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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: TBD
	)	Expedited Hearing Requested
	)	Proposed Date: Nov. 12, 2003 at 10:30 a.m.

**DEBTORS' MOTION FOR APPROVAL OF (1) SETTLEMENT
AGREEMENT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE
9019, (2) ALLOWED, PREPETITION GENERAL UNSECURED CLAIMS BY
PEPCO IN THE AMOUNT OF \$105 MILLION AGAINST EACH OF MIRANT AND
MAEM, AND (3) ASSUMPTION OF CERTAIN TRANSITION POWER AGREEMENTS**

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

Mirant Corporation ("Mirant") and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") for authorization to enter into a settlement agreement, the principal terms of which include (1) the assumption of certain Transition Power Agreements ("TPAs"), as modified by the settlement agreement between Mirant, Mirant Americas Energy Marketing, LP ("MAEM") and Potomac Electric Power Company ("Pepco"), and (2) the allowance of certain of Pepco's claims against the bankruptcy estates of each of Mirant and MAEM in the amount of \$105 million as an

allowed, prepetition general unsecured claim. The key terms of the proposed settlement agreement are summarized herein.¹

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”).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”). 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

¹ This Summary is qualified in its entirety by the detailed terms set forth in the settlement agreement between Mirant, MAEM and Pepco, and in the event of any inconsistency between this Motion and the settlement agreement, the settlement agreement shall govern and control.

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 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.

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 6, 2003, the Debtors filed a motion requesting the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. Also on October 6, 2003, the Debtors filed a motion for the entry of 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 Transition Power Agreements

4. On December 19, 2000, Southern Company Energy Marketing, L.P., a predecessor of MAEM, entered into the TPAs with Pepco, one pertaining to Maryland and the other to the District of Columbia. (The TPAs were amended in or around October 2001.) The Maryland TPA expires June 30, 2004; the District of Columbia TPA on January 22, 2005. Under the TPAs, MAEM agreed to supply capacity, energy and ancillary services to Pepco at fixed prices.

5. The TPAs are power marketing agreements by which MAEM supplies wholesale power to Pepco. MAEM does not own any generating assets, but rather is a wholesale marketing

entity that has the ability to provide power to Pepco by purchasing power from any supply source of MAEM's choosing, including purchases from generating assets owned and operated by certain of its affiliates.

6. Soon after the commencement of these cases, MAEM began analyzing a number of its executory contracts with the goal of identifying unprofitable contracts that it should reject within its business judgment. Among those contracts were the TPAs, which are substantially below market. On August 28, 2003, the Debtors filed a complaint against Pepco and the Federal Energy Regulatory Commission ("FERC") seeking, among other things, a temporary restraining order and preliminary injunction prohibiting FERC and Pepco from taking any action to require or coerce the Debtors to abide by the terms of the TPAs pending completion of the Debtors' business judgment analysis, or encouraging any persons or entities to do so. Simultaneously therewith, Debtors made a motion for an *ex parte* temporary restraining order seeking the same relief.

7. By order dated August 28, 2003, as amended from time to time, this Court issued a temporary restraining order enjoining FERC and Pepco from, among other things, taking any action to require the Debtors to abide by the terms of the TPAs.

8. By order dated September 25, 2003, and for the reasons set forth in the Court's Corrected Memorandum Opinion, dated September 23, 2003 (the "Opinion"), this Court converted the temporary restraining order to a preliminary injunction directed against FERC. In the Opinion, the Court held among other things, that (i) it is not necessary for the Court to issue an injunction against Pepco because the automatic stay of section 362(a) applies to Pepco and enjoins the commencement or continuation of judicial or administrative proceedings against the Debtors; and (ii) FERC is preliminarily enjoined from taking any action, or encouraging any

person or entity to take an action, to require or coerce the Debtors to abide by the terms of the TPAs. Pursuant to the motions of FERC and Pepco, the District Court recently withdrew the reference with respect to the adversary proceedings seeking the injunctive relief. The parties advised the District Court of this Motion during a telephonic hearing on October 28, 2003, and the District Court concurred that this Motion should be filed in this Court.

9. Recognizing that there would be value in the TPAs after certain modifications, MAEM commenced negotiations with Pepco over a compromise that would benefit both the Debtors' estates and Pepco. The goal of such negotiations was to create a situation where the TPAs would remain in effect, with certain modifications, and limit Pepco's claim against the estates related to the TPAs. The parties have successfully reached such a compromise, as discussed below.

B. Summary of Settlement Agreement.

10. The principal terms of the proposed settlement agreement between Mirant, MAEM and Pepco (the "Agreement," a copy of which is attached to the Declaration of Wayne A. Cross, dated October 29, 2003 ("Cross Decl.") as Exhibit 1) include:

- MAEM will assume the TPAs, as modified, effective as of October 1, 2003.
- Pepco and MAEM will amend the TPAs to include a new pricing structure (the "Amendments" (copies of which are attached to the Agreement, Cross Decl., Ex. 1). The new pricing structure will increase the summer and winter energy rates for Maryland and the District of Columbia, by \$6.40 per MWh. Capacity and ancillary services will remain at current levels. The energy payment under Section 6.1(b) of the Maryland TPA will be \$46.40/MWh during a Summer Month, and \$28.60/MWh during a Winter Month. The energy payment under Section 6.1(b) of the District of Columbia TPA will be \$41.90/MWh during a Summer Month and \$31.70/MWh during a Winter Month.
- Pepco will have an allowed, prepetition general unsecured claim or claims in the amount of \$105 million, not subject to any offset or reduction for any reason, against the estates of each of Mirant and MAEM in the bankruptcy proceedings for (i) damages resulting from the amendment of the TPAs and (ii) any and all claims with respect to any failure to perform, including any failure to pay amounts

due, under the TPAs on or before the date of the Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of the Agreement (collectively referred to hereinafter as the “TPA-related damage claims”)). The claim against Mirant Corporation is in recognition of the fact that Mirant Corporation is signatory to a guarantee agreement with Pepco under which, *inter alia*, Mirant Corporation guarantees MAEM’s obligation with respect to the TPAs.

