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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Date and Time: January 21, 2004; 10:30
_____	)	a.m.

**DEBTORS' MOTION FOR APPROVAL OF (I) SETTLEMENT AGREEMENT  
WITH PEPCO ENERGY SERVICES, INC. PURSUANT TO RULE 9019 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (II) REJECTION  
OF THE AMENDED AND RESTATED TRANSACTION CONFIRMATION  
WITH PEPCO ENERGY SERVICES, INC. PURSUANT TO  
11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014**

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 approval of: (i) the Agreement and Releases, dated December 24, 2003, (the “Settlement Agreement”) with Pepco Energy Services, Inc. (“PES”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) as part of the

Settlement Agreement, to reject the Transaction Confirmation, dated March 28, 2003, as amended and restated on May 6, 2003, (the “GSA Confirmation”) between PES and debtor Mirant Americas Energy Marketing, LP (“MAEM”), effective as of the date an order is entered allowing the relief sought herein, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules.

## **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

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<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.

Funding, L.L.C. (collectively, the “Wrightsville Debtors”). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP; and (ii) Mirant Americas Energy Capital Assets, LLC (the “MAEC Debtors” and collectively with the Initial Debtors, the New Debtors, and the Wrightsville Debtors, the “Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, this Court entered an order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. On October 20, 2003, this Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 20, 2003, this Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

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

### **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 enough electric generating capacity to power several of the world's largest cities. Mirant owns or controls 23 power generation plants in countries, including power generation plants in the United States.

6. Mirant employs thousands of employees worldwide. 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.**

(i) *The Master Power Purchase and Sale Agreement.*<sup>2</sup>

7. On March 28, 2003, PES and MAEM entered into a Master Power Purchase and Sale Agreement (the "Power Agreement"). The Power Agreement established the contract under which the GSA Confirmation was derived.

8. The Debtors assumed the Power Agreement, exclusive of the GSA Confirmation, as part of the "Final Order Authorizing The Debtors To (i) Comply With Terms Of Pre-Petition Trading Contracts, (ii) Enter Into Post-Petition Trading Contracts In The Ordinary Course Of Business, (iii) Provide Credit Support Relating To Both Pre- And Post-Petition Trading Contracts, and (iv) Authorizing Assumption of Pre-Petition Trading Contracts," entered on August 27, 2003 (the "Final Trading Order"). PES and the Debtors have executed a

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<sup>2</sup> The Power Agreement is not attached. Parties in interest may request a copy of this agreement by making a request to the Debtors' counsel.

counterparty assurance agreement that excluded the GSA Confirmation from the Final Trading Order, but acknowledged the disagreement between the parties regarding the status of the GSA Confirmation.

(ii) *The GSA Confirmation.*<sup>3</sup>

9. Also on March 28, 2003, PES and MAEM entered into the GSA Confirmation, which was amended and restated on May 6, 2003. Pursuant to the GSA Confirmation, MAEM agreed to sell and deliver wholesale full-requirements power, at a fixed price per megawatt hour, to over 120 General Services Administration (“GSA”) accounts in the Maryland and Washington D.C. areas (the “Customer Accounts”). The information relating to the Customer Accounts was provided to MAEM by PES and identified on Exhibits B and C to the GSA Confirmation. Service pursuant to the GSA Confirmation began at the meter read date in April or May 2003 and was to expire upon the last meter read date in May 2004.

10. Pursuant to the GSA Confirmation, PES is currently holding the sum of \$4 million as cash collateral (the “Cash Collateral”) to secure the Debtors’ obligations under the GSA Confirmation.

11. MAEM originally entered into the GSA Confirmation to mitigate the Debtors’ exposure under the Transition Power Agreements (“TPA Agreements”) with Potomac Electric Power Company (“PEPCO”). However, since entering into the GSA Confirmation, the pricing under the TPA Agreements (the “TPA Price”) has increased and this Court has approved assumption of the revised TPA Agreements with the more favorable TPA Price. Pursuant to the pricing in the GSA Confirmation, the Debtors will receive approximately \$6 million less during

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<sup>3</sup> The GSA Confirmation contains confidential information and, therefore, is not attached to this Motion. Parties in interest may request a copy of the agreement, without any confidential information, by making a request to the Debtors’ counsel.

the period of January 2004 to May 2004 than they would receive pursuant to the TPA Price.

12. In analyzing the GSA Confirmation in order to determine the best course with respect thereto, the Debtors ascertained that (a) assumption of the GSA Confirmation would not benefit the estates because the cost to service the GSA Confirmation postpetition is prohibitively high and (b) outright rejection of the GSA Confirmation would also not benefit the estates because it would result in a significant prepetition claim against MAEM (and the loss of all, or substantially all, of the \$4 million in cash collateral). In lieu of the foregoing lesser alternatives, and in order to maintain a positive business relationship with PES going forward, the Debtors entered into negotiations with PES and have reached an agreement to reject the GSA Confirmation, but to continue to service the Customer Accounts at the much more favorable TPA Pricing, and transition those accounts to PEPCO. The specifics of the Debtors' settlement with PES are memorialized in Exhibit A attached hereto, and discussed in greater detail below.

