

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

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

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

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

**MOTION OF THE DEBTORS PURSUANT TO SECTION 1121(d) OF THE
BANKRUPTCY CODE FOR ORDER EXTENDING THE EXCLUSIVE PERIODS IN
WHICH TO PROPOSE AND SOLICIT ACCEPTANCES TO A PLAN OR
PLANS OF REORGANIZATION AND REPORT PURSUANT TO LOCAL
BANKRUPTCY RULE 3016.1**

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

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, “Mirant” or the “Debtors”), as debtors-in-possession, file this motion (the “Motion”) for the entry of an order pursuant to section 1121(d) of title 11, United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), extending the exclusive periods during which the Debtors may propose and solicit acceptances to a plan or plans of reorganization, and in support of the Motion, respectfully represent the following:

I. PRELIMINARY STATEMENT

1. Mirant's chapter 11 case is one of the largest and most complex of all time. The Debtors' assets, which include power plants and related infrastructure throughout the United States, the Caribbean and the Philippines, have a book value in 2002 of over \$20 billion. Total liabilities exceed \$11 billion, including over \$5 billion of unsecured bank and bond debt against Mirant, nearly \$3 billion of unsecured bank and bond debt against Mirant Americas Generation, LLC ("MAG"), approximately \$1 billion of unsecured obligations under long-term leases covering generating assets of Mirant Mid-Atlantic, ("Mirma"), over \$1 billion of contractual obligations associated with the trading and marketing operations conducted by Mirant Americas Energy Marketing LP ("MAEM") and over \$1.6 billion of non-recourse project debt associated with Mirant's non-debtor international subsidiaries.

2. The Debtors' constituencies are diverse and, at this point, hardly harmonious. Three official committees—one to represent the debt of Mirant, one to represent the debt of MAG and one to represent Mirant's over 400,000 shareholders—have been appointed and are actively participating in the case. At least two ad hoc committees—purporting to represent the landlords and the pass-through noteholders of Mirma—have also been formed and appear at most hearings.

3. Despite being comprised of over 80 separate legal entities, the Debtors' operate their business as a single, integrated, unitary enterprise. This has given rise to countless intercompany arrangements, relationships and claims that must now be assessed and analyzed by the Debtors and their various constituencies in connection the determination of who is entitled to what. The process of review, now only in its nascent stages, will ultimately affect the allocation of billions of dollars of value among the Debtors' estates and is thus sure to be arduous and time-consuming. If not resolved amicably, litigation over such matters will be hard-fought.

4. Since the Debtors' formation 10 years ago, fundamental (and unanticipated) changes have occurred in their industry, the financial markets and the regulatory environment. Accordingly, from an operational perspective, the Debtors face the monumental challenge of revamping their business model from the ground up in order to maximize value for the benefit of their constituencies. The process of deregulating the nation's wholesale energy markets, once viewed as a *fait accompli*, has ground to a halt in mid-stream, leaving market participants (such as Mirant) in a state of limbo. The expectation of standardized energy markets nationwide has been replaced with the reality of numerous regional markets, each differently configured from the other. Almost overnight, concerns about widespread energy shortages have yielded to widespread over-capacity. The profits once derived from efficient, robust trading in energy-related products have shrunk commensurately with the contraction of the trading markets. Capital that once flowed freely into the energy sector has all but dried up. The investment grade status of debt issued by the Debtors and their counterparties in the industry, once taken for granted has become a distant memory replaced by “junk” ratings, materially increasing the capital required to operate their businesses, the cost of such capital and the credit risk associated with transacting business.

5. Further complicating the Debtors' rehabilitation efforts are the jurisdictional disputes raised by the Debtors' principal regulator, the Federal Energy Regulatory Commission (“FERC”). If the FERC is ultimately found to be correct, relief to which other debtors in chapter 11 routinely avail themselves may be unavailable to the Debtors, costing the estates hundreds of millions of dollars of cash flow. Even if the Debtors ultimately prevail, resolution is not close at hand given the likelihood of appeals at least to the Fifth Circuit, if not the Supreme Court.

6. Although much has been achieved to this point in terms of transitioning the Debtors' business into chapter 11 administration, obviously, much remains to be done before the Debtors will be able to propose a plan consistent with their fiduciary duties to maximize value. Accordingly, an extension of the initial periods for the Debtors to submit and solicit votes on a plan is appropriate. Until a reliable business plan—one upon which valuation and capital structure can fairly and reliably be postulated—can be developed, vetted and validated, and until the myriad intercompany issues can be brought into greater focus, efforts to propose a value-maximizing plan of reorganization will be futile.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in the Motion is authorized under 1121(d) of the Bankruptcy Code, Rule 3016(b) of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 3016.1.

III. PROCEDURAL BACKGROUND

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

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

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.

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

10. 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 MAG (collectively, the “Committees”).

IV. FACTUAL BACKGROUND

A. The Debtors' Business Operations (the Expansion and Contraction of the Businesses).

11. In 1982, the Southern Company created Mirant Corporation (then known by other names) to provide electric utility-related consulting services as a way to leverage the operational expertise existing within its regulated U.S. utilities. Southern Company was, and is, a traditional U.S. public utility holding company, with a consistently high investment grade credit rating. In 1993, in the nascent stages of deregulation in certain foreign electric markets, Southern Company sent Mirant Corporation and its subsidiaries into international markets to begin acquiring new assets. Their key 1993 acquisitions were a 50% interest in Freeport Power of the Bahamas, a 55% interest in Hidroelectrica Alicura of Argentina, and a 30% interest in EDELNOR of Chile. In 1994, Mirant Corporation increased its EDELNOR ownership to 65%, and purchased 39% of PowerGen in Trinidad and Tobago. It also completed construction of its first greenfield development project, a qualified electric generating facility in Birchwood, Virginia. In 1995, Mirant Corporation purchased a 100% interest in the Southwest England utility SWEB. At about the same time, the Debtors obtained a power marketer license from FERC and began active risk management, marketing, and proprietary trading of physical and financial power, natural gas, and other energy-related products and services (collectively, "Optimization") in the U.S.