- Pepco also reserves the right to assert and file separate proofs of claim or otherwise pursue claims for the TPA-related damage claims against certain specified other Mirant entities³ and/or any other person or entity. However, Pepco agrees that it may not recover on its prepetition, unsecured TPA-related damage claims against Mirant, MAEM or any of the specified other Mirant entities an amount in excess of a total of \$105 million in value. Mirant, MAEM and any other Mirant entity are free to object to Pepco’s entitlement to assess TPA-related damage claims against entities other than Mirant and MAEM.
- Pepco, Mirant and MAEM will each support the Agreement in any communications with the FERC, the Public Service Commission of Maryland, the Public Service Commission of the District of Columbia, the People’s Counsel for the State of Maryland and the People’s Counsel for the District of Columbia.⁴
- The Agreement shall become effective on the date that this Court enters orders, in substance reasonably satisfactory to Pepco, Mirant and MAEM, approving this Agreement, authorizing assumption of the TPAs, as amended, authorizing the allowance of the above-described claims against each of Mirant and MAEM, and authorizing, in a separate order, the “Make Whole” mechanism described in the next paragraph.
- Because the Agreement becomes effective on this Court’s approval orders (described above), Debtors’ estates will gain the benefit of the increased cash flow associated with the amended TPAs prior to the resolution of appeals, if any, of such approval orders. While securing increased cash flow at the earliest possible moment is a significant priority for the estates, Pepco reasonably desired

³ The specified entities are Mirant Americas Generation, LLC, Mirant Mid-Atlantic, LLC, Mirant Chalk Point, LLC, Mirant D.C. O&M, LLC, Mirant MD Ash Management, LLC, Mirant Piney Point, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Mid-America Services, LLC, including predecessors and successors of the foregoing.

⁴ Debtors do not believe that approval of, or filing for approval with, or prior notice to, FERC is required in connection with the transactions contemplated by the Amendments or by this Agreement, or the execution, delivery or performance of the Amendments by any party thereto. Mirant and MAEM have agreed to give Pepco a representation and warranty to this effect, and to indemnify Pepco for any harm which arises directly from or directly as a result of a breach of such representation and warranty. The Debtors do not believe that any approval or filing for approval is required with the Maryland or District of Columbia Public Service Commissions.

a “Make Whole” mechanism against Mirant and MAEM in the event the Court’s approval of the Agreement is reversed or materially modified on appeal by a final, binding order. Thus, Pepco, Mirant and MAEM agreed to attempt to restore the parties to the positions in which they stood as of the date the Agreement was executed. Thus, in the event of an appellate reversal or substantial modification, (1) the settlement agreement will terminate and is rendered void; (2) Pepco will receive an allowed claim against Mirant and MAEM with administrative priority status, for the difference between the total amount Pepco has paid under the amended TPAs and the amount Pepco would have paid under the original TPAs, which claim shall not be subject to objection, offset or reduction for any reason; and (3) MAEM will have the ability to pursue rejection of the original TPAs, and if such rejection is approved and MAEM is permitted to cease performance under the TPAs, the parties agree that the effective date of such rejection shall be October 31, 2003.

- Pepco also reserves its right to terminate the Agreement, if on or before November 7, 2003, Pepco gives Mirant written notice that it believes, in its sole discretion, that the Public Service Commission of Maryland or the Public Service Commission of the District of Columbia opposes Pepco consummating the transactions contemplated by this Agreement and/or the Amendments.
- The parties have executed cross-releases in respect of claims arising from the TPAs and the amendments.⁵

III. RELIEF REQUESTED

11. By this Motion, the Debtors hereby request authority to enter into a proposed settlement agreement, substantially on the terms described above. As part of the proposed settlement agreement, the parties have agreed to fix certain of Pepco’s claims against each of Mirant and MAEM in the amount of \$105 million and the parties have agreed to release certain claims against one another. 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

⁵ A fully executed copy of the Amendments are being held in escrow until such time as the parties obtain court approval of the Agreement. In the event that the parties do not obtain court approval, the escrow agent shall return the appropriate executed counterparts of the Amendments to the respective parties as described in the Agreement. The Agreement expressly provides that it and any of the negotiations related to it are not admissible in this or any other litigation or proceeding, and that, except as otherwise set forth in the Agreement, nothing in the Agreement compromises, discharges, waives or otherwise affects any legal position or argument of, or any claim, demand, action or cause of action by or against, Mirant, MAEM and their affiliates or Pepco and its affiliates.

proposed settlement is that MAEM has agreed to assume the TPAs, as modified by the settlement agreement. The Debtors hereby seek approval of MAEM's assumption of the TPAs under section 365 of the Bankruptcy Code. The proposed settlement also provides a "Make Whole" mechanism in the event the Court's approval of the Agreement is reversed or materially modified on appeal by a final, binding order. The Debtors hereby seek approval of this Make Whole mechanism. Finally, the proposed settlement calls for the Debtors to seek expedited treatment of this settlement motion. The Debtors, in conjunction with a separate motion for such treatment, hereby seek expedited treatment of this motion.

IV. APPLICABLE AUTHORITY

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

12. 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).

13. 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).

14. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors:

- (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law;
- (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- (c) all other factors bearing on the wisdom of the compromise.

See Cajun Electric, 119 F.3d at 356 (citations omitted).

1. The 9019 Factors Are Satisfied in this Instance.

15. If the Debtors did not enter into a settlement agreement with Pepco and moved to reject the TPAs, several factors would come into play. First, Pepco would likely assert a \$200 million plus rejection damage claim, as well as assert various jurisdictional arguments regarding whether rejection is permissible in light of the purported jurisdiction of FERC over the TPAs. Debtors would be forced to litigate these matters and, as the proceedings relating to Debtors’ rejection of the Back-to-Back Agreement with Pepco reveal, such litigation would be protracted

and hard fought.⁶ The Debtors estimate that the cost associated with litigating Pepco's challenge to rejection, as well as its rejection damage claim, would be several million dollars. Moreover, as noted, the litigation would likely be protracted and have a detrimental impact on the Debtors' reorganization efforts because some of the Debtors' key personnel and management would be focused on managing the litigation as opposed to Mirant's emergence from chapter 11. Pursuant to the settlement agreement, the Debtors and Pepco have agreed to an allowed damage claim of \$105 million in the aggregate, and the issue will be laid to rest. Second, assuming the TPAs and continuing to do business with Pepco (as opposed to rejecting the TPAs) avoids the risks associated with marketing an extremely high level of capacity in the marketplace.

16. Other factors bearing on the wisdom of compromise include (1) that the Debtors will avoid the risk of an all or nothing judgment with respect to the FERC jurisdictional issue, (2) MAEM will continue doing business with a key customer, and (3) the Debtors will avoid the collateral damage to relationships with key stakeholders, such as regulators, elected officials and consumers, that would be associated with the rejection of the TPAs.

