates and NGPL. The goal of such negotiations was to create a situation where the ITS Agreement would remain in effect, the FTS and IBS Agreements would be rejected, and NGPL would be paid a limited amount in full and final satisfaction of any rejection damage claim it would have as the result of the Debtors’ rejection of the FTS and IBS Agreements. The parties have successfully reached such a compromise, as discussed below.

D. Summary of Settlement Agreement.

12. The principal terms of the Settlement Agreement between MAEM and NGPL include:²

- MAEM will assume the ITS Agreement, effective upon the entry of an order approving the Settlement Agreement. In connection with such assumption, the Debtors will pre-pay the amount of \$10,000 to secure future performance under the ITS Agreement.

² Note that this motion includes only a summary of the key terms of the Settlement Agreement. Parties should refer directly to the provisions of the Settlement Agreement for more detailed information.

- MAEM will reject the FTS and IBS Agreements.
- In full satisfaction of NGPL’s claims arising out of MAEM’s rejection of the FTS and IBS Agreements, the Debtors will pay NGPL \$3,247,163.89, which payment will be satisfied through a draw by NGPL upon an existing letter of credit.
- The Debtors and NGPL will execute mutual releases with respect to all claims and/or potential claims relating to or arising from MAEM’s rejection of the FTS and IBS Agreements.

III. RELIEF REQUESTED

13. By this Motion, the Debtors hereby request Court approval of the Settlement Agreement. As part of the Settlement Agreement, both parties have agreed to release certain claims against one another and satisfy rejection damages through a draw by NGPL in the amount of \$3,247,163.89 pursuant to an existing letter of credit. The Debtors hereby seek approval of that aspect of the settlement under Rule 9019 of the Federal Rules of Bankruptcy Procedure. A second major aspect of the Settlement Agreement is that MAEM has agreed to assume the ITS Agreement and reject the FTS and IBS Agreements. The Debtors hereby seek approval of MAEM’s assumption or rejection of the Agreements under section 365 of the Bankruptcy Code.

IV. APPLICABLE AUTHORITY

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

14. Bankruptcy Rule 9019(a) provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Bankruptcy 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, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968).

15. A Court will consider the following factors when determining whether a settlement is fair and equitable: (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).

16. It is likely that NGPL would assert a rejection damage claim against MAEM in excess of \$17 million, representing the present value of fixed capacity payments over the remaining life of the FTS Agreement and certain other liabilities incurred under the IBS Agreements.³

17. Accordingly, given (1) the uncertainties associated with litigating NGPL’s rejection damage claim, (2) the risk of a \$17 million judgment against the estates and (3) the availability under the letter of credit to satisfy the agreed-upon amount of NGPL’s rejection

³ As noted, the amount of the letter of credit is approximately \$3.5 million, with approximately \$3.2 of availability.

damage claim against the estates, the proposed compromise is certainly reasonable and in the best interest of the estates.

B. Approval of Assumption or Rejection of the Agreements is Appropriate under Section 365 of the Bankruptcy Code.

18. Key aspects of the Settlement Agreement are MAEM's assumption of the ITS Agreement and rejection of the FTS and IBS Agreements. 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).

19. As noted, the Debtors determined after their business judgment analysis that the IBS and FTS Agreements are of no benefit to the estates because the Wrightsville Plant will be "mothballed" due to depressed market conditions. Those agreements cannot be assigned to a third party because the Wrightsville Plant is the only point of delivery under the FTS and IBS Agreements.

20. Moreover, for the reasons stated above, it is clearly an exercise of sound business judgment for the Debtors to assume the ITS Agreement. Section 365(b) governs a debtor's ability to assume and executory contract:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default; (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b).

21. There were no prepetition defaults under the ITS Agreement and therefore, the obligation to “cure” prepetition defaults and provide adequate assurance of future performance is not applicable in this instance. As noted, however, MAEM and NGPL have agreed that MAEM will pre-pay \$10,000 as adequate assurance of MAEM’s future performance.

22. Currently, the ITS Agreement provides the most efficient mechanism by which fuel can be transported to the Wrightsville Plant. Thus, rejecting that agreement at this juncture would be detrimental to the estates.