(iii) *Summary of Settlement Agreement.*

13. MAEM and PES hereby request Court approval to enter into the Settlement Agreement,<sup>4</sup> the principle terms of which include:

- The Debtors will reject the GSA Confirmation effective as of the date this Court enters an order allowing the requested relief.
- The Debtors will provide electric supply for the Customer Accounts at prices provided for in the GSA Confirmation through December 31, 2003. From January 1, 2004 through February 9, 2004 (the "Transition Period"),<sup>5</sup> the Debtors will provide electric supply for the Customer Accounts at the TPA Price: (a) \$32.60/MWh with respect to the Transition Product delivered to

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<sup>4</sup> Unless otherwise defined herein, capitalized terms have the same meanings ascribed to them in the Settlement Agreement.

<sup>5</sup> Pursuant to the Settlement Agreement, the Transition Period will end on the last Customer Account meter read, which for reasons beyond PES's control may occur later than February 9, 2004, but under no condition will occur later than February 12, 2004.

Customer Accounts in the State of Maryland, and (b) \$35.70/MWh with respect to the Transition Product delivered to Customer Accounts in Washington, D.C.<sup>6</sup>

- PES will coordinate the transition of the Customer Accounts to Potomac Electric Power Company, the electric distribution company in which the Customer Accounts are located, in the most efficient and cost effective manner possible, to be completed no later than the conclusion of the Transition Period, with the limited exception of specified Customer Accounts that will remain with PES and for which the Debtors will have no obligation after the respective meter read dates for the two Customer Accounts.
- PES's claims (the "PES Claims") will be limited to the following prepetition and rejection damages (and will also include the amount described in the immediately following bullet): (i) the difference between the TPA Price applied during the Transition Period and the GSA Confirmation;<sup>7</sup> plus (ii) \$304,821.14 representing prepetition amounts due under the GSA Confirmation.
- PES will also receive \$1.15 million, representing PES's lost value from the GSA Transaction and costs that PES will incur as a result of the transition of the Customer Accounts to the EDC, not otherwise recoverable as rejection damages.
- The PES Claim will be satisfied from the Cash Collateral after the expiration of the Transition Period. PES shall return the remainder of the Cash Collateral (which the Debtors expect to be approximately \$1,450,000) to the Debtors upon full satisfaction of the PES Claims.
- The parties will mutually release of all claims and potential claims, including avoidance action claims arising under the Bankruptcy Code, relating to or

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<sup>6</sup> The TPA Prices were approved by this Court in the "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," entered November 19, 2003.

<sup>7</sup> Pursuant to the Settlement Agreement, on February 11, 2003, PES will provide the Debtors with an estimate of the damages resulting from the Transition Period. The Settlement Agreement provides PES and the Debtors up to sixty-five (65) days following the end of the Transition Period to determine the actual amount of the damages (and May 7, 2004 for February 2004 deliveries, based on the PJM reconciliation schedule described below) (the "True-up"). The Debtors and PES anticipate that the True-Up will be of a de minimus amount (5% or less of the monthly invoice issued by PJM Interconnection, LLC, the electric grid operator for the Mid-Atlantic region, including Maryland and the District of Columbia). The actual True-up amount will depend on the accuracy of load forecasts and PJM's reconciliation of actual usage which is typically completed by the fifth business day of the third month following the month in which deliveries occurred. However, the parties have agreed to return to this Court for further relief should the Debtors dispute the amount of damages PES claims in relation to the Transition Period.

arising from any proposed amendment, rejection, breach of, or default under the GSA Confirmation that occurs on or prior to the date the Settlement Agreement is executed.<sup>8</sup>

- Any amounts owing to PES as a result of the Debtors' failure to make any payment to PES related to a True-up or Debtors' failure to perform any obligation under the GSA Confirmation prior to the date of rejection or under the Settlement Agreement after the date of the Settlement Agreement will be allowed as an administrative claim under Section 503(b) of the Bankruptcy Code.

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

14. By this Motion, the Debtors hereby request approval of the Settlement Agreement. The Debtors hereby seek approval of the Settlement Agreement under Rule 9019 of the Bankruptcy Rules. The Debtors also hereby seek approval of the rejection of the GSA Confirmation under section 365 of the Bankruptcy Code and Rules 6006 and 9014 of the Bankruptcy Rules effective as of February 10, 2004.<sup>9</sup>

#### **V. BASIS FOR RELIEF**

##### **A. The Court Should Authorize the Debtors to Enter Into the Settlement Agreement Under Rule 9019.**

15. Rule 9019(a) of the Bankruptcy Rules 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).

16. 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*

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<sup>8</sup> The Debtors do not believe any such claims exist and the release is merely a formality.