B. Approval of Assumption of the TPAs Under Section 365

17. As noted, the Debtors will assume the TPAs, as modified, as part of the settlement with Pepco. Bankruptcy Code section 365(a) provides:

. . . the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

⁶ The issues surrounding the Back-to-Back Agreement have not been compromised by the proposed settlement.

18. The Debtors' decision to assume or reject an executory contract is an exercise of the Debtors' business judgment. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). The business judgment test is not a strict standard, but merely requires a showing that either assumption or rejection of the contract at issue will benefit the Debtors' estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd sub nom.*, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

19. For the reasons stated above, it is clearly an exercise of sound business judgment for the Debtors to assume the TPAs. Not only will the Debtors avoid costly litigation with a key customer by assuming the TPAs, but the Debtors will not be required to market the excess capacity that rejecting the TPAs would have created.

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.

Respectfully submitted this 29th day of October, 2003.

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

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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 the parties listed below via email, facsimile and/or overnight courier and upon all parties on the Limited Service List via first class U.S. mail on the 29th day of October, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Judith Elkin

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

_____	)	Chapter 11 Case
In re)	
	)	Case No. 03-46590(DML)11
MIRANT CORPORATION, <u>et al.</u>,	)	Jointly Administered
)	
Debtors.	)	Hearing Date and Time:
	)	Expedited Hearing Requested:
_____	)	Proposed Date: November 12, 2003

**DECLARATION OF WAYNE A. CROSS IN SUPPORT OF
DEBTORS' MOTIONS FOR APPROVAL OF (1) SETTLEMENT
AGREEMENT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE
9019, (2) ALLOWED, PREPETITION, GENERAL UNSECURED CLAIMS BY PEPCO
IN THE AMOUNT OF \$105 MILLION AGAINST EACH OF MIRANT AND MEAM,
AND (3) ASSUMPTION OF CERTAIN TRANSITION POWER AGREEMENTS**

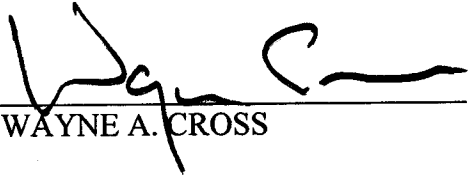
WAYNE A. CROSS, being duly sworn, deposes and says:

1. I am a partner with the law firm of White & Case LLP, attorneys for Debtors.

This affidavit is made in support of Debtors' Motions for Approval of (1) Settlement Agreement Under Federal Rule of Bankruptcy Procedure 9019, (2) Certain Allowed, Prepetition, General Unsecured Claims by Pepco in the Amount of \$105 Million Against Each of Mirant and MEAM, and (3) Assumption of Certain Transaction Power Agreements.

2. Annexed hereto as Exhibit 1 is a true and accurate copy of the fully executed Settlement Agreement between Mirant, MAEM and Pepco dated October 24, 2003.

Dated: October 29, 2003



WAYNE A. CROSS

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 24th day of October, 2003, between and among Potomac Electric Power Company ("Pepco"), Mirant Americas Energy Marketing, LP ("MAEM"), and Mirant Corporation ("Mirant") (collectively, MAEM and Mirant are referred to as the "Mirant Parties").

WHEREAS, on December 19, 2000, MAEM, formerly known as Southern Company Energy Marketing L.P., and Pepco executed and delivered a Transition Power Agreement (Maryland), (as amended by Amendment No.1 to Transition Power Agreement, dated October, 2001, the "Maryland TPA"); and

WHEREAS, on December 19, 2000, MAEM and Pepco executed and delivered a Transition Power Agreement (District of Columbia), (as amended by Amendment No.1 to Transition Power Agreement, dated October, 2001, the "District of Columbia TPA", and together with the Maryland TPA, the "TPAs"); and

WHEREAS, on December 19, 2000, Mirant executed and delivered a Guarantee Agreement under which Mirant, among other things, guaranteed the obligations of MAEM under the TPAs (the "Guarantee Agreement"); and

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

WHEREAS, the Mirant Parties have expressed a desire to reject the TPAs pursuant to Section 365 of the Bankruptcy Code and Pepco has indicated that it will object to the rejection, and if rejection is allowed and the Mirant Parties are otherwise permitted to cease performance, it will assert claims in the Proceeding against the Mirant Parties and other Mirant affiliates; and

WHEREAS, Pepco and the Mirant Parties desire to amend the TPAs on the terms and conditions described herein and have MAEM assume, and not reject, the TPAs as so amended; and

WHEREAS, Pepco and the Mirant Parties desire to settle, on the terms and conditions described herein, certain claims that Pepco would have as a result of any proposed amendment, rejection or breach of the TPAs.

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

1. Amendment of the TPAs; Escrow:

(a) Contemporaneously with the execution of this Agreement, MAEM and Pepco shall execute two counterparts of (i) an amendment to the Maryland TPA in the form annexed

hereto as Exhibit A; and (ii) an amendment to the District of Columbia TPA in the form annexed hereto as Exhibit B (collectively, the “Amendments”) and shall deliver the same to Wayne M. Cross (the “Escrow Agent”), White & Case LLP, 1155 Avenue of the Americas, New York, New York, as escrow agent, to be held in escrow pending the satisfaction of the conditions precedent set forth herein and released as provided herein. Notwithstanding any provision herein or in the Amendments, in no event shall the Amendments become effective unless and until the Effective Date (defined below) occurs. Prior to the Effective Date, the Mirant Parties shall continue to perform (or cause the performance of, as applicable) each of the TPAs in accordance with their respective terms.

(b) Upon the occurrence of the Effective Date, the Amendments shall become effective and the Escrow Agent shall release the Amendments from escrow and deliver one fully executed original to each of Pepco and MAEM at the address listed below by overnight courier.

(c) In the event that this Agreement is terminated as provided in Section 9, the Escrow Agent shall immediately return, by overnight courier with evidence of receipt requested, Pepco’s executed counterpart of the Amendments to Pepco and MAEM’s executed counterpart of the Amendments to MAEM.

2. Pepco’s Claim:

(a) Pepco will have an allowed, prepetition general unsecured claim or claims, not subject to any offset or reduction for any reason, against each of the Mirant Parties in the Proceeding for (i) damages resulting from the amendment of the TPAs as provided in this Agreement and (ii) any and all claims with respect to any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of this Agreement). Such allowed, prepetition general unsecured claim or claims against each of the Mirant Parties is in the liquidated sum of \$105 million and is referred to herein as the “Pepco Claim.”