12. In 1996, as deregulation picked up steam in the U.S., the Debtors purchased the State Line plant in Hammond, Indiana. Separately, it sold down 25% of SWEB.

13. In 1997, the Debtors entered a joint venture merging their own predominantly electricity-focused Optimization operations with a natural gas-focused Optimization subsidiary of Atlantic Richfield Company. With the creation of the new joint venture (MAEM), the

Debtors obtained their first significant natural gas assets. From that time forward, Optimization became an increasingly significant value driver for the Debtors. Being a part of the Southern Company family provided implicit credit support for the Debtors. In addition, through the vehicle of parent guarantees, Southern Company pledged its credit directly in support of MAEM's Optimization activities.

14. The Debtors remained active internationally. In 1997, the Debtors acquired 100% of CEPA in Asia, and 26% of the Bewag utility in Berlin, Germany. In 1998, they acquired 3.6% of CEMIG in Brazil, while selling an additional 26% of SWEB.

15. In the U.S. in 1998, the Debtors acquired two power plants with 1200 megawatts of capacity in New England, plus an 80 megawatt facility in Wichita Falls, Texas. Meanwhile, MAEM was establishing itself as a leading energy marketer in the U.S.

16. In 1999, the Debtors acquired two power plants plus assorted hydroelectric generating facilities in New York, and three power plants from Pacific Gas & Electric in the San Francisco Bay area of California. Additionally, MAEM moved into a new, state-of-the-art trading floor in Atlanta, Georgia. Internationally, the Debtors purchased 9.99% in Shandong International Power Development Company Limited, and completed construction of its Sual Power Plant in the Philippines. They also sold off the power supply business of SWEB, retaining a 49% interest in the electric distribution assets and renaming that business Western Power Distribution. Finally, the Debtors opened a European trading operation in the Netherlands.

17. In 2000, the Debtors completed construction on two 300 megawatt greenfield merchant plants, one in Neenah, Wisconsin and the other in Bosque County, Texas. They also acquired enormous natural gas assets in a transaction with Pan-Alberta Gas Ltd. In other moves,

Mirant Corporation bought out its partner in the MAEM joint venture, converting MAEM to an indirect, wholly owned subsidiary, and joined a consortium that helped found IntercontinentalExchange, an internet-based, business-to-business, over-the-counter energy trading platform. The Debtors closed the year by acquiring 5,000 megawatts of generating capacity and other assets from the Potomac Electric Power Company in the Washington, D.C. area. By the end of the year, the Debtors had contractual rights to acquire over 100 electric generating turbines. Internationally, the Debtors sold their interest in Hidroelectrica Alicura in Argentina, while acquiring a 20% interest in Ilijan, a 1,251 megawatt facility under construction in Batangas, Philippines. They also acquired an interest in Hyder PLC, a large Welsh electricity network.

18. The Debtors' five year business plans openly targeted 25% year-over-year increases in revenues and profits in 2000 and 2001. The market view and exuberance that propelled the Debtors to embark on their massive construction program was widely shared by the Debtors' competitors. From 1999 to 2002, Mirant and its competitors initiated the construction of enormous quantities of new generating capacity. The capital markets shared the sector's bullish view of growth prospects and readily subscribed to new debt and equity issues.

19. In 2001, the Debtors acquired, and later waived, 120 megawatts of electric generating capacity from Thermo Ecotek in San Bernardino, California, acquired additional natural gas assets in a deal with Niagara Mohawk Power Corp., bought 18 oil and gas producing fields and 206,000 acres of mineral rights in southern Louisiana, completed construction of a 298 megawatt facility in Zeeland, Michigan, began building a 286 megawatt greenfield facility near Portland, Oregon, purchased one plant in Thomaston, Georgia, and another in New Port Richey, Florida, while agreeing with Cleco to pursue joint development of approximately 2,000

megawatts of additional generating capacity. In Canada, the Debtors acquired substantial additional gas marketing and trading assets from TransCanada Pipelines Ltd. The Debtors also acquired an 80% interest in Jamaica Public Service Company, a 40% stake in an 800 megawatt Norwegian power plant (under development), a 25.5% interest in Curacao Utilities Co., a strategic investment in an integrated water and electric company in Curacao, and contracted to buy a 97.5% interest in a Puerto Rican power plant and liquefied natural gas facility.

20. In the meantime, Southern Company announced in the mid-2000 its intent to spin-off Mirant Corporation as an independent company. On September 27, 2000, Mirant (then known as Southern Energy, Inc.) had its initial public offering of 19.9% of its shares. On April 2, 2001, the remaining 80.1% of its shares were distributed to Southern Company shareholders. As a result of the spin off, the Debtors lost the implicit backing of Southern Company and MAEM lost the ability to support its Optimization with parent guarantees from the Southern Company. In effect, MAEM's credit immediately changed from A-rated credit to minimum investment grade rated credit, substantially reducing the amount of uncollateralized risk counterparties were willing to take, and thus increasing the amount of collateral required to support the Debtors' Optimization activities.

