

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

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

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

---

In re	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590(DML)11
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date and Time: December 3,
	)	2003 at 10:30 a.m.

---

**DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019 FOR APPROVAL  
OF THE TERMINATION AND SETTLEMENT OF THE SERVICE AGREEMENT BY  
AND BETWEEN NORTHWESTERN ENERGY AND MIRANT AMERICAS, INC.**

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") pursuant to rule 9019 of Federal Rule of Bankruptcy Procedure for an order approving the settlement agreement with respect to the "Form of Service Agreement for Non-Firm Point-to-Point Transmission Service Dated April 22, 1997" by and between Northwestern Energy and Mirant Americas, Inc.

(the “Service Agreement”), which Service Agreement is attached hereto as **Exhibit A**, and, in support thereof, respectfully represent as follows:

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II. PROCEDURAL BACKGROUND**

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).<sup>1</sup> 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”). The Debtors continue to manage and

---

<sup>1</sup> 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.

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, 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 20, 2003, the Court entered an order approving the joint administrations of the Wrightsville Debtors' cases with those of the New Debtors and the Initial Debtors. On November 5, 2003, the Court entered an order directing that certain orders entered in the cases of the New Debtors and the Initial Debtors be made applicable to the Wrightsville Debtors.

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

### **III. FACTUAL BACKGROUND**

#### **A. The Debtors' Business Operations**

5. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries,

Mirant produces, sells, and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers, and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls 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.

6. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

**B. Facts Specifically Relevant to the Motion**

7. Northwestern Energy (successor-in-interest to Northwestern Public Service Company) ("Northwestern") and Debtor Mirant Americas, Inc. ("MAI") are parties to a Service Agreement dated April 22, 1997 pursuant to which Northwestern is required to provide Non-Firm Point-to-Point Transmission Service to MAI at any time MAI decided to "take" service. The Service Agreement is for an indefinite term.

8. MAI does not currently take service, has never previously taken service, and does not intend to take service in the future under this Service Agreement. Nonetheless, the

mere existence of this Service Agreement presents an administrative inconvenience to both MAI and Northwestern. Consequently, both parties to the Service Agreement wish to terminate it as set forth in Letter Agreement dated August 12, 2003 between Northwestern and MAI (the “Letter Agreement”) attached hereto as **Exhibit B**.

9. Under the terms of the Letter Agreement, each party agrees to terminate the Service Agreement and in connection with such termination provides the other party with a general release of all liabilities and obligations arising out of the conduct of such party in connection with the Service Agreement.<sup>2</sup> The Debtors do not believe it has any claims against Northwestern (or vice versa). The release is merely perfunctory and for the avoidance of doubt. There are no further obligations, monetary or otherwise on the part of either party set forth in the Letter Agreement.

#### IV. **RELIEF REQUESTED**

10. By this Motion, the Debtors seek entry of an order, in the form of **Exhibit C** attached hereto, authorizing MAI to enter into the Letter Agreement and authorizing the termination and settlement of the Service Agreement pursuant to the terms of the Letter Agreement.

---

<sup>2</sup> The release provides that “each [p]arty does for itself and its successors, assigns, affiliated companies, agents, and employees forever release and discharge the other [p]arty, its successors, assigns, affiliated companies, agents and employees from any and all manner of actions, suits, debts, covenants, contracts, controversies, agreements, obligations, promises, liabilities, damages, claims, and any and all demands, whether known or unknown, matured or unmatured, liquidated or unliquidated, at law or in equity, which such [p]arty, its successors, assigns, affiliated companies, agents and employees ever had, now have or may hereafter have against the other [p]arty, its successors, assigns, affiliated companies, agents and employees arising out of the conduct of the parties with regard to the [Service] Agreement.” *Letter Agreement* p. 1.

## V. APPLICABLE AUTHORITY

11. 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).

12. Bankruptcy Rule 9019(a) empowers the Bankruptcy Court to approve compromises and settlements if they are “fair and equitable and in the best interest of the estate.” *Official Committee of Unsecured Creditors v. Cajun Electric Power Cooperation, Inc. (In re Cajun Electric Power Cooperative, Inc.)*, 119 F.3d 349, 355 (5th Cir. 1997); *see also, Feld v. Zale Corporation (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 to 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. *Myers v. Martin (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.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (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).