(b) Pepco may (but is not required to) file separate proofs of claim simultaneously or otherwise pursue claims for (i) damages resulting from the amendment of the TPAs as provided in this Agreement and (ii) any and all claims with respect to any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of this Agreement), against each of the Mirant Parties, each of the MAGI Parties (as defined below) and/or any other person or entity. Notwithstanding anything herein to the contrary, the aggregate value of all recoveries, distributions and funds received by Pepco, whether from Mirant, MAEM, or any of the MAGI Parties (as defined below) with respect to claims for (i) damages resulting from the amendment of the TPAs as provided in this Agreement and/or (ii) any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of this Agreement), shall not exceed the \$105 million of value set forth in Section 2(a) above; *provided however* that the foregoing limitation shall not apply to recoveries, distributions or funds received or sought for damages upon or in respect of any breach of this Agreement, any breach of the TPAs or the Guarantee Agreement after the date of this Agreement, or any breach of the

Amendments after the Effective Date.

3. Court Approval: From and after the date of this Agreement, Pepco and the Mirant Parties shall each use their best efforts to obtain, on an expedited basis, approval of this Agreement by the United States District Court for the Northern District of Texas (the “District Court”) or, if the District Court has referred such approval to the Bankruptcy Court, by the Bankruptcy Court (the District Court or, in the event of such referral, the Bankruptcy Court, is referred to herein as the “Court”) as well as authorization of the Mirant Parties to assume the TPAs as modified by the Amendments under Section 365 of the Bankruptcy Code, and authorization that the Pepco Claim be allowed on a final basis against each of the Mirant Parties in the amount of \$105 million.

4. Regulatory Bodies; Support of Agreement:

a. Each of the Mirant Parties represents and warrants that, under existing law as of the date of this Agreement, no approval of, or filing for approval with, or prior notice to, the Federal Energy Regulatory Commission (“FERC”) is required in connection with the transactions contemplated by the Amendments or by this Agreement, or the execution, delivery or performance of the Amendments by any party thereto.

b. Pepco and the Mirant Parties shall each support this Agreement in any communications, whether oral or written, as to the matters that are the subject of this Agreement with the Court, FERC, the Public Service Commission of Maryland, the Public Service Commission of the District of Columbia, the People’s Counsel for the State of Maryland, the People’s Counsel for the District of Columbia.

5. Conditions Precedent to the Effective Date:

a. The “Effective Date” means and shall be the date as of which the Court enters an orders (i) approving this Agreement, authorizing assumption of the TPAs, as amended, and authorizing that the Pepco Claim be allowed, all as more particularly described in Section 3, and such order does not materially modify or amend the transactions contemplated by this Agreement and the Amendments (the “Approval Order”), and (ii) authorizing and approving the Make Whole Claim mechanism as more particularly described in Section 5(b), which orders shall be in substance reasonably satisfactory to Pepco and the Mirant Parties. Upon the occurrence of the Effective Date, the Escrow Agent shall distribute the Amendments as described in Section 1. Prior to the occurrence of the Effective Date, this Agreement may be terminated as provided in Section 9.

b. In the event the Court’s Approval Order is reversed or materially modified on appeal by a final, binding, then Pepco shall have an agreed allowed claim (the “Make Whole Claim”) against the Mirant Parties.

The Make Whole Claim –

- shall have administrative priority status pursuant to 11 U.S.C. §§ 503(b) and 507(a)(1);
- shall be allowed in an amount equal to (x) the total amount Pepco has paid under the Amendments, less (y) the amount Pepco would have paid under the

TPAs if the Amendments had not been executed and the Mirant Parties had performed the TPAs in accordance with their terms;

- may be contested by the Mirant Parties only as to the accuracy of the calculation, but not as to its existence or allowability;
- does not include, but does not preclude, an assertion by Pepco of any other claim arising on account of such reversal or modification, including without limitation claims arising under the Guarantee Agreements, as to which the Mirant Parties may assert any defenses or objections;
- shall not be subject to objection, offset, or reduction for any reason, provided however that the Mirant Parties (or either of them) shall have the right to offset the Make Whole Claim against any amounts the Mirant Parties (or either of them) are permitted to recover under Section 5(c) below.

Separate and apart from the Approval Order, upon execution of this Agreement, the parties shall seek and obtain an order granting and approving the Make Whole Claim as provided in this Section 5. The entry of such an order shall be a condition to the Effective Date.

c. In the event the Approval Order is reversed or materially modified as provided in Section 5(b), the Mirant Parties (or either of them) shall nevertheless have the right to pursue rejection of the TPAs, and if such rejection is approved and the Mirant Parties are permitted to cease performance under the TPAs, (i) the effective date of rejection shall be October 31, 2003, and (ii) the Mirant Parties (or either of them) shall have the right to recover all amounts that would not have been paid to Pepco had the TPAs been rejected in fact and in the first instance on October 31, 2003. Further, Pepco shall have the right to contest only the accuracy of the calculation but otherwise shall have no right to object, offset, or reduce for any reason the amounts so recovered by the Mirant Parties (or either of them), provided however that Pepco shall have the right to offset any such claim or right to recover against the Make Whole Claim.

6. Release in Favor of the Mirant Parties: Pepco executes the following release in favor of the Mirant Parties, and their respective subsidiaries (except each MAGI Party), affiliates (except each MAGI Party, as defined below), shareholders, officers, directors and employees (collectively, the "Mirant Releasees"):

a. Effective as of the Effective Date and for and in consideration of the terms of this Agreement and except as provided in Section 2 of this Agreement, Pepco, acting for itself, its predecessors, assigns, agents, attorneys, successors, parents, subsidiaries, and affiliates, does hereby compromise, settle and fully release and forever discharge the Mirant Releasees of and from any and all claims, demands, actions, or causes of action which Pepco had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from any of the following: (i) the amendment of the TPAs as provided in this Agreement, (ii) any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of this Agreement), and (iii) \$3,417,090 claimed to be due from the Mirant Parties in respect of the July 2003 invoice relating to the period of July 1 to July 14, 2003 and described on Exhibit C annexed hereto (collectively, and except as otherwise provided in Section 2 and Section 6(b), the "Released Claims Against Mirant").