<sup>9</sup> As noted, the Debtors seek to reject the GSA Confirmation effective as of the date this Court enters an order approving the relief requested. To the extent the Debtors have agreed to delivery energy, at the TPA Price, during the Transition Period, the Debtors submit that they are operating under a new agreement entered into in the ordinary course of business, pursuant to section 363 of the Bankruptcy Code. However, if this Court finds to the contrary, the Debtors request authority to perform under the Settlement Agreement as required therein.

*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)).

17. Furthermore, a 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 settlements 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).

18. In order to determine whether a settlement is fair and equitable, this Court should consider and evaluate the following factors: (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (iii) all other factors bearing on the wisdom of the compromise. *See Cajun Electric*, 119 F.3d at 356 (citations omitted).

**B. The Rule 9019 Factors Are Satisfied.**

*(i) Probability of Success in the Litigation.*

19. As mentioned above, PES and the Debtors disagree as to whether the GSA Confirmation is a forward contract that should have been assumed as a result of the Final Trading Order. The Debtors have determined that rejection of the GSA Transaction could result in a net value impact to Mirant of negative \$12.1 million, while the Settlement Agreement (together with value that will be realized by Mirant during the Transition Period) minimizes the loss to approximately \$5.7 million, and facilitates maintaining a favorable relationship between PES and the Debtors going forward.

20. Assumption of the GSA Confirmation also is not as beneficial as the settlement memorialized in the Settlement Agreement because of the unfavorable terms set forth in the GSA Confirmation when compared to the TPA Price. Mirant has estimated that the cost to perform under the GSA Confirmation is approximately \$12 million, compared to approximately \$4.6 million under the TPA Price. The proposed Settlement Agreement minimizes the loss in regard to the GSA Confirmation when compared to the alternatives of assumption or outright rejection. Therefore, this factor weighs in favor of settlement.

*(ii) Complexity, Likely Duration of the Litigation, and Expense.*

21. Because of the complexity of the GSA Confirmation, part of a larger transaction established pursuant to the Power Agreement, litigation regarding the rejection damage claim would obviously be complex and quite possibly involve expert testimony. The attorneys' fees and costs incurred by the parties would easily exceed the difference between the two amounts each party believes is owing. Moreover, litigation of PES's rejection damage claim might have a detrimental impact on the Debtors' reorganization efforts because some of the Debtors' key personnel and management would be focused on managing such litigation rather

than the Debtors' emergence from chapter 11. This factor also weighs in favor of settlement.

22. The Debtors, accordingly, believe that establishing the amount of PES's rejection damage claim arising from the GSA Confirmation is beneficial to their estates. Pursuant to the Settlement Agreement, PES will agree to waive any and all claims against the Debtors relating to or arising from the rejection of the GSA Confirmation. The Debtors, in their business judgment, have determined that the terms of the Settlement Agreement are beneficial to the Debtors and hereby requested Court approval to enter into an agreement with substantially the same terms.

*(iii) Other Factors Favoring Settlement.*

23. Although the Debtors seek to reject the GSA Confirmation, the Debtors believe that maintaining a working relationship with PES will assist the Debtors to maximize the value of its services in the future. Beginning in July 2004, the Debtors will have substantial generation available to market into the Mid-Atlantic areas. The Debtors believe that maintaining good relations with healthy aggregators and retail energy suppliers, such as PES, will assist the Debtors to maximize the value of its services, and therefore its chapter 11 estates.

24. Pursuant to the Settlement Agreement, PES will coordinate the transition of the Customer Accounts to PEPCO in the most efficient and cost effective manner possible. This transition of the Customer Accounts is crucial to maintaining a positive and beneficial working relationship with PES.

25. As described above, the Debtors have determined that rejection of the GSA Transaction could result in a net value impact to Mirant of \$12.1 million, while the Settlement Agreement minimizes that loss to approximately \$5.7 million. Since PES is currently holding \$4 million in Cash Collateral, Mirant anticipates that under the Settlement Agreement,

PES will be returning approximately \$1,450,000 of cash collateral to the Debtors' estates at approximately February 16, 2004.

**C. The GSA Confirmation is an Executory Contract that Should Be Rejected.**

26. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject an executory contract of the debtor." 11 U.S.C. § 365(a). An executory contract is defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. See *In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994).