21. The California energy crisis sprung upon the stage in May of 2000 and stretched through June of 2001. By late summer of 2000, the first of what would become a multitude of governmental investigations began. Resistance to deregulation increased steadily during the energy crisis and its aftermath. In October of 2001, Enron Corporation disclosed massive accounting errors, resulting in its December 2, 2001 bankruptcy filing. The crisis of confidence in the entire energy sector followed on the heels of Enron's downfall, and led Moody's, without any prior warning, to downgrade Mirant Corporation's credit rating to "junk" status on

December 19, 2001. Immediately following the downgrade, the Debtors announced the sale of their 48% interest in Bewag, the Berlin utility, and conducted an overnight equity issue.

22. In the spring of 2002, Enron released sensitive documents lending support to arguments that Enron and other energy marketers had manipulated energy markets to cause or contribute to the California energy crisis. These revelations spurred additional investigations of the Debtors and their competitors, and provided new ammunition to the foes against deregulation. In the meantime, fresh waves of corporate scandals continued to stun the press, politicians, and public and undermine confidence in the private sector and large corporations generally.

23. Like others, the Debtors banked heavily on early signs of deregulation of the electricity industry by international, federal, and state governments. One of the Debtors' assumptions was that market prices set by properly functioning markets were inviolate. For that reason, the Debtors were willing to bid on, and acquire, power plants in the belief that it would likely lose money or break even in all but a literal handful of days in the year on those assets, but that prices would be sufficiently high in those handful of days to generate the necessary return on investment. Persistent resistance to deregulation in certain quarters, compounded domestically both by the California energy crisis and corporate scandals, resulted in dramatically increased regulatory oversight, a near total halt in deregulation efforts, and, in some cases, the roll-back of key aspects of early deregulation. Today, the existence of soft-price caps, automatic mitigation mechanisms (a/k/a price controls), prohibitions on certain previously accepted bidding practices, cost-based bidding requirements, and heightened political and regulatory oversight and scrutiny have effectively deprived energy merchants of the ability to capture, much if not all, the projected upside.

24. Compounding the legal and regulatory problems of the sector, competitive electricity companies and the capital markets were beginning to realize that, contrary to their earlier beliefs, most of the country suffered not from impending shortages, but from excessive supply. Excessive supply undermined the company's growth strategy, as well as its ability to Optimize existing assets profitably.

25. The combination of corporate scandals, suspected energy sector misconduct, and a decidedly pessimistic shift in the view of supply and demand fundamentals sparked a widespread retreat of the capital markets from Mirant and the rest of the sector. This had two dire consequences for the Debtors. First, the Debtors suddenly and unexpectedly lost the means to support their ambitious expansion plans. The Debtors' business model was that of a classic high growth, start up company, with negative operating cash flow dependent on a continual influx of new capital to subsidize new acquisitions and new construction, all built upon the expectation of improving market conditions and the Debtors' ability to excel in the developing environment.

26. Second, in response to these pressures, many of the Debtors' counterparties drastically scaled back or wholly abandoned their own Optimization activities, thus removing key liquidity from the commodities markets and making it that much more difficult for the Debtors to profitably Optimize. The loss of each counterparty weakened the remaining participants, slowly pulling down the whole sector. Worse still, the power and natural gas markets were extraordinarily immature, dominated by bilateral over-the-counter trading, with no meaningful clearinghouses and only a very few exchange traded products. As a company's creditworthiness weakens, its counterparties demand the posting of increasingly more hard collateral, exacerbating the liquidity strain on a desperate player. Inevitably, Standard and

Poor's and Fitch reacted to these events by following Moody's lead and lowering Mirant Corporation to a "junk" credit rating.

27. The Debtors responded by slashing spending and attempting to generate cash through asset sales. Among the assets and projects they either sold, cancelled, or closed are the following: its EDELNOR interest, its State Line plant, its 50% interest in a newly constructed 725 megawatt generation facility in northeast Louisiana, large parts of its natural gas asset base, its WPD interest, its European Optimization center, its Italian, Korean, and Norwegian greenfield development projects, and its 33% economic interest in the Shajiao C power plant in China. In addition, the Debtors cancelled contracts for over 70 turbines and power islands at a cost of nearly \$550 million.

28. In 2003, the trend continued with a further sell off of natural gas assets, the sale of its first-ever U.S. power development project in Birchwood, Virginia (under contract), and the sale of a power plant in Neenah, Wisconsin.

29. Notably, in order to make Mirant's investment opportunities attractive, Mirant was organized and structured such that its principal generating assets (i.e., the plants) are owned separately by various subsidiaries. Mirant's organization provides diversification and a degree of insulation and protection.² In this regard, for example, MAG was formed as a holding company for many of the Debtors' generating assets. In this sense, MAG is very similar to a "special purpose entity" vis-à-vis Mirant.³

² Many of these power plants are owned or leased by separate special purpose entities and are financed with extremely complex financing arrangements. For example, MIRMA is the lessee of power plants involving "owner/participants," trusts and "pass through certificate holders." Mirant reserves the right to attempt to recharacterize certain of these "leases" as secured or unsecured transactions.

³ Although MAG is not a true "special purpose entity" in the strictest sense (*e.g.*, there is no special director required to file a bankruptcy petition), the concept is very similar given its relationship to Mirant

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30. MAG had a clear and limited purpose: it provided acquisition financing to purchase the operating assets of the MAG subsidiaries. While this role is obviously important, the role of other Mirant entities is equally (or more) important. For example, all of the agreements and relationships that allow the MAG operating subsidiaries to buy and sell fuel and electricity (this includes interconnection agreements, pipeline agreements, transmission agreements and fuel agreements) generally reside in MAEM. Additionally, Mirant Corporation provides working capital for all of the operating subsidiaries. Virtually all of the Debtors' employees are actually employed by Mirant Services, LLC. In other words, without the infrastructure provided by Mirant Corporation, MAEM, and Mirant Services, MAG would be incapable of operating or functioning in any sense. Thus, the Debtors are integrated entities in the fullest sense of the phrase.