V. 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
November 7, 2003

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-and-

By /s/ Michelle C. Campbell

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Application upon all persons on the Limited Service List via first class mail, postage prepaid on the 7th day of November, 2003.

/s/ Michelle C. Campbell

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("this Agreement") is made and entered into this 23rd day of October, 2003, by and among Mirant Americas Energy Marketing, LP ("Mirant"), Mirant Corporation ("Mirant Corp.") and Natural Gas Pipeline Company of America ("Natural") (collectively, the "Parties").

WHEREAS, Mirant Americas Energy Marketing, LP, Mirant Corporation, and many of their affiliates ("the Debtors") have filed for bankruptcy protection;

WHEREAS, the Debtors have the right to reject executory contracts under Section 365 of the U.S. Bankruptcy Code;

WHEREAS, the Parties have been in discussions regarding the following four contracts: Negotiated Rate FTS Agreement No. 119394 ("FTS Agreement") and Discounted Rate IBS Agreement Nos. 119413 and 119465 ("IBS Agreements"), and Negotiated Rate ITS Agreement No. 119412 ("ITS Agreement") (collectively, "the Agreements");

WHEREAS, the Debtors could reject the Agreements, which Natural could oppose, and if rejected, Natural could file a claim against the bankruptcy estate, which itself would be subject to dispute, and Natural believes it would have the right to draw on a letter of credit posted by Debtors for the benefit of Natural ("the Dispute");

WHEREAS, the Parties have settled upon the rejection of three of the Agreements, an assumption of another, the amount of rejection damages, and the form and timing of payment of those damages;

WHEREAS, the Parties wish to settle the Dispute pursuant to the terms, conditions, and consideration set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual promises, agreements, and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Release of claims by Mirant.

Upon the Effective Date of this Agreement, Mirant, for and on behalf of itself and its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, agrees to and hereby does release, acquit, and forever discharge Natural, its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates,

representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, of and from any manner of action or actions, causes of action, claims, damages, demands, executions, expenses, judgments, levies, liabilities, losses, or attorneys' fees, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct, or indirect, relating to the Dispute. Notwithstanding the above, nothing in this paragraph shall affect Mirant's right to bring an action to enforce or interpret this Agreement.

2. Release of claims by Natural.

Upon the Effective Date of this Agreement, Natural, for and on behalf of itself and its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, agrees to and hereby does release, acquit, and forever discharge Mirant, its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, of and from any manner of action or actions, causes of action, claims, damages, demands, executions, expenses, judgments, levies, liabilities, losses, or attorneys' fees, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct, or indirect, relating to the Dispute, including without limitation any claim for damages for rejection of the FTS Agreement and the IBS Agreements as contemplated by Paragraph 3. Notwithstanding the above, this paragraph shall not affect Natural's right to bring an action to enforce or interpret this Agreement. Nothing in this Agreement shall affect the rights of any affiliate or other entity related to Natural from pursuing their rights and remedies with regards to contracts other than the Agreements.

3. Rejection of FTS Agreement and IBS Agreements.

Natural agrees to the rejection of the FTS Agreement and the IBS Agreements. The Parties shall promptly and jointly move and support their rejection. Natural reserves the right to make any filings with the Federal Energy Regulatory Commission which Natural deems necessary to reflect any of the terms of this Settlement Agreement or actions of the bankruptcy court in connection with this Settlement Agreement.

4. Payment by Mirant.

In full and final satisfaction of all claims of Natural as more fully outlined in Paragraph 2, Mirant shall pay Natural \$3,247,163.89. Natural, Mirant and Mirant Corp. agree that such payment shall be made and satisfied through a draw by Natural upon the existing letter of credit issued by Wachovia and numbered as SM200665W, which is held by Natural as security. Natural shall be entitled to make such draw upon the above-described letter of credit for the liabilities and obligations of Mirant and Mirant Corp. to Natural upon the Effective Date of this Agreement.