13. Termination of the Service Agreement would eliminate administrative expenses and burdens to the Debtors and their estates from an agreement which provides no benefit to the debtor and is of no value to the estate, thereby, preserving and protecting the value of the Debtors' assets. Thus, the issuance of an order by this Court authorizing the termination and settlement of this Service Agreement is well within the authority afforded the bankruptcy courts by the Bankruptcy Code. Accordingly, Bankruptcy Rule 9019(a) authorizes the Court to approve the termination and settlement of the Service Agreement pursuant to the Letter Agreement. As discussed earlier, termination of the Letter Agreement would preserve the resources, monetary and otherwise, of the Debtors by eliminating an administrative inconvenience and any potential future claims thereunder. Further, as no service has been taken, is being taken or will be taken, MAI does not actually lose any benefit by virtue of the termination of this Service Agreement. As discussed above, the settlement requires a release of claims which appear non-existent. Debtors are not required to pay any amounts with respect to the termination of this Service Agreement. By maximizing and preserving the estates of Debtors, the termination and settlement of the Service Agreements is in the best interests of the creditors' and Debtors' estates.

**CONCLUSION**

WHEREFORE, based upon the foregoing, the Debtors request that the Court (i) grant the relief requested herein in full and in all respects; (ii) enter an order in the form attached hereto as **Exhibit C**; and (iii) grant to the Debtors such other and further relief as is just and proper.

Dated: Fort Worth, Texas  
November 5, 2003

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

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

-and-

Thomas E Lauria  
State Bar No. 11998025  
Craig H. Averch  
State Bar No. 01451020  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing document upon all persons on the Limited Service List, and upon all parties listed below via First Class United States Mail, postage prepaid, on the 6<sup>th</sup> day of November, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Meredyth A. Purdy \_\_\_\_\_

Northwestern Energy  
Attn: Contract Administrator  
600 Market Street  
Huron, South Dakota 57350-1318

**EXHIBIT A**

**SERVICE AGREEMENT DATED APRIL 22, 1997  
BY AND BETWEEN NORTHWESTERN AND MIRANT**

ATTACHMENT B

Form Of Service Agreement For Non-Firm Point-To-Point  
Transmission Service

- 1.0 This Service Agreement, dated as of April 22, 1997, is entered into, by and between Northwestern (the Transmission Provider), and Southern Energy Trading and Marketing, Inc. (Transmission Customer).
- 2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.
- 3.0 Service under this Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer.
- 4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.
- 5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.
- 6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

---

Issued by: R. F. Leyendecker  
Vice President Market Development

Effective Date: July 10, 1996  
Issued on: July 9, 1996

Northwestern Public Service Company  
Huron, South Dakota 57350

Open Access Transmission Tariff  
Original Sheet No. 121

Transmission Provider:

Northwestern Public Service Company  
600 Market Street  
Huron, South Dakota 57350-1318

Transmission Customer:

Southern Energy Trading and Marketing, Inc.  
900 Ashwood Parkway, Suite 500  
Atlanta, Georgia 30338

7.0 The Tariff is incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: S. B. Donnell V.P. Energy Operations 4/22/97  
Name Title Date

Transmission Customer:

By: Joseph Bokalsky Senior Vice President 4/18/97  
Name Title Date

Issued by: R. F. Leyendecker  
Vice President Market Development

Effective Date: July 10, 1996  
Issued on: July 9, 1996

**EXHIBIT B**

**LETTER AGREEMENT TERMINATING THE SERVICE AGREEMENT  
DATED AUGUST 12, 2003 BY AND BETWEEN NORTHWESTERN AND MIRANT**

Mirant Americas Energy Marketing, LP  
1155 Perimeter Center West, Atlanta, Georgia 30338-5416  
Y 678 579 5000 F 678 579 5001 U www.mirant.com

August 12, 2003

VIA U.S. MAIL

Northwestern Energy  
Attention: Contract Administration  
600 Market Street  
Huron, South Dakota 57350-1318



*ERAD*

Re: *Transmission Service Agreement dated as of April 2, 1997 (the "Agreement") between Northwestern Energy ("NorthWestern") as successor-in-interest to NorthWestern Public Service Company and Mirant Americas, Inc. ("MAI") as successor-in-interest to Southern Energy Trading and Marketing, Inc. and, herein collectively referred to as the "Parties."*

Dear Contract Administration:

MAI is currently not taking and, in fact, has never taken service under the Agreement. Therefore, the Parties mutually agree to terminate the Agreement. Each Party does for itself and its successors, assigns, affiliated companies, agents, and employees forever release and discharge the other Party, its successors, assigns, affiliated companies, agents and employees from any and all manner of actions, suits, debts, covenants, contracts, controversies, agreements, obligations, promises, liabilities, damages, claims, and any and all demands, whether known or unknown, matured or unmatured, liquidated or unliquidated, at law or in equity, which such Party, its successors, assigns, affiliated companies, agents and employees ever had, now have or may hereafter have against the other Party, its successors, assigns, affiliated companies, agents and employees arising out of the conduct of the Parties with regard to the Agreement.