B. Events Leading to the Chapter 11 Filing.

31. Fundamentally, some of the assumptions that formed the basis for why Mirant was structured the way it was, and indeed, which formed the basis for Mirant's entire business plan, changed dramatically. For example, although Mirant's business plan (and its operational structure) was formulated to capitalize upon the deregulation of the energy market that occurred in the 1990s, the energy markets have not been fully deregulated. Moreover, given the California energy crises, the Enron debacle, and the recent power outage this year in the Northeastern United States, Mirant expects additional regulation of its industry. Since deregulation has not entirely occurred, Mirant is competing with regulated utilities, which have

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Corporation and the Mirant corporate structure. For example, the MAG debt is unsecured, the financing documents contain no cross-default provisions, and no prohibitions against selling and encumbering the assets of MAG's subsidiaries.

built in rate-payer base and generates predictable revenue streams. The cost of capital for such regulated utilities is generally lower than that available to Mirant. In contrast, Mirant is subject to direct or indirect price caps in most (if not all) of its power markets, without the downside protection afforded by a regulated utility franchise. Mirant must evaluate a new strategy to compete with those regulated entities.⁴ Simply put, the energy industry is in transition.

32. As of April 2003, although Mirant had approximately \$1.4 billion of cash and available credit, it faced approximately \$4.5 billion of near-term debt repayments, including a repayment of credit in the principal amount of \$1.125 billion due under a 364-day revolving credit facility on July 15, 2003. Based upon Mirant's projected cash flow, existing liquidity and scheduled debt maturities, Mirant determined that it would be unable to pay or refinance its ongoing debt repayment obligations as scheduled. Although an exchange offer option was pursued, it was ultimately determined that the implementation of the exchange offer would present an unacceptable risk of failure.

33. Among the legacies of the past three years of crises, are a legacy of lawsuits and investigations. While the civil litigation is largely stayed, the Debtors continue to respond to active investigations from the Commodities Futures Trading Commission, the Securities and Exchange Commission, two United States Attorney's Offices, and the California Attorney General, as well as FERC investigations. These investigations are largely focused on price survey reporting, wash trades, Enron-style trading strategies, accounting irregularities, and the California energy crisis. The resolution of these investigations and, more broadly, the elimination of the cloud of impropriety hanging over the Debtors as a result of the industry

⁴ These issues are not exclusive to Mirant. Indeed, all non-regulated energy merchants are confronting the same issues due to the collapse of the energy trading market.

scandals of the past three years, is critical to the Debtors' rehabilitation. These lawsuits and investigations are not unique to the Debtors; indeed most of their major competitors face similar, or more serious, scrutiny.

34. The Debtors' bankruptcy filing and the credit crises of the past three years have left the Debtors' with nearly \$500 million in affirmative claims for Optimization activities. These include \$320 million owed by Pacific Gas & Electric Company, the California Independent System Operator, and the California Power Exchange, \$82 million owed by Enron Corporation and its affiliates, \$30 million owed by Metromedia, \$17 million owed by the City of Vernon, California, and \$70 million owed by El Paso Merchant Energy. The repatriation of these funds to the Debtors' estates will be critical to their successful reorganization.

35. In addition to the business issues, the Debtors faced other problems. For example, due to accounting problems, the Debtors have not been current on their required quarterly and annual SEC reporting requirements since the first quarter of 2002. At the same time, the Debtors have had to cope with high turnover in key financial and accounting positions. Since early 2001, the Debtors have lost a former Controller of MAEM, two former Chief Financial Officers of its Americas Group, the former corporate Controller, the corporate Chief Financial Officer, the former Chief Financial Officer of the International Group, and the former Treasurer of Americas.

36. Several months before the Petition Date, the Debtors prepared a business plan that allowed the payment of all debts in full over time. This required the granting of security and the sale of \$800 million of assets within a year. Because all creditors would be paid in full, the granting of security and proposed asset sales did not violate any potential duty to any creditor constituency. Accordingly, an exchange offer was made to the holders of all debt maturing

before the end of 2006 to extend maturities of such debt to 2008, and in exchange for that extension, these creditors would be granted a lien on substantially all of the assets of the Debtors.

37. This strategy did produce some controversy. The Debtors were sued by a group of dissident bondholders of MAG. In addition, the Debtors hit another roadblock. To the Debtors' surprise, the agent banks for the corporate bank debt balked at the exchange offer, and indeed balked at the proposal publicly. This, of course, had negative consequences for the ongoing business operations.

38. As the clock wound down on the exchange offer, there were more adverse developments in the Debtors' performance, and the Debtors' cash balances were significantly below planned levels. The Debtors ultimately concluded that (i) as a consequence of the unlikelihood that the banks would agree to the exchange offer, and (ii) the adverse effect that the continued publicity of not having a deal was having on the business, the best strategy for was to commence, not a prepackaged chapter 11 case, but a traditional chapter 11 case for the purpose of creating and testing a new business plan and fundamentally addressing an over leveraged capital structure.

C. Status of Chapter 11 Cases.

39. Since filing chapter 11, the Debtors have had to cope with the impending departures and replacements of three members of their governing Management Council, including their Chief Operating Officer, Chief Financial Officer, and Senior Vice President of International. As a result, the Debtors continue to identify and integrate replacement members of senior management.