5. ITS Agreement.

Throughout the term of the ITS Agreement, Mirant shall at all times, to the extent that Mirant does not otherwise satisfy Natural's creditworthiness requirements, provide Natural with, and maintain in effect during the term of the ITS Agreement, adequate assurance of payment in accordance with the requirements of Natural's FERC Gas Tariff, as may be revised from time to time. The Parties agree that this requirement shall initially be satisfied by a pre-payment in the amount of \$10,000 to secure Mirant's obligations under the ITS Agreement. The Parties acknowledge and agree that (i) Natural's FERC Gas Tariff, Section 16(b), requires that if a Shipper (as defined therein) fails to satisfy Natural's credit criteria, such Shipper may still obtain service thereunder if it provides payment in advance for three (3) months' service and (ii) that Mirant's pre-payment of \$10,000 hereunder is the mutual attempt of the Parties to estimate the uncertain amount of three (3) months' service under the ITS Agreement.

Mirant agrees to assume the ITS Agreement and the parties shall promptly and jointly move for its assumption.

6. Bankruptcy Court Approval; Effective Date

This Agreement is subject to the approval of the U.S. Bankruptcy Court presiding over the Debtors' bankruptcy case. The Parties will work cooperatively and in good faith to obtain that approval promptly. The Effective Date of this Agreement will be the date on which the rejection of the FTS Agreement and IBS Agreements contemplated by Paragraph 3, and the assumption of the ITS Agreement contemplated by Paragraph 5, is approved by the bankruptcy court.

7. Designation of Agency.

Upon execution of this Agreement by the Parties, Mirant shall designate Natural as its exclusive agent under the FTS Agreement effective October 20, 2003, and such agency shall remain in effect until the bankruptcy court either approves or denies this Agreement. As agent, Natural may, among other things, remarket transportation capacity pursuant to the terms and conditions of Natural's FERC Gas Tariff. During the period of its agency, Natural shall determine at its sole discretion the rates, terms, and conditions for any one or more releases of transportation capacity, subject to the provisions of Natural's FERC Gas Tariff. Mirant will pay

no agency or marketing fees to Natural for marketing the capacity. The sole consideration for Natural's marketing efforts will be retention by Natural of any and all revenues received by Natural as a result of the capacity releases. Mirant shall not be entitled to any revenues from the releases which may be greater than the charges which would have been paid by Mirant under the FTS Agreement for the term of the capacity releases, and likewise shall not be liable to Natural for any amount by which any revenues received by Natural from any releases might be less than the charges which would have been paid by Mirant under the FTS Agreement for the term of the capacity releases. Natural shall indemnify Mirant, and hold Mirant harmless, for all acts or omissions relating to the agency for which it or its officers, directors, agents, employees, designees, or any combination thereof, are responsible during the period of its agency.

8. Settlement not an admission.

Nothing contained in this Agreement shall be deemed an admission of any kind, whether of guilt, liability, or fact, by or against the Parties or their directors, officers, shareholders, agents, employees, representatives, principals, successors, predecessors, assigns, and heirs. Whether or not this Agreement is consummated or approved, neither this Agreement nor evidence regarding any of the events or negotiations leading up to it shall be admissible in any action or proceeding for any purpose other than enforcement of this Agreement.

9. Representations, warranties, and agreements.

The Parties represent and warrant to each other and agree with each other as follows:

- a. The Parties to this Agreement have received independent legal advice from attorneys of their own choosing with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by each Party, that Party's attorneys reviewed this Agreement at length, and made all desired changes.
- b. Except as expressly stated in this Agreement, no Party to this Agreement has made any statement or representation to any other Party to this Agreement regarding any fact relied upon by such other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation, or promise of the other Party in executing this Agreement, except as expressly stated in this Agreement.
- c. There are no other agreements or understandings between the Parties to this Agreement except as stated in this Agreement.
- d. Each Party to this Agreement, together with its attorneys, has made such investigation of the facts pertaining to this Agreement, and of all the matters pertaining thereto, as it deems necessary.
- e. The terms of this Agreement are contractual, not a mere recital, and this Agreement is the result of negotiations between the Parties to this Agreement, each of which has participated in the drafting of this Agreement through its respective attorneys.