27. The GSA Confirmation is an executory contract because it requires MAEM to provide firm all requirement service to the Customer Accounts on an ongoing basis, and requires PES to pay for such energy. Moreover, MAEM's failure to continue to provide such energy—or PES's failure to pay for such energy—would constitute a material breach of the GSA Confirmation, excusing the performance of the other party. Therefore, the GSA Confirmation is undoubtedly an executory contract that may be rejected under section 365 of the Bankruptcy Code. See, e.g., *In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Power Cooperative, Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

**D. Rejection Of the GSA Confirmation Is Within the Debtors' Business Judgment.**

28. As noted previously, rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved, provided that it meets the

“business judgment” test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) (“[A] bankruptcy court applies the business judgment rule to evaluate a trustee’s rejection decision...”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor’s request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith).

29. The “business judgment” test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984). “The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.” *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

30. In this case, the rejection of the GSA Confirmation is well within the sound business judgment of the Debtors. The Debtors made this decision based upon their determination that a variety of factors, including depressed market conditions and transmission constraints, have resulted in the GSA Confirmation becoming uneconomical. Specifically, the cost to serve the Customer Accounts under the GSA Confirmation is approximately \$8 million more than the cost to serve the same accounts under the TPA Price. By rejecting the GSA Confirmation, the Debtors can avoid this additional cost.

31. Recognizing that there was no value in the GSA Confirmation, the Debtors commenced negotiations with PES that would both benefit the Debtors’ estates and

achieve an outcome minimally acceptable to PES. The Debtors' goal in these negotiations was to reject the GSA Confirmation, but only pay to PES a limited amount in full and final satisfaction of any prepetition rejection damages claims resulting from the Debtors' rejection of the GSA Confirmation. Consistent with the foregoing, the Debtors and PES have reached a settlement, as discussed above, and now seek Court approval of the Settlement Agreement based on those terms.

## **VI. CONCLUSION**

**WHEREFORE**, based upon the foregoing, the Debtors request that the Court grant the relief requested herein, and any other relief that is necessary and proper.

Dated: December 29, 2003

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-and-

By  /s/ Michelle C. Campbell

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibit) via U.S. mail, and the addressees set forth below via overnight mail (with exhibit) on the 29<sup>th</sup> day of December, 2003.

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/s/ Michelle C. Campbell



# **EXHIBIT A**

## AGREEMENT AND RELEASES

This Agreement and Releases ("Agreement") is entered into this 24th day of December, 2003 (the "Effective Date"), between Pepco Energy Services, Inc. ("PES") and Mirant Americas Energy Marketing, LP ("Mirant"). All capitalized terms used but otherwise not defined herein shall have the meanings given in the Power Agreement or the GSA Transaction, as applicable.

### DEFINITIONS

"ARRs" means Auction Revenue Rights as defined in the PJM FTR Business Rules, PJM Manuals, the PJM Open Access Transmission Tariff, the PJM Reliability Assurance Agreement, and the PJM Operating Agreement.

"Customer Accounts" means the Customer Accounts as specified in the GSA Transaction

"FTRs" means Financial Transmission Rights as defined in the PJM FTR Business Rules, PJM Manuals, the PJM Open Access Transmission Tariff, the PJM Reliability Assurance Agreement, and the PJM Operating Agreement.

"GSA Transaction" means the transaction confirmation dated March 28, 2003, as amended and restated on May 6, 2003.

"GSA Transaction Product" means the firm all requirements service as further described in the GSA Transaction.

"Power Agreement" means the Master Power Purchase and Sale Agreement under which the GSA Transaction derived, which Power Agreement was assumed by the Debtors effective August 27, 2003.

"Final Trading Order" means the "Final Order Authorizing The Debtors To (i) Comply With Terms Of Pre-Petition Trading Contracts, (ii) Enter Into Post-Petition Trading Contracts In The Ordinary Course Of Business, (iii) Provide Credit Support Relating To Both Pre- And Post-Petition Trading Contracts, and (iv) Authorizing Assumption Of Pre-Petition Trading Contracts," entered August 27, 2003.

"Settlement Date" means February 16, 2004, or such later date two business days after the date on which a final, non-appealable order of the Bankruptcy Court (defined below) approving this Agreement has been entered.

"Transition Price" means, (a) \$32.60/MWh with respect to the Transition Product delivered to Customer Accounts in the State of Maryland, and (b) \$35.70/MWh with respect to the Transition Product delivered to Customer Accounts in Washington, D.C.

"Transition Product" means the GSA Transaction Product delivered to the same Delivery Point as described in the GSA Transaction, except that PES shall be responsible for all transmission

service required to deliver the Transition Product to the Customer Accounts, and the Transition Price shall not cover any costs associated with transmission service to the Customer Accounts.