40. During the beginning stages of these cases, the Debtors and their professionals focused on ensuring a smooth transition into chapter 11 and stabilizing their business operations.

Immediately after the commencement of these cases, the Debtors successfully obtained numerous first-day orders designed to ensure the Debtors' seamless transition into chapter 11. Notably, the Debtors were permitted to (1) pay prepetition employee wages; (2) continue their existing prepetition cash management system; and (3) pay prepetition trust fund taxes. Orders were also entered extending the time within which the Debtors were required to file their Schedules of Assets and Liabilities and Statement of Financial Affairs (the "Schedules") and authorizing procedures for the release or other disposition of firm capacity under certain natural gas transportation and storage agreements.

1. The Trading Motion.

41. One of the Debtors' major accomplishments in these cases is obtaining the final order granting relief permitting the Debtors' ability to Optimize. Immediately after the filing of the Mirant and MAEM bankruptcy cases, Mirant filed a motion (the "Trading Motion") seeking to limit the risks and uncertainties that may arise with respect to the trading contracts of MAEM under the Bankruptcy Code and create an environment conducive to the continuation of the trading operations. The Trading Motion, among other things, requested assumption of the trading contracts upon regular notice and, pending a hearing on the requested assumption, immediate entry and approval of an interim order providing an adequate protection package in favor of trading counterparties if such counterparties elect to accept the terms of the proposed interim order. At the request of Mirant, this Court held a hearing at approximately 8:00 p.m. on July 14, 2003, during which this Court agreed to enter an interim order on the Trading Motion. This relief was necessary since MAEM provides the working capital, fuel and marketing expertise for Mirant's business. After the entry of the interim order, the Debtors and their professionals worked tirelessly to negotiate postpetition assurance agreements with trading

counterparties. Subsequently, the Debtors spent a significant amount of time reviewing, analyzing and determining which prepetition trading contracts they would assume pursuant to a final order on the Trading Motion. Finally, at a hearing on August 25, 2003, the Court granted the Trading Motion and entered a final order with respect to all of the relief requested therein.

2. The NOL Motion.

42. In addition to the above, the Debtors filed a motion, commonly referred to as the “NOL Motion,” requesting an order establishing procedures for (i) providing advance notice of certain transactions involving claims against, and equity interests, in Mirant; and (ii) the imposition of sanctions for non-compliance. The emergency relief was sought to prevent potential trades of claims or stock that could negatively impact the Debtors’ net operating loss tax attributes. These tax loss attributes are currently approximately \$1 billion and could reach \$2.5 billion by the end of 2003. These tax attributes may result in potential future tax savings for the Debtors’ estates of as much as \$200-\$400 million.

43. This Court entered an emergency order preventing the sale or trading of certain shares of, and claims of creditors in, Mirant’s chapter 11 cases. This Court entered two subsequent interim orders, and a final order directing, among other things, that holders of claims, preferred securities, and common stock provide at least ten (10) days advance notice of their intent to buy or sell claims against Mirant and/or its Debtor subsidiaries, including MAG or shares in Mirant. The notice procedure is limited to only those transactions with a person or entity owning (or, because of the transaction, resulting in ownership of) an aggregate amount claims equal to or in excess of \$250 million and, with respect to shares, only those persons or entities owning 4.75% or more of any class of outstanding shares. In addition, each entity or person that owns at least \$250 million of claims or preferred securities must, within fifteen (15)

days of the entry of the order, provide the Debtors with a court-approved notice of ownership information. An alternative procedure is also approved by the order to allow trading in claims of the Debtors upon an election by parties in interest and the undertaking by such parties to either divest themselves of claims or forfeit receipt of certain consideration in connection with a plan of reorganization. The Court's order also provides for expedited procedures to impose sanctions for a violation of its order, including monetary damages and the avoidance of any such transactions that violate the order.

3. MAG Committee Blocking Procedures Motion.

44. Shortly after appointment, the MAG Committee moved on an emergency basis for an order allowing the members of the MAG Committee to trade claims or equity interests in the Debtors, provided the members set up ethical screens within their firms. The MAG Committee members agreed to file with the Bankruptcy Court declarations of every employee receiving information from the Debtors as a result of their involvement with the MAG Committee stating that said MAG Committee member would not transmit the information or allow it to come into the possession of those within their institution involved in the trading of the Debtors' equity and debt. After weeks of negotiations between the MAG Committee and the Debtors, the parties ultimately agreed upon the terms of confidentiality that will govern both Committees and their members as to information obtained from the Debtors in their cases. With that issue resolved, the parties agreed on an order allowing the institutions employing the members of each of the two committees to trade in the Debtors' shares and securities and created the environment for flow of information between the Debtors and the Committees.

4. Debtor in Possession Financing.

45. Before the Petition Date, the Debtors began negotiating the terms of debtor in possession financing with at least two potential lenders. Postpetition, the Debtors and General Electric Capital Corporation agreed on the terms of a credit facility, for which the Debtors seek Court approval. The debtor in possession financing negotiations and the activities associated therewith consumed a significant amount of the Debtors and their professionals' time. The time was well spent given that the debtor in possession financing will aid the Debtors' continued operations and promote the successful emergence from chapter 11.

5. Contract and Lease Rejections and Assumptions.

46. In addition to the various motions designed to ensure the continued operations and successful emergence from chapter 11, the Debtors have begun the rigorous process of analyzing approximately 6,000 executory contracts and unexpired leases to which they are parties for the purposes of determining whether to assume or reject such contracts or leases. As part of that process, the Debtors successfully moved for the establishment of rejection procedures designed to ensure that the rejection process is efficient and cost-effective. The Debtors already have successfully rejected numerous contracts and leases pursuant to that procedure and pursuant to separate motions.