- f. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by each person executing this Agreement.
- g. Each Party to this Agreement has the power and authority to enter into and perform this Agreement, and the execution and performance of this Agreement has been duly authorized by all requisite corporate action.
- h. Each Party to this Agreement agrees that such Party will not take any action that would interfere with the performance of this Agreement by any other Party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.
- i. In entering into this Agreement, each Party recognizes that no facts or representations are ever absolutely certain; accordingly, except as specifically provided in this Agreement, each Party to this Agreement assumes the risk of any mistake, and if any Party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such Party shall not be entitled to set aside this Agreement by reason thereof. This Agreement is intended to be final and binding between and among the Parties, regardless of any mistake of fact, mistake of law, or any other circumstances whatsoever. Each Party relies on the said finality of this Agreement as a material factor inducing that Party's execution of this Agreement.
- j. No Party to this Agreement has heretofore assigned or transferred or purported to assign or transfer to any person, firm, or corporation whatsoever any actions, causes of action, debts, dues, liabilities, controversies, claims, or demands herein released. Each Party hereto agrees to indemnify and hold harmless each other Party hereto against any actions, causes of action, debts, dues liabilities, controversies, claims, counterclaims, crossclaims, third-party claims or demands based on, arising out of, or in connection with any such transfer or assignment or purported transfer or assignment, including all attorneys' fees and costs incurred in connection therewith.

10. Integration.

This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the Parties to this Agreement relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party to this Agreement, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement may not be supplemented or changed orally.

11. Execution in Counterparts.

This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together

constitute but one and the same instrument and agreement. This Agreement shall be deemed to be fully executed on the last date any such counterpart is executed.

12. Section Headings.

The section headings used herein are solely for convenience, shall not be used in interpreting this Agreement, and shall not be construed in any way to limit, modify, or affect the terms of this Agreement.

13. Enforcement of the Settlement.

In the event of a dispute between the Parties arising out of this Agreement or any action that is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, expenses, and costs incurred after execution of this Agreement, but only against a party to the dispute.

14. Severability.

In the event that any portion or provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions and provisions hereof shall remain in full force and effect.

15. Governing Law and Venue.

This Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York (without reference to its choice of law doctrine, other than section 5-1402 and 5-1402 of the New York General Obligations Law).

[The rest of this page is intentionally left blank.]

16. Construction.

The terms of this Agreement are to be construed in an evenhanded fashion as between the Parties. Should it be determined that there is ambiguity or a lack of clarity as regards any of the language of the Agreement, the issue as to the meaning of such language shall be resolved in a manner consistent with the relevant terms of the Agreement and without regard to authorship.

IN WITNESS WHEREOF, the Parties to this Agreement have each approved and executed this Agreement on the dates set forth opposite their respective signatures.

MIRANT AMERICAS ENERGY
MARKETING, LP, through Mirant Americas
Development, Inc., its general partner

Date: 10/23/03

By: [Signature]
Name: Dahn L. O'Neal
Title: Vice President + Chief Commercial Officer, North America

MIRANT CORPORATION

Date: 10/23/03

By: [Signature]
Name: Dahn L. O'Neal
Title: Vice President + Chief Commercial Officer, North America

NATURAL GAS PIPELINE OF AMERICA

Date: 10/23/03

By: [Signature]
Name: Scott E Parker
Title: President

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

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

**NOTICE OF HEARING ON DEBTORS' MOTION FOR APPROVAL OF (1)
SETTLEMENT AGREEMENT UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019, (2) REJECTION OF CERTAIN AGREEMENTS AND (3)
ASSUMPTION OF CERTAIN OTHER AGREEMENTS WITH NATURAL GAS
PIPELINE COMPANY OF AMERICA**

PLEASE TAKE NOTICE that the above-referenced Motion will be heard on
Wednesday, December 3, 2003; 10:30 a.m. before the Honorable D. Michael Lynn, United
States Courthouse, 501 W. Tenth, Fort Worth, Texas.

RESPECTFULLY SUBMITTED THIS 7th DAY OF NOVEMBER, 2003

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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 forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List via United States mail, on the 7th day of November, 2003.

/s/ Michelle C. Campbell