### RECITALS

WHEREAS, on March 28, 2003, Mirant Americas Energy Marketing LP ("MAEM") and PES executed the Power Agreement. On March 28, 2003, Mirant and PES entered into the GSA Transaction, as amended and restated on May 6, 2003, a Transaction under the Power Agreement contemplating certain prices to be paid for the GSA Transaction Product delivered to the Customer Accounts.

WHEREAS pursuant to the Power Agreement, PES is currently holding the sum of \$4 million as cash collateral to secure Mirant's obligations under the GSA Transaction (the "Cash Collateral");

WHEREAS, on July 14, 2003 (the "Petition Date") and continuing into the morning of July 15, 2003, Mirant and its affiliated debtors (collectively, the "Mirant Parties") 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, Case No. 03-46590 (DML) (the "Proceeding");

WHEREAS, effective August 23, 2003, Mirant assumed the Power Agreement pursuant to the procedures set forth in the Prepetition Trading Order, excluding the GSA Transaction;

WHEREAS, Mirant has notified PES that Mirant intends to reject the GSA Transaction;

WHEREAS, PES does not agree with Mirant's exclusion of the GSA Transaction from the assumption of the Power Agreement and has indicated that it would contest Mirant's rejection of the GSA Transaction but for this Agreement;

WHEREAS, PES shall coordinate the transition of the Customer Accounts to Potomac Electric Power Company, the electric distribution company ("PEPCO" or the "EDC") in the most efficient and cost effective manner possible; and

WHEREAS, PES and Mirant desire to settle, on the terms and conditions described herein, certain claims that PES would have as a result of the rejection of the GSA Transaction.

### STIPULATION

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

1. Continuation of GSA Transaction. Mirant will continue to provide the GSA Transaction Product to the Customer Accounts at the prices provided for in the GSA Transaction through December 31, 2003.

2. Transition Period. Beginning January 1, 2004 through and including February 9, 2004 (or such later date on which the last Customer Account meter read occurs for reasons beyond PES's reasonable control, but in no event no later than February 12, 2004) (the "Transition Period"), Mirant will cease to provide the GSA Transaction Product and shall instead provide the Transition Product only to the Customer Accounts at the applicable Transition Price. In addition:

a. PES has begun and will promptly complete sending all Customer Accounts to the EDC, except that PES may elect to retain the following Customer Accounts with respect to which (i) Mirant shall have no further obligation under the GSA Transaction or this Agreement as of the meter read dates (each an "End Date") set forth next to those Customer Accounts: (1) Account Number 2730163017 - January 9, 2004; and (2) Account Number 0251145017 - January 16, 2004 (each a "Retained Account"); (ii) as of the applicable End Date for each Retained Account the accrual of Transition Damages for these accounts shall cease; and (iii) Mirant shall no longer be required to deliver the Transition Product.

b. Mirant will maintain the FTRs that are listed in the GSA Transaction for supply of the Customer Accounts.

c. PES will reduce the ARR payments it makes to Mirant in accordance with the reduction in ARR revenues that PES experiences as the Customer Accounts are transferred to the EDC (or in the case of the Retained Accounts, as of the respective End Dates).

d. The ARR payments from PES will cease when all Customer Accounts are transferred to the EDC (or in the case of the Retained Accounts, as of the respective End Dates).

e. PES will receive no transmission credit pursuant to Special Provision C of the GSA Transaction for the Transition Period.

3. Rejection of GSA Transaction. Mirant will reject the GSA Transaction, which rejection shall become effective on the date this Agreement is approved by the Bankruptcy Court (the "Rejection Date"). PES agrees not to oppose rejection of the GSA Transaction on the terms set forth in this Agreement.

4. PES Claims; Satisfaction of PES Claims. PES' claims under and related to the GSA Transaction, including its prepetition and rejection damage claims are limited to the following: (i) with respect to the Transition Period, "Transition Damages," which shall be defined to be the difference between (a) the sum of the (I) Transition Price for the Transition Product and (II) the cost of network transmission service based on the EDC's Open Access Transmission Tariff and (b) the amount PES would have owed for such Customer Accounts for the GSA Transaction

Product if the GSA Transaction had not been rejected; (ii) \$1.15 million, representing PES' lost value from the GSA Transaction, which is not otherwise recoverable as rejection damages, and costs that PES will incur as a result of the transition of the Customer Accounts to the EDC; and (iii) \$304,821.14 representing prepetition amounts due under the GSA Transaction (the foregoing items (i), (ii) and (iii), collectively, the "PES Claims"). Notwithstanding anything to the contrary herein, in full and final satisfaction of the PES Claims, Mirant shall pay PES through the Cash Collateral on the Settlement Date the lesser of (a) the PES Claims and (b) the Cash Collateral.