6. Creditor Participation.

47. As in most large, complex chapter 11 cases, creditors and other parties-in-interest have engaged in active participation in the cases by moving to protect their interests. For example, El Paso Energy Merchants, LP commenced an adversary proceeding seeking a temporary restraining order restricting the Debtors from drawing down on a letter of credit exceeding \$100 million. Other parties, such as Hamon Research-Cottrell, Inc., Unitil Energy

Systems, Inc. et al., and the City of Zeeland, moved to compel the Debtors to assume or reject executory contracts. Such active participation by creditors has forced the Debtors to expend significant resources working towards resolution of these matters.

7. The Committees.

48. The Committees are very active in these cases. The Debtors are committed to working with the Committees on a consensual plan of reorganization. The essence of chapter 11 is negotiation. As a general rule, the Bankruptcy Code favors a consensual approach to reorganization and rehabilitation. The Committees and the Debtors surely should approach the mutual financial issues on a consensual basis. The Debtors require a meaningful amount of time to discuss and negotiate a viable business plan and capital structure with the Committees. Exclusivity will preserve and foster negotiations and discussions with the Committees (the absence of which could easily result in three warring factions).

8. FERC/PEPCO Litigation.

49. As part of the assumption/rejection process, the Debtors determined to reject certain executory contracts between the Debtors and Potomac Electric Power Company (“PEPCO”) and enjoin both PEPCO and the FERC from taking any actions to require the Debtors to abide by those contracts. The Court granted a temporary restraining order and a preliminary injunction. The FERC/PEPCO matters have required hundreds of hours of work between the Debtors and their professionals. To further complicate such matters, FERC/PEPCO moved to withdraw the references as to those proceedings. Resolution of the FERC/PEPCO issues will significantly affect the business plan and available cash flow of the Debtors and the ultimate plan of reorganization.

50. This Court recognized in its Memorandum Opinion dated September 17, 2003 that the FERC/PEPCO issues facing the Debtors' estates are vital and require resolution in order for the Debtors to be in a position to formulate their business plan:

Pepco argues, however, that, . . . the only harm to Debtors of allowing the Commission to proceed would be the delay inherent in appeals from any decisions reached by the Commission. The court does not find merit in this argument. First, delay of, possibly, years is not consistent with the expedition with which a debtor's reorganization is expected to proceed. *In re Timers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 371-72 (5th Cir. 1987), *aff'd* 484 U.S. 365 (1988). . . Second, Debtors face a variety of time limits. *See, e.g.*, sections 365 and 1121 of the Code. It is doubtful that Debtors can meet this time constraints if the issue of performance of rejected contracts such as the Back-to-Back Agreement and the TPAs is up in the air. [Footnote omitted.] Third, uncertainty as to Debtor's obligation to perform the Back-to-Back Agreement or the TPAs would frustrate not only formulation but even negotiation of a plan of reorganization.

See, Memorandum Opinion pgs. 20-21 (emphasis added).

9. State and Federal Court Litigation.

51. Finally, the Debtors have aggressively moved forward to manage dozens of civil litigation actions pending in both state and federal courts. The Debtors, accordingly, filed a motion for an order extending the deadline to file notices of removal with respect to state and federal civil litigation. The Debtors also filed motion seeking (among other relief) a stay of certain legal actions against (i) the Debtors' current and former officers and directors, whom the Debtors are required to indemnify under its organizational documents and by-laws and/or who are vital to the Debtors' restructuring and operations; and (2) other parties to whom the Debtors have indemnification obligations (or who have asserted a claim for indemnification). Treatment of these litigation matters under a plan will require significant further analysis and many of the issues involved in the litigations will impact the business plan, and vice versa.

52. Although this progress represents a significant set of accomplishments, the Debtors require additional time to continue to address these and many other issues. Until the business plan is prepared and revised, it is impossible to determine the structure of a plan of reorganization.

V. RELIEF REQUESTED

53. By this Motion, and pursuant to section 1121(d) of the Bankruptcy Code, the Debtors seek the entry of an order extending the periods under sections 1121(b) and (c) of the Bankruptcy Code to file and solicit chapter 11 plans for 280 days to and including August 17, 2004 and October 15, 2004, respectively, without prejudice to their right to seek additional and further extensions of these periods as may be appropriate under the circumstances then prevailing. The extensions are realistic and necessary given the multiple tasks to be completed and issues to be resolved before confirmable plans can be proposed and negotiated.

VI. BASIS FOR RELIEF

A. The Exclusive Periods.

54. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”). Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor proposes a plan within the 120-day exclusive period, it has a period of 180 days after the commencement of the chapter 11 case to obtain acceptances of such plan (the “Exclusive Solicitation Period,” and collectively, with the Exclusive Filing Period, the “Exclusive Periods”). Absent an extension, the Debtors’ initial Exclusive Filing Period and Exclusive Solicitation Period will expire on November 11, 2003 and January 9, 2004, respectively. Pursuant to section 1121(d) of the Bankruptcy Code, the Court may, upon a

demonstration of cause, extend a debtor's Exclusive Periods. As demonstrated below, cause exists for extending the Debtors' Exclusive Periods.

B. Exclusive Periods May be Extended for Cause.

55. The paramount objectives of a chapter 11 case are the rehabilitation of a debtor's business and the negotiation, development, proposal, confirmation and consummation of a chapter 11 plan. The Exclusive Periods under section 1121 of the Bankruptcy Code were intended to afford a debtor a full and fair opportunity to achieve these objectives without the disruption of its business that might be caused by the filing of competing plans.