The Parties further agree that the termination will take effect under the following conditions: 1.) MAI agrees that it will file notice of the termination and seek approval with the U.S. Bankruptcy Court, Northern District of Texas, and 2.) Upon receiving approval of termination from the bankruptcy court Northwestern agrees that it will file with the Federal Energy Regulatory Commission ("FERC") record of the termination of this Agreement.

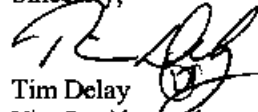
Northwestern/MAI  
Termination Letter  
August 14, 2003  
Page 2

This termination shall only be effective upon approval from the above-referenced bankruptcy court and the FERC.

Please acknowledge your consent to the termination of the Agreement and the terms associated with such termination.

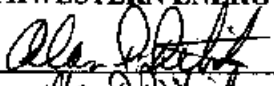
If you have any questions, please feel free to contact Sonnet Edmonds at (678) 579-5119.

Sincerely,



Tim Delay  
Vice President and  
Chief Commercial Officer

ACKNOWLEDGED AND ACCEPTED BY:  
NORTHWESTERN ENERGY

By:   
Name: Alan D. Dietrich  
Title: VP - Legal Admin & Corp Sec., Northwestern Corp.  
Date: Aug. 27, 2003

**EXHIBIT C**

**FORM OF ORDER APPROVING THE TERMINATION AND SETTLEMENT OF  
THE SERVICE AGREEMENT FOR NON-FIRM POINT-TO-POINT TRANSMISSION  
SERVICE DATED APRIL 22, 1997 BY AND BETWEEN  
NORTHWESTERN ENERGY AND MIRANT AMERICAS, INC.**

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

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

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date and Time: December 3,
_____	)	2003 at 10:30 a.m.

**ORDER APPROVING DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE  
9019 FOR APPROVAL OF THE TERMINATION AND SETTLEMENT OF THE  
SERVICE AGREEMENT BY AND BETWEEN  
NORTHWESTERN ENERGY AND MIRANT AMERICAS, INC.**

Upon the Motion (the "Motion") dated November 5, 2003 Pursuant to Bankruptcy Rule 9019 for the Approval of the Termination and Settlement of the Service Agreement for Non-Firm Point-to-Point Transmission Service Dated April 22, 1997 (the "Service Agreement") by and between Northwestern Energy ("Northwestern") and Mirant Americas, Inc. ("MAI"), Debtors Mirant Corporation, *et. al* ("Mirant") have moved the Court pursuant to Bankruptcy

Rule 9019 for an order authorizing the termination and settlement of Service Agreement. The Court has reviewed the Motion filed by Mirant and has heard the arguments of counsel. Based on the foregoing, it is hereby ordered:

1. The Motion is granted;
2. The Service Agreement is terminated as of the date hereof;
3. MAI is authorized to enter into (and perform the terms of) the Letter Agreement, a copy of which is attached to this Motion;
4. Effective upon entry of this Order, each of Northwestern and MAI does for itself and its successors, assigns, affiliated companies, agents, and employees forever release and discharge the other party, its successors, assigns, affiliated companies, agents and employees from any and all manner of actions, suits, debts, covenants, contracts, controversies, agreements, obligations, promises, liabilities, damages, claims, and any and all demands, whether known or unknown, matured or unmatured, liquidated or unliquidated, at law or in equity, which either Northwestern or MAI, its successor, assigns, affiliated companies, agents and employees ever had, now have or may hereafter have against the other party, its successors, assigns, affiliated companies, agents and employees arising out of the conduct of Northwestern and MAI with regard to the Service Agreement.

SIGNED THIS 5th DAY OF NOVEMBER, 2003.

---

D. Michael Lynn  
United States Bankruptcy Judge