5. Calculation of Transition Damages; Settlement Date. On the Settlement Date, PES shall disburse to itself from the Cash Collateral free and clear of any claims of Mirant the amounts identified in clauses (ii) and (iii) of the definition of the PES Claims. No later than February 11, 2003, PES shall calculate its good faith estimate of the Transition Damages as described above in subsection 4(i) and submit such calculation to Mirant. Mirant shall review PES' calculation and, in writing, approve or dispute in good faith such calculation by the Settlement Date and detail the portion, if any, of the Cash Collateral that is to be returned to Mirant (the "Excess Collateral"). PES shall return any Excess Collateral on the Settlement Date together with payment for the amounts due for the Transition Product delivered for the period January 1, 2004 through February 9, 2004, less a good faith estimate of the sixty-day PJM reconciliation amount for the January and February 2004 deliveries (the "Reconciliation Estimate"); provided, however, that the Reconciliation Estimate that PES retains shall not exceed an amount equal to 5% of PES's PJM invoice for the Customer Accounts for the period January 1, 2004 through February 9, 2004. In the event Mirant disputes some portion of PES' calculation of the Transition Damages, Mirant shall specify what amount is not in dispute and shall authorize PES to apply the balance of the Cash Collateral to the undisputed amount only. If the parties are not able to resolve the disputed amount within thirty days following the Settlement Date, the parties shall submit such dispute to the Bankruptcy Court, which shall have the sole and exclusive jurisdiction to resolve such dispute.

6. Estimates; True-Ups; Failure to Perform. PES and Mirant acknowledge and agree that invoices issued in connection with the GSA Transaction for periods prior to the Transition Period for the delivered GSA Transaction Product and during the Transition Period for the Transition Product as well as Transition Damages may be based on estimates of the GSA Transaction Product or the Transition Product usage of the Customer Accounts and of the components of the Transition Damages, if actual data is not available. Further, PES and Mirant agree that the above-described invoices may therefore be subject to true-up(s), which shall occur no later than sixty-five (65) days following the Settlement Date with respect to January 2004 deliveries of the Transition Product and May 7, 2004 with respect to February 2004 deliveries of the Transition Product. PES shall provide a statement setting forth in reasonable detail any true-ups and any invoices or other documentation provided by PJM or the EDC to PES related to the true-ups. If after application of the Reconciliation Estimate (to the extent applicable) Mirant owes PES for any true-up, Mirant shall pay the true-up within ten days of receipt of an invoice. If any amounts owing by Mirant are less than the Reconciliation Estimate or if PES owes Mirant a true-up amount, and no other amounts are due to PES relating to this Agreement, then PES shall pay to Mirant the remaining portion of the Reconciliation Estimate together with any additional amounts owing to Mirant within ten days of PES' receipt of the February 2004

reconciliation report from PJM Interconnection, LLC. Any amounts owing by Mirant to PES as a result of Mirant's failure to make any payment to PES related to a true-up, subject to the limitations in Paragraph 4, or as a result of Mirant's failure to perform any obligation under the GSA Transaction prior to the Rejection Date or this Agreement after the date of this Agreement shall be allowed as an administrative expense claim under Section 503(b) of the United States Bankruptcy Code.

7. Bankruptcy Court Approval. PES and Mirant will each use their best efforts to obtain, on an expedited basis, approval of this Agreement by the Bankruptcy Court in the Proceeding. Mirant will submit a proposed form of order with its motion to approve this Agreement, which proposed order shall be acceptable in form and substance to PES. In the event that the Bankruptcy Court does not approve this Agreement, this Agreement shall be null and void *more pro tunc* except as provided in the following sentence, and the parties shall have all of their rights and obligations under the GSA Transaction. Notwithstanding anything to the contrary herein, the following provisions shall survive termination of this Agreement: (a) the return by PES of the Customer Accounts to the EDC shall not constitute an Event of Default under the GSA Transaction, notwithstanding Special Provision B of the GSA Transaction; and (b) PES shall be entitled to assert all of its rights under the GSA Transaction, notwithstanding that some portion or all of the Customer Accounts have been returned to the EDC.

8. Release in Favor of Mirant. PES executes the following release in favor of Mirant, its respective agents, attorneys, insurers, assigns, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees (the "Mirant Releasees"):

a. This Release is made and executed by PES, as of the date set forth above, but this Release shall not become effective until this Agreement is approved by the Bankruptcy Court. For and in consideration of the terms of this Agreement, PES, acting for itself, its predecessors, assigns, agents, attorneys, insurers, successors, subsidiaries, affiliates, shareholders, officers, directors and employees, does hereby compromise, settle, and fully release and forever discharge the Mirant Releasees and any person, organization, corporation, or entity in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action which PES 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 proposed amendment, rejection, or breach of, or default under the GSA Transaction that occurred on or prior to the date of this Agreement.