56. Section 1121(d) of the Bankruptcy Code permits the Court to extend a debtor's Exclusive Periods upon a demonstration of cause:

(d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).

57. "The hallmark of . . . section [1121(d)] is flexibility." In re Perkins, 71 B.R. 294, 297 (W.D. Tenn. 1987). Congress intended that the period during which only the debtor may file a chapter 11 plan be of adequate length for the debtor to formulate, negotiate and draft a consensual plan and solicit acceptances thereof. As reflected in the legislative history of section 1121 of the Bankruptcy Code, section 1121(d) "allows the flexibility in individual cases" to extend the Exclusive Periods "to allow the debtor to reach an agreement." H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977); see In re Newark Airport/Hotel L.P., 156 B.R. 444, 451 (Bankr. D.N.J. 1993), aff'd, 155 B.R. 93 (D.N.J. 1993); In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("the legislative intent . . . [is] to promote maximum flexibility").

58. In circumstances where the initial Exclusive Periods prove inadequate for the debtor to negotiate and file a plan, which often is the case, the bankruptcy court has the discretion to, and in the context of large chapter 11 cases, routinely does, extend the debtor's Exclusive Periods for substantial periods of time. In determining whether cause exists to extend a debtor's exclusive periods, courts generally consider whether (1) the debtor's case is sizable and complex; (2) there is good faith progress towards rehabilitation and the development of a consensual plan of reorganization; (3) the debtor is seeking to use the exclusivity period to pressure creditors into accepting a plan of reorganization; and (4) the debtor is generally making required postpetition payments as they come due and is effectively managing its business and preserving the value of its assets. See In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); In re Express One Intern, Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re United Press Int'l, Inc., 60 B.R. 265, 269 (Bankr. D.D.C. 1986). Cause may also include instances where there is recalcitrance among the creditors and where there is a major obstacle in the path of a successful reorganization, such as an acrimonious relationship among the principal parties. Texas Extrusion Corp. v. Palmer, Palmer, & Coffee (In re Texas Extrusion Corp.), 68 B.R. 712, 725 (N.D. Tex. 1986), aff'd 844 F.2d 1142 (5th Cir. 1988).

59. The legislative history to section 1121 notes that "if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement." H.R. Rep. No. 595, 95th Cong., 2d Sess. 231-32 (1978) (footnotes omitted). The legislative history has been interpreted as a virtual mandate for extension in unusually large cases, and courts have routinely granted extensions in such cases. The facts and circumstances of these cases and the express terms of section 1121(d) amply support the extension of the Exclusive Periods requested herein. See Express One Int'l,

Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (large size of debtor and concomitant difficulty in formulating a plan of reorganization are traditional grounds for extension); In re Pine Run Trust, Inc., 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (“[t]he traditional ground for cause [is] the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization...”).

60. The 280-day extension sought by the Debtors is reasonable when compared to the extensions granted by other courts in large reorganization cases. See, e.g., In re Kitty Hawk, Inc., Case No. 00-42141 (Bankr. N.D. Tex. Nov. 27, 2000) (initial extension of exclusive periods for over five months); In re NRG Energy, Inc., Case No. 03-13024 (Bankr. S.D.N.Y. September 10, 2003) (initial extension of exclusive periods for four months); In re UAL Corp., Case No. 02-B-48141 (Bankr. N.D. Ill. March 24, 2003); (initial extension of exclusive periods for six months); In re Kmart Corp., Case No. 02-24795 (Bankr. N.D. Ill. July 24, 2002) (initial extension of exclusive period more than nine months); In re WorldCom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y. November 15, 2002) (initial extension of exclusive periods for six months); In re Adelpia Business Solutions, Inc., Case No. 02-11389 (Bankr. S.D.N.Y. August 8, 2002) (initial extension of exclusive periods for four months); In re Global Crossing, Case No. 02-40188 (Bankr. S.D.N.Y. June 3, 2002) (initial extension of exclusive periods for four months); In re Enron Corp., Case No. 01-16034 (Bankr. S.D.N.Y. April 24, 2002) (initial extension of exclusive periods for five and six months).

C. Ample Cause Exists to Grant the Limited Extensions Requested by the Debtors.

61. The Debtors believe that ample cause exists to support the requested extension. These chapter 11 cases are large and complex. As discussed above, the Debtors are one of the world’s largest generators and marketers of electricity, employing thousands employees

worldwide and generating approximately \$6.4 billion in annual operating revenues. As noted, for the first several months of these chapter 11 cases, the Debtors have expended significant time and energy towards stabilizing their operations that were negatively impacted by the financial crises in the U.S. power industry, and ensuring a smooth transition into chapter 11. Even in light of the numerous issues facing these Debtors during the early stages of these cases, the Debtors have managed to begin analyzing contracts and leases that will either be assumed or rejected throughout the cases or in connection with a plan, formulating a business plan, and communicating with creditor constituencies concerning the future of these companies. Given the size and complexity of these cases and the business issues that must be addressed and resolved prior to the formulation of a plan, the Debtors could not possibly propose a confirmable chapter 11 plan.

(i) The Size and Complexity of the Cases.

62. Both Congress and the courts have recognized the size and complexity of a debtor's case alone may constitute cause for the extension of a debtor's exclusive period to file a plan and the period to solicit acceptances of such a plan. "[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement." H.R. Rep. No. 595, 95th Cong., 1st Sess. 231, 232, 406 (1978), reprinted in 1978 U.S.C.A.N. 5787, 6191, 6362. In In re Texaco, Inc., the court stated:

The large size of a debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.