b. Section 6(a) only releases the specific claims, demands, actions, and causes of action described therein, and does not release any other claim, demand, action or cause of action against the Mirant Releasees or any other person or entity, including without limitation the direct and indirect subsidiaries of Mirant listed on Exhibit D annexed hereto (such entities and their predecessors and successors being referred to herein as the “MAGI Parties”). By way of example and for the avoidance of doubt, the “Released Claims Against Mirant” shall not include, without limiting the generality of the first sentence of this Section 6(b): (i) any claims under the Ohio Edison back to back arrangement, (ii) any claims under the Panda-Brandywine, L.P. back to back arrangement (other than claims in respect of the July 2003 invoice relating to the period of July 1 to July 14, 2003 and described on Exhibit C) including, without limitation, claims relating to the existing billing dispute between Pepco and Panda-Brandywine, L.P., (iii) any claims which Pepco may have, own, or hold under or for breach of any provision of this Agreement or the Amendments, or for any breach of the TPAs or the Guarantee Agreement after the date of this Agreement, or (iv) any claims against the MAGI Parties for (A) damages resulting from the amendment of the TPAs as provided in this Agreement or (B) any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement; *provided however* that no claim made by Pepco of the type described in clause (A) or (B) of this Section 6(b)(iv) shall exceed the amount of \$105 million, and the aggregate recovery amount for all such claims together with any recovery with respect to the Pepco Claim shall not exceed \$105 million as more particularly described in Section 2(b). Nothing herein shall prejudice the right of any party, including, without limitation, the Mirant Parties and the MAGI Parties to object to, or to contest, whether as to liability, damages, the facts or law, or otherwise, any claim Pepco asserts against the MAGI Parties which is described in this Section 6(b).

c. Pepco states and warrants that it is the sole owner of the Released Claims Against Mirant, that such Released Claims Against Mirant have not been assigned, encumbered or transferred, and that Pepco has unqualified authority, by the signatory immediately below, to release the same.

d. Pepco states and warrants that upon the Effective Date, this Agreement effects a full, complete and final settlement, satisfaction and extinguishment of the Released Claims Against Mirant.

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

f. Relying on and assuming the accuracy of the representation and warranty made by the Mirant Parties in Section 4, Pepco states and warrants that it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by Pepco and constitutes the valid and binding obligation of Pepco; and that the execution, delivery and performance of this Agreement by Pepco requires no consent, approval or authorization by or filing with any third party or governmental authority (other than any of the

foregoing which has been obtained or made) and does not and will not (with notice, the passage of time or both) contravene or violate any agreement or commitment binding upon Pepco or any provision of applicable law.

7. Release in Favor of Pepco: The Mirant Parties execute the following release in favor of Pepco and its subsidiaries, affiliates, shareholders, officers, directors and employees (collectively, the "Pepco Releasees"):

a. Effective as of the Effective Date and for and in consideration of the terms of this Agreement, each of the Mirant Parties, acting for themselves and each of their respective predecessors, assigns, agents, attorneys, successors, parents (except each MAGI Party), subsidiaries (except each MAGI Party), and affiliates (except each MAGI Party) does hereby compromise, settle and fully release and forever discharge the Pepco Releasees of and from any and all claims, demands, actions, or causes of action which the Mirant Parties had, or may now, or may in the future have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, relating to or arising from any of the following: (i) the amendment of the TPAs as provided in this Agreement, (ii) any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement (except for normal and customary invoice reconciliations for the period between the commencement of the Proceeding and the date of this Agreement), (iii) the \$3,417,090 claimed to be due from the Mirant Parties in respect of the July 2003 invoice relating to the period of July 1 to July 14, 2003 and described on Exhibit C annexed hereto, and (iv) any payments received by Pepco prior to the date of this Agreement under or in respect of the TPAs, including without limitation any avoidance or recovery actions under Sections 544, 545, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, or under any similar state statutes (collectively, and except as otherwise provided in Section 7(b), the "Released Claims Against Pepco").

b. Section 7(a) only releases the specific claims, demands, actions, and causes of action described therein, and does not release any other claim, demand, action or cause of action against the Pepco Releasees or any other person or entity. By way of example and for the avoidance of doubt, the "Released Claims Against Pepco" shall not include, without limiting the generality of the first sentence of this Section 7(b): (i) any claims which the Mirant Parties may have, own, or hold under or for breach of any provision of this Agreement or the Amendments, or for any breach of the TPAs after the date of this Agreement, (ii) any claims under the Ohio Edison back to back arrangement, (iii) any claims under the Panda-Brandywine, L.P. back to back arrangement (other than claims in respect of the July 2003 invoice relating to the period of July 1 to July 14, 2003 and described on Exhibit C) including, without limitation, claims relating to the existing billing dispute between Pepco and Panda-Brandywine, L.P.

c. The Mirant Parties state and warrant that they are the sole owner of the Released Claims Against Pepco, that such Released Claims Against Pepco have not been assigned, encumbered or transferred, and that the Mirant Parties have unqualified authority, by the signatories immediately below, to release the same.

d. The Mirant Parties state and warrant that upon the Effective Date this Agreement effects a full, complete and final settlement, satisfaction and extinguishment of the Released Claims Against Pepco.

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

f. The Mirant Parties state and warrant that, except for Court approval as provided in Section 3 of this Agreement, they have full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by or on behalf of the Mirant Parties and constitutes the valid and binding obligation of the Mirant Parties; and that the execution, delivery and performance of this Agreement by or on behalf of the Mirant Parties require no consent, approval or authorization by or filing with any third party or governmental authority (other than any of the foregoing which has been obtained or made) and does not and will not (with notice, the passage of time or both) contravene or violate any agreement or commitment binding upon the Mirant Parties or any provision of applicable law.

8. Surviving Claims; Stipulation:

(a) Except as provided herein, nothing in this Agreement compromises, discharges, waives or otherwise affects any legal position or argument of, or any claim, demand, action or cause of action against, the Mirant Releasees, the MAGI Parties, or the Pepco Releasees or any dispute between or among any of them, including without limitation any claim, legal position or argument, or dispute under the Asset Purchase and Sale Agreement dated as of June 7, 2000, as amended, between Pepco and Mirant, formerly known as Southern Energy, Inc. (including all related exhibits, schedules and documents), and all such legal positions, arguments, claims and disputes, and all rights and defenses in respect thereof, are expressly preserved.

(b) Pepco and Mirant Parties agree that this Agreement and the discussions, negotiations and communications preceding execution of this Agreement have been entered into for settlement purposes only and are not admissible in the Proceeding or any litigation related to the Proceeding, for any purpose, except to effectuate or otherwise enforce this Agreement or the Amendments.