b. PES states and warrants that it is the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that PES has unqualified authority, by the signatory immediately below, to release the same.

c. PES will hold harmless the Mirant Releasees, and any person, persons, or organizations in privity with the Mirant Releasees, of and from any and all claims, demands, actions, or causes of action relating to or arising from any proposed amendment, rejection or breach of, or default under, the GSA Transaction that occurred on or before the date of this Agreement by any person or organization claiming an interest in the claims, demands, actions, or

causes of action which PES has or may have against the Mirant Releasees with respect to the matters that are the subject of this Release.

d. Except as provided herein with respect to the PES Claims, PES states and warrants that its execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by PES against the Mirant Releasees relating to or arising from any proposed amendment, rejection or breach of, or default under, the GSA Transaction.

e. In entering into and executing this Agreement, PES 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; but PES has relied upon attorneys of its own independent choosing and has determined this Agreement is in its best interest.

f. PES states and warrants that, except as provided in Section 8 of this Agreement, it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by PES and constitutes the valid and binding obligation of PES.

9. Release in Favor of PES. Mirant executes the following release in favor of PES, its respective agents, attorneys, insurers, assigns, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees (the "PES Releasees"):

a. This Release is made and executed by Mirant, as of the date set forth above, but this Release shall not become effective until this Agreement is approved by the Bankruptcy Court. For and in consideration of the terms of this Agreement, Mirant, acting for itself and each of its respective predecessors, assigns, agents, attorneys, insurers, predecessors, successors, parents, subsidiaries, affiliates, shareholders, officers, directors and employees, does hereby compromise, settle and fully release and forever discharge the PES Releasees, and any person, organization, corporation, or entity in privity with the PES Releasees, of and from any and all claims, demands, actions, or causes of action which Mirant has, 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 proposed amendment, rejection or breach of, or default under, the GSA Transaction that occurred on or prior to the date of this Agreement, including, without limitation, any avoidance or recovery actions under Section 544, 545, 547, 548, 549, 550, 551 and/or 553 of the United States Bankruptcy Code, or under any similar state statutes.

b. Mirant states and warrants that it is the sole owner of the claims, demands, actions, or causes of action which are the subject of this Release, that such claims have not been assigned, encumbered or transferred, and that Mirant has unqualified authority, by the signatories immediately below, to release the same.

c. Mirant will hold harmless the PES Releasees, and any person, persons, or organizations in privity with the PES Releasees, of and from any and all claims, demands,

actions, or causes of action relating to or arising from any proposed amendment, rejection or breach of, or default under, the GSA Transaction that occurred on or prior to the date of this Agreement by any person or organization claiming an interest in the claims, demands, actions, or causes of action which Mirant has or may have against the PES Releasees with respect to the matters that are the subject of this Release.

d. Mirant states and warrants that its execution of this Release effects a full, complete and final settlement, satisfaction and extinguishment of all claims, demands, actions, or causes of action owned or asserted, or which could have been asserted by Mirant against the PES Releasees relating to or arising from any proposed amendment, rejection or breach of, or default under, the GSA Transaction that occurred on or prior to the date of this Agreement.

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

f. Mirant states and warrants that, except as provided in Section 8 of this Agreement, it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by or on behalf of Mirant and constitutes the valid and binding obligation of Mirant.

#### 10. Regulatory Bodies; Support of Agreement.

a. This Agreement shall not be subject to change through any unilateral application by either party, to any governmental authority, including the Federal Energy Regulatory Commission (the "Commission") pursuant to the provisions of Sections 205 or 206 of the Federal Power Act, without the prior mutual written agreement of both Parties. Each of the Parties hereby irrevocably waives any right it may or can have to unilaterally seek any change, or to support any application, complaint, or action by any other party or governmental authority seeking such change. Absent the agreement of all parties to any proposed changes to this Agreement, the standard of review for changes to this Agreement proposed by a party, a non-party or the Commission 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).

b. PES and Mirant 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 and any governmental or regulatory agency.

#### 11. Surviving Claims.

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 or the PES 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 Corporation, formerly known as Southern Energy, Inc. (including all related exhibits, schedules and documents) (the "APSA"), the Power Agreement, or any Transaction (as defined in the APSA or the Power Agreement) thereunder (excluding the GSA Transaction), and all such legal positions, arguments, claims and disputes, and all rights and defenses in respect thereof, are expressly preserved.

b. PES and Mirant 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 other action or proceeding for any purpose other than enforcement of this Agreement.