76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

63. The Debtors' cases are certainly large and complex by any standard. Many publications have represented that the Debtors' cases are among the ten largest in the history of the United States, and it is larger than any case filed prior to 2001. Thus, the size and complexity of these chapter 11 cases compel the requested extension of the Exclusive Periods.

64. Considering the early stages of their chapter 11 cases, as well as the size of the estates and complexity of the issues to be resolved, neither the Debtors nor any other party in interest could realistically be in a position to formulate, promulgate and build consensus for a plan of reorganization before November 11, 2003. The extension of the Exclusive Periods requested herein will only aid the plan process by enabling the Debtors to formulate a plan and present that plan to parties-in-interest. Thus, the extension will not result in a delay of the process to formulate a chapter 11 plan. To the contrary, the requested extension of the Exclusive Periods will permit the plan process to move forward in an orderly fashion.

(ii) Stabilizing the Business and Responding to Third Party Litigation Has Consumed the First Several Months of These Chapter 11 Cases.

65. Since the Petition Date, the Debtors, as is common in substantially all large and complex chapter 11 cases, have focused on critical issues typically faced by a debtor at the outset of a case. As noted, the Debtors' efforts in this regard have been focused on ensuring continued trading operations, maintaining their existing cash management system, ensuring the preservation of the NOL carryforwards, managing litigation naming the Debtors, and analyzing the Debtors' operations.

(iii) The Debtors Have Made Progress in Resolving Issues Facing the Estates.

66. Extensions of a debtor's exclusive period to file a plan and the period to solicit acceptances for such plan are justified by progress in the resolution of issues facing the debtor's estate. See e.g., In re Service Merchandise, Inc., 256 B.R. 744, 753-54 (M.D. Tenn 2000); In re

Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996); In re McLean Indus. Inc., 87 B.R. 830, 835 (Bankr. S.D.N.Y. 1987); and In re Texaco, Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987). During the first three months of these chapter 11 cases, the Debtors have made substantial progress in addressing certain of the major issues facing their estates as of the Petition Date. Given the importance of such issues, the Debtors have devoted substantial time and effort to addressing these fundamental threshold issues.

67. The Debtors' achievements in resolving key restructuring issues to date include:
- negotiating with trading parties to provide adequate assurance to induce compliance with terms of prepetition trading contracts and obtaining Court approval of the provisions of the assurance program with trading counterparties;
 - obtaining Court approval of their cash management system;
 - obtaining Court approval of employee wage and benefit plans;
 - establishing a bar date for the filing of certain proofs of claim;
 - timely preparing and filing the 77 Schedules;
 - commencing the review and analysis of over 6,000 executory contracts and unexpired leases to which one or more of the Debtors are parties; obtaining Court approval of contract rejection procedures; and filing numerous motions to reject contracts;
 - negotiating and drafting debtor-in-possession financing documents for a \$500 million facility;
 - responding to countless inquiries regarding the Debtors' operations; and
 - obtaining a preliminary injunction against PEPCO and FERC.

68. As noted, the issues relating to the PEPCO contract must be resolved for the Debtors to move forward. If the Debtors successfully reject the Back-to-Back Agreement, PEPCO could well become the Debtors' single largest creditor.

69. The Debtors' progress on these crucial issues in this short period of time justify the requested extension of the Exclusive Periods.

(iv) The Debtors Are in the Process of Developing the Business Plan.

70. The Debtors, moreover, must negotiate and discuss the development of a business plan with the Committees. Notably, the development of a financial plan alone is typically a four-month process. Given the size and complexity of the Debtors' cases, it is not unusual for the development of such a business plan to require six or more months. Without a business plan, the parties in interest cannot negotiate the structure of a plan of reorganization and values cannot be realistically determined. The extension of the Exclusivity Periods will permit the Debtors to develop and implement a viable long-term business plan.

71. As noted above, the formulation of a business plan is especially difficult in this case because of the significant changes that have occurred in the energy sector. As noted, the Debtors' prepetition business plan assumed free market competition as a result of the deregulation of the energy sector that occurred in the 1990s. However, the contemplated deregulation of the electric markets has never fully developed and the Debtors are forced to compete with regulated utilities that have consistent rate-payer revenue streams. Moreover, the Debtors anticipate additional regulation as a result of the California energy crises, the Enron debacle, and the power outage this year in the Northeastern United States. Thus, the Debtors must re-formulate their business plan and that plan must be validated through implementation. The implementation of the Debtors' new business plan cannot be truly tested (and thereby validated) until the summer season (third quarter) of 2004. Thus, it would be impossible to

finalize the Debtors' business plan and have it validated until at least a year from now.

Additional time is clearly necessary.⁵

(v) The Debtors Still Need to Engage in the Process of Claims Reconciliation.

72. The Court entered an order establishing a December 16, 2003 general bar date for filing claims against the Debtors' estates. The process of analyzing and reconciling those claims must begin before the Debtors can propose a plan. The current Exclusive Filing Period will expire before the December 16, 2003 bar date.

(vi) Extensions of Time Will Not Harm the Parties In Interest.

73. The extensions of the Exclusive Periods will afford the Debtors and all other parties in interest an opportunity to develop fully the grounds upon which serious negotiations toward a plan of reorganization can be based. Affording the Debtors a full opportunity to undertake an extensive review and analysis of their businesses and properties, so that they may develop a plan of reorganization that satisfies the requirements of chapter 11, will only help the creditors and other parties-in-interest. Terminating the Exclusive Periods before this process is complete and the process of negotiation has been developed fully, would defeat the