9. Termination; Effective Date of Rejection of TPAs:

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated (or shall terminate, in the case of clause (v) below) as follows:

(i) at any time prior to the Effective Date, by the mutual written consent of Pepco and each of the Mirant Parties;

(ii) by Pepco, if on or before November 7, 2003, Pepco gives Mirant written notice that it believes, in its sole discretion, that the Public Service Commission of Maryland or the Public Service Commission of the District of Columbia opposes Pepco consummating the transactions contemplated by this Agreement and/or the Amendments;

(iii) prior to the Effective Date, automatically if any material term or provision of this

Agreement is found by a final, non-appealable judicial order in any situation in any jurisdiction to be invalid or unenforceable;

(iv) prior to the Effective Date, by Pepco, in the event of any material breach by the Mirant Parties of any of their covenants, representations or warranties contained herein and the failure of the Mirant Parties to cure such breach within five days after receipt of notice from Pepco requesting such breach to be cured;

(v) prior to the Effective Date, by the Mirant Parties, in the event of any material breach by Pepco of any of its covenants, representations or warranties contained herein and the failure of Pepco to cure such breach within five days after receipt of notice from the Mirant Parties requesting such breach to be cured;

(vi) by Pepco or either of the Mirant Parties if the Court enters an order denying the approval of this Agreement or any of the other authorizations sought by Pepco and the Mirant Parties as described in Sections 3 and 5; or,

(vii) by Pepco or either of the Mirant Parties in the event an appeals court of competent jurisdiction reverses the Court's Approved Order or otherwise materially modifies the transactions contemplated by this Agreement and the Amendments and the decision of such appeals court is a final, nonappealable decision.

(b) If either Pepco or the Mirant Parties desire to terminate this Agreement under Section 9(a), the party so desiring such termination shall give written notice of such termination to each of the other parties to this Agreement.

(c) In the event that this Agreement shall be terminated pursuant to this Section 9, all obligations under this Agreement shall be terminated and of no further force or effect without further action by any party hereto and without liability of any party hereto to the others, *provided* that (i) the foregoing shall not relieve any party in breach of this Agreement at the time of such termination from liability in respect of such breach, and (ii) the following Sections shall survive termination of this Agreement: Section 1(c), Section 5(b), Section 5(c), Section 8(a), Section 8(b), Section 9(c), Section 9(d), Section 11, Section 12(a), Section 12(b), Section 12(c), and Section 12(d). In addition, upon termination of this Agreement, no rights or obligations, nor any claims or defenses, of Pepco or the Mirant Parties existing prior to the execution of this Agreement will be prejudiced, compromised, discharged or otherwise affected in any way, and all shall exist as if this Agreement had never been executed.

(d) If this Agreement is terminated under Section 9(a)(ii), Pepco agrees that the effective date of any rejection of the TPAs shall be October 27, 2003, and if this Agreement is terminated under Section 9(a)(v) (but only if neither of the Mirant Parties is then in breach), Pepco agrees that the effective date of any rejection of the TPAs shall be October 31, 2003; *provided* that, in either case, the Mirant Parties file a motion to reject the TPAs with the Court within 10 business days of receipt or sending, as applicable, notice of termination. In all other circumstances, except as provided in Section 5(c), the effective date of any rejection of the TPAs following termination of this Agreement shall be such date as is determined in accordance with applicable law. For the avoidance of doubt, the effective date only applies if such rejection is approved and the Mirant Parties are permitted to cease performance of the TPAs.

10. Public Statements: Pepco and the Mirant Parties agree that any press release as to this Agreement or the settlement effected hereby shall be made jointly by Pepco and the Mirant Parties, shall comply with their respective obligations under Section 4, and shall be in form and substance mutually agreeable to Pepco and the Mirant Parties.

11. Indemnification:

(a) In addition to any other rights and remedies the Mirant Releasees may have at law or by agreement, Pepco shall hold harmless and indemnify the Mirant Releasees from and against, and shall compensate and reimburse the Mirant Releasees on demand for, any and all loss, damage, injury, claim, demand, settlement, judgment, award, fine, penalty, fee (including any reasonable legal fee, reasonable expert fee, reasonable accounting fee or reasonable advisory fee), charge, cost (including any reasonable cost of investigation) and/or expense, which is suffered or incurred by any of the Mirant Releasees or to which any of the Mirant Releasees may otherwise become subject at any time and which arises directly from or directly as a result of, (i) the breach of any representation or warranty made by Pepco in this Agreement, or (ii) the breach of any covenant or agreement of Pepco contained in this Agreement.

(b) In addition to any other rights and remedies the Pepco Releasees may have at law or by agreement, Mirant shall hold harmless and indemnify the Pepco Releasees from and against, and shall compensate and reimburse the Pepco Releasees on demand for, any and all loss, damage, injury, claim, demand, settlement, judgment, award, fine, penalty, fee (including any reasonable legal fee, reasonable expert fee, reasonable accounting fee or reasonable advisory fee), charge, cost (including any reasonable cost of investigation), and/or expense which is suffered or incurred by any of the Pepco Releasees or to which any of the Pepco Releasees may otherwise become subject at any time and which arises directly from or directly as a result of: (i) the breach of any representation or warranty made by the Mirant Parties in this Agreement, or (ii) the breach of any covenant or agreement of the Mirant Parties contained in this Agreement or, after the Effective Date, in the TPAs as amended by the Amendments.

12. Miscellaneous:

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

b. All disputes relating to or arising out of this Agreement shall be governed by the laws of the District of Columbia, excluding its choice-of-law rules. The Court shall retain jurisdiction over the terms and application of this Agreement.

c. Except as expressly provided herein, this Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

d. This Agreement constitutes the entire agreement and understanding of the parties with respect to the settlement and releases contemplated herein and supersedes all prior agreements and understandings, written or oral, between the parties with respect to settlement and releases.

e. The releases effected hereby shall be limited to the claims expressly set forth herein.

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

POTOMAC ELECTRIC POWER COMPANY

By *[Signature]*
Name: ANDREW W. WILLIAMS

Title: CHIEF FINANCIAL OFFICER
Address: 701 9TH ST., N.W. SUITE 1000
WASHINGTON, D.C. 20068

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

By *[Signature]*
Name: Lisa D. Johnson

Title: Vice President
Address: 901 F. Street, N.W.
Washington, D.C. 20004

MIRANT CORPORATION

By *[Signature]*

Name: Lisa D. Johnson
Title: Vice President
Address: 901 F. Street, N.W.
Washington D.C. 20004

EXHIBIT A
TPA AMENDMENT (MD)

AMENDMENT NO. 2
TO
TRANSITION POWER AGREEMENT
(Maryland)
DATED OCTOBER 24, 2003,
AND EFFECTIVE AS OF OCTOBER 1, 2003,
BY AND BETWEEN
POTOMAC ELECTRIC POWER COMPANY
AND
MIRANT AMERICAS ENERGY MARKETING, LP

AMENDMENT NO. 2
TO
TRANSITION POWER AGREEMENT
(Maryland)

THIS AMENDMENT NO. 2 TO TRANSITION POWER AGREEMENT (Maryland) (this "Amendment") is dated October 24, 2003, and effective as of October 1, 2003, and is by and between POTOMAC ELECTRIC POWER COMPANY, ("Pepco"), and MIRANT AMERICAS ENERGY MARKETING, LP, formerly Southern Company Energy Marketing, L.P. (the "Generator," collectively with Pepco, the "Parties").