12. Miscellaneous.

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

b. All disputes relating to or arising out of this Agreement will be governed by the laws of the State of New York, excluding its choice-of-law rules. The United States Bankruptcy Court for the Northern District of Texas will retain jurisdiction over the terms and application of this Agreement.

c. This Agreement will not confer any rights or remedies upon any person other than the parties, the Mirant Releasees, the PES Releasees, and their respective successors and permitted assigns.

d. 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, this entire Agreement will automatically terminate *nunc pro tunc* without prejudice to the parties' rights and obligations obtaining with respect to GSA Transaction prior to entering into this Agreement.

e. This Agreement constitutes the entire agreement and understanding of the parties with respect to the settlement and releases and related transactions contemplated herein. There are no restrictions, promises, representations, warranties, covenants or undertakings between the parties with respect to the transactions contemplated herein, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings, written or oral, between the parties with respect to such transactions.

f. The releases effected hereby will be limited to the claims expressly set forth herein.

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

PEPCO ENERGY SERVICES, INC.

By \_\_\_\_\_

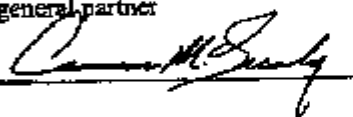

Name:

Title:

Address:

MIRANT AMERICAS ENERGY  
MARKETING, LP

By Mirant Americas Development, Inc.  
Its general partner

By  

Name: Cameron Bready

Title: Vice President and Global Chief  
Risk Officer

Address: 1155 Perimeter Center West  
Atlanta, Georgia 30338-5416

f. The releases effected hereby will be limited to the claims expressly set forth herein.

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

PEPCO ENERGY SERVICES, INC.

By E.R. Mayberry

Name: E.R. Mayberry

Title: President

Address: 1300 North 17<sup>th</sup> Street, Suite 1600  
Arlington, Va. 22209

MIRANT AMERICAS ENERGY  
MARKETING, LP

By Mirant Americas Development, Inc.  
Its general partner

By \_\_\_\_\_

Name: Cameron Bready

Title: Vice President and Global Chief  
Risk Officer

Address: 1155 Perimeter Center West  
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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Date and Time: January 21, 2004
_____	)	10:30 a.m.

**ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF (I) SETTLEMENT AGREEMENT WITH PEPCO ENERGY SERVICES, INC. PURSUANT TO RULE 9019 OF THE BANKRUPTCY RULES; AND (II) REJECTION OF THE AMENDED AND RESTATED TRANSACTION CONFIRMATION WITH PEPCO ENERGY SERVICES, INC. PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014**

Upon the motion,<sup>1</sup> dated December 29, 2003 (the "Motion") of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for approval of: (i) the Agreement and Releases, dated December 24, 2003 (the "Settlement Agreement") with Pepco Energy Services, Inc. ("PES") pursuant to Rule 9019 of the Federal

<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) as part of the Settlement Agreement, to reject the Transaction Confirmation, dated March 28, 2003, as amended and restated on May 6, 2003, (the “GSA Confirmation”) between PES and debtor Mirant Americas Energy Marketing, LP (“MAEM”), effective as of the date this order is entered, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

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

**ORDERED**, that the GSA Confirmation is rejected effective as of the date this order is entered; it is further

**ORDERED**, that the Debtors are authorized to provide electric supply for the Customer Accounts at prices provided for in the GSA Confirmation through December 31, 2003 and are further authorized to provide electric supply for the Customer Accounts at the TPA Price during the Transition Period; it is further

**ORDERED**, that PES’s claims will be limited to the following prepetition and rejection damages: (i) the difference between the TPA Price applied during the Transaction Period and the GSA Confirmation price; plus (ii) \$304,821.14 representing prepetition amounts due under the GSA Confirmation; it is further

**ORDERED**, that, in addition to the foregoing amounts, as part of PES’s claim, PES will receive a payment of \$1.15 million, representing PES’s lost value from the GSA Confirmation

and costs that PES will incur as a result of transitioning the Customer Accounts; it is further

**ORDERED**, that the PES Claim will be satisfied from the Cash Collateral on the Settlement Date as to the \$1.15 million and at the expiration of the Transition Period with respect to the balance to be paid to PES (and subject to certain True-up amounts as provided in the Settlement Agreement) and that PES shall return the remainder of the Cash Collateral to the Debtors upon full satisfaction of the PES Claims; it is further

**ORDERED**, that any amounts owing to PES as a result of the Debtors' failure to make any payment to PES related to a True-up or the Debtors' failure to perform any obligation under the GSA Confirmation prior to the date of rejection, or under the Settlement Agreement after the date the Settlement Agreement is approved, will be allowed as an administrative expense claim under Section 503(b) of the Bankruptcy Code.

**ORDERED**, that the Settlement Agreement attached to the Motion is approved and the Debtors are authorized to perform as required thereunder.

**IT IS SO ORDERED.**

Dated: January \_\_\_\_, 2004

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D. Michael Lynn,  
United States Bankruptcy Judge