WHEREAS, Generator and Pepco entered into the Transition Power Agreement (Maryland) dated December 19, 2000, as amended by Amendment No. 1 To Transition Power Agreement (Maryland) (as amended, the "TPA"); and

WHEREAS, Generator, Mirant Corporation and Pepco have, contemporaneously herewith, entered into that certain Settlement Agreement and Release of even date herewith (the "Settlement Agreement"); and

WHEREAS, this Amendment is being executed and delivered into escrow pursuant to the terms of the Settlement Agreement pending the occurrence of the Effective Date (as defined in the Settlement Agreement); and

WHEREAS, the Parties desire to amend the TPA, effective as of the Effective Date, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and 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. Defined Terms. Defined terms used in this Amendment and not defined herein shall have the meanings ascribed to them in the TPA.

2. Amendment to Section 6.1. Effective as of October 1, 2003, Section 6.1(b) is hereby amended by deleting the following:

Energy Price = \$40.00/ MWh during a Summer Month and
\$22.20/MWh during a Winter Month.

And substituting in its place:

For service provided up to and including September 30, 2003:

Energy Price = \$40.00/ MWh during a Summer Month and \$22.20/MWh during a Winter Month.

For service provided beginning October 1, 2003:

Energy Price = \$46.40/ MWh during a Summer Month and \$28.60/MWh during a Winter Month.

3. Governing Law. This Amendment is governed by, and shall be construed in accordance with, the laws of the state of Maryland without regard to principles of conflicts of law.

4. Modifications and Amendments. This Amendment shall not be modified or amended except by a written instrument executed by both of the Parties. Absent the agreement of the Parties to any proposed changes to this Amendment, the standard of review for such changes proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "*Mobile-Sierra*" doctrine).

5. Entire Agreement; Severability. This Amendment and the TPA constitute the entire agreement and understanding between the parties hereto with respect to the Energy Price. In the event that any portion of this Amendment or the TPA shall be determined to be invalid or unenforceable, such portion of this Amendment or TPA shall be severable from the other provisions of this Amendment or the TPA which provisions shall be valid, binding upon and enforceable against the Parties.

6. Effectiveness; TPA. This Amendment shall become effective on the Effective Date and shall have no force or effect until the occurrence of the Effective Date. Amounts due for the period from October 1, 2003 through the Effective Date due to the increase in the Energy Price provided for herein shall be paid within __ days of the Effective Date. In the event that the Effective Date does not occur or the Settlement Agreement is terminated as provided therein, this Amendment shall be null and void and have no force or effect. Except as amended by this Amendment, all other terms of the TPA shall continue in full force and effect and unchanged and are hereby confirmed in all respects.

7. Counterparts. This Amendment may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Pepco and Generator have signed and delivered this Amendment No. 2 on the day and year set forth above.

POTOMAC ELECTRIC POWER COMPANY

By: _____
Name:
Title:

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

By: _____
Name:
Title:

EXHIBIT B

TPA AMENDMENT (DC)

AMENDMENT NO. 2
TO
TRANSITION POWER AGREEMENT
(District of Columbia)
DATED OCTOBER 24, 2003,
AND EFFECTIVE AS OF OCTOBER 1, 2003,
BY AND BETWEEN
POTOMAC ELECTRIC POWER COMPANY
AND
MIRANT AMERICAS ENERGY MARKETING, LP

AMENDMENT NO. 2
TO
TRANSITION POWER AGREEMENT
(District of Columbia)

THIS AMENDMENT NO. 2 TO TRANSITION POWER AGREEMENT (District of Columbia) (this "Amendment") is dated October 24, 2003, and effective as of October 1, 2003, and is by and between POTOMAC ELECTRIC POWER COMPANY, ("Pepco"), and MIRANT AMERICAS ENERGY MARKETING, LP, formerly Southern Company Energy Marketing, L.P. (the "Generator," collectively with Pepco, the "Parties").

WHEREAS, Generator and Pepco entered into the Transition Power Agreement (District of Columbia) dated December 19, 2000, as amended by Amendment No. 1 To Transition Power Agreement (District of Columbia) (as amended, the "TPA"); and

WHEREAS, Generator, Mirant Corporation and Pepco have, contemporaneously herewith, entered into that certain Settlement Agreement and Release of even date herewith (the "Settlement Agreement"); and

WHEREAS, this Amendment is being executed and delivered into escrow pursuant to the terms of the Settlement Agreement pending the occurrence of the Effective Date (as defined in the Settlement Agreement); and

WHEREAS, the Parties desire to amend the TPA, effective as of the Effective Date, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and 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. Defined Terms. Defined terms used in this Amendment and not defined herein shall have the meanings ascribed to them in the TPA.

2. Amendment to Section 6.1. Effective as of October 1, 2003, Section 6.1(b) is hereby amended by deleting the following:

Energy Price = \$35.50/ MWh during a Summer Month and
\$25.30/MWh during a Winter Month.

And substituting in its place:

For service provided up to and including September 30, 2003:

Energy Price = \$35.50/ MWh during a Summer Month and \$25.30/MWh during a Winter Month.

For service provided beginning October 1, 2003:

Energy Price = \$41.90/ MWh during a Summer Month and \$31.70/MWh during a Winter Month.

3. Governing Law. This Amendment is governed by, and shall be construed in accordance with, the laws of the District of Columbia without regard to principles of conflicts of law.

4. Modifications and Amendments. This Amendment shall not be modified or amended except by a written instrument executed by both of the Parties. Absent the agreement of the Parties to any proposed changes to this Amendment, the standard of review for such changes proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "*Mobile-Sierra*" doctrine).

5. Entire Agreement; Severability. This Amendment and the TPA constitute the entire agreement and understanding between the parties hereto with respect to the Energy Price. In the event that any portion of this Amendment or the TPA shall be determined to be invalid or unenforceable, such portion of this Amendment or TPA shall be severable from the other provisions of this Amendment or the TPA which provisions shall be valid, binding upon and enforceable against the Parties.

6. Effectiveness; TPA. This Amendment shall become effective on the Effective Date and shall have no force or effect until the occurrence of the Effective Date. Amounts due for the period from October 1, 2003 through the Effective Date due to the increase in the Energy Price provided for herein shall be paid within 5 days of the Effective Date. In the event that the Effective Date does not occur or the Settlement Agreement is terminated as provided therein, this Amendment shall be null and void and have no force or effect. Except as amended by this Amendment, all other terms of the TPA shall continue in full force and effect and unchanged and are hereby confirmed in all respects.

7. Counterparts. This Amendment may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Pepco and Generator have signed and delivered this Amendment No. 2 on the day and year set forth above.

POTOMAC ELECTRIC POWER COMPANY

By: _____
Name:
Title:

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

By: _____
Name:
Title:

EXHIBIT C

JULY 1 through 14, 2003, INVOICE

Exhibit C**Invoice For July 1 – 14**

	<u>Pre-Petition Amounts</u>	<u>Comments</u>
Pepco's Load Cost	\$ 37,746,812	TPAs Related - Mirant to Pepco
Pepco TPA Revenue	\$ 31,283,224	TPAs Related - Pepco to Mirant
PPA revenue	\$ 6,342,463	Revenues related to Ohio Edison, Panda and Prince George - Pepco to Mirant
Panda PPA Costs	\$ 3,283,634	Costs related to Panda - Mirant to Pepco
Prince George PPA Costs	\$ 12,331	Costs related Prince George - Mirant to Pepco
Total Pepco to Mirant	\$ 37,625,687	
Total Mirant to Pepco	\$ 41,042,777	
Net Mirant to Pepco	<u>\$ 3,417,090</u>	

EXHIBIT D

MAGI PARTIES

Mirant Americas Generation, LLC
Mirant Mid-Atlantic, LLC
Mirant Chalk Point, LLC
Mirant D.C. O&M, LLC
Mirant MD Ash Management, LLC
Mirant Piney Point, LLC
Mirant Peaker, LLC
Mirant Potomac River, LLC
Mirant Mid-Atlantic Services, LLC

**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

**PROPOSED ORDER GRANTING DEBTORS' MOTION FOR APPROVAL
OF (1) SETTLEMENT AGREEMENT UNDER FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019, (2) ALLOWED, PREPETITION
GENERAL UNSECURED CLAIMS BY PEPCO IN THE AMOUNT OF
\$105 MILLION AGAINST EACH OF MIRANT AND MAEM, AND
(3) ASSUMPTION OF CERTAIN TRANSITION POWER AGREEMENTS**

Came before the Court for consideration the Debtors' Motion for Approval of (1) Settlement Agreement under Federal Rule of Bankruptcy Procedure 9019, (2) Allowed, Prepetition General Unsecured Claims by Pepco in the Amount of \$105 Million against Each of Mirant and MAEM, and (3) Assumption of Certain Transition Power Agreements ("TPAs"), filed by Mirant Corporation ("Mirant") and its affiliated debtors (the "Debtors"), as debtors and debtors-in-possession, on October 28, 2003 (the "Motion"); and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the certificate of service attached to the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is, therefore, hereby

ORDERED that the Motion is hereby granted; and it is further

ORDERED that the Debtors are authorized to assume, pursuant to 11 U.S.C. §§ 365, the TPA's, as modified by the amendments to the TPAs (the "Amendments") and subject to the terms and conditions set forth in the Settlement Agreement and Release between and among Potomac Electric Power Company ("Pepco"), Mirant Americas Energy Marketing, LP ("MAEM") and Mirant, dated October 24, 2003 (the "Agreement"); and it is further

ORDERED that the terms of the Agreement are hereby approved pursuant to Federal Rule of Bankruptcy Procedure 9019; and it is further

ORDERED that Pepco shall have an allowed, prepetition general unsecured claim or claims in the amount of \$105 million against each of MAEM and Mirant in the proceeding, not subject to any offset or reduction for any reason, for (i) damages resulting from the amendment of the TPAs as provided in the Agreement and (ii) any and all claims with respect to any failure to perform, including any failure to pay amounts due, under the TPAs on or before the date of this Agreement; and it is further

ORDERED that the relief granted herein does not modify or amend the terms of the Agreement or the Amendments.

Dated: November ____, 2003.

**HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE**

**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.)	
_____)	

**PROPOSED ORDER AUTHORIZING AND APPROVING “MAKE WHOLE”
MECHANISM PROVIDED BY SETTLEMENT AGREEMENT AND RELEASE**

Upon the Debtors’ Motion for Approval of (1) Settlement Agreement under Federal Rule of Bankruptcy Procedure 9019, (2) Allowed, Prepetition General Unsecured Claims by Pepco in the Amount of \$105 Million against Each of Mirant and MAEM, and (3) Assumption of Certain Transition Power Agreements (“TPAs”), filed by Mirant Corporation (“Mirant”) and its affiliated debtors (the “Debtors”), as debtors and debtors-in-possession, on October 28, 2003 (the “Motion”), the Debtors have requested an order approving a mechanism by which, in the event this Court’s approval of the Settlement Agreement and Release between and among Potomac Electric Power Company (“Pepco”), Mirant Americas Energy Marketing, LP (“MAEM”) and Mirant, dated October 24, 2003 (the “Agreement”), is reversed or materially modified on appeal by final, binding order, the parties to the Agreement would be restored to the positions in which they stood as of the date the Agreement was executed (the “Make Whole” mechanism). It appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the certificate of service attached to the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon all of the

proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is, therefore, hereby

ORDERED that the Debtors' request for approval of the Make Whole mechanism is granted pursuant to Federal Rule of Bankruptcy Procedure 9019; in the event this Court's approval of the Agreement is reversed or materially modified on appeal by final, binding order:

A. the Agreement will terminate and be rendered void;

B. Pepco shall have an agreed allowed claim against MAEM and Mirant with administrative priority status pursuant to 11 U.S.C. §§ 503(b) and 507(a)(1) in an amount equal to the total amount Pepco has paid under the amended TPAs, less the amount Pepco would have paid under the TPAs if the Agreement had not been executed and MAEM and Mirant had performed under the TPAs according to their terms; and

C. MAEM and Mirant shall have the right to pursue rejection of the TPAs, and if such rejection is approved and MAEM and Mirant are permitted to cease performance under the TPAs, the effective date of rejection shall be October 31, 2003, and MAEM and Mirant shall have the right to recover all amounts that would not have been paid to Pepco had the TPAs been rejected in fact and in the first instance on October 31, 2003.

Dated: November ____, 2003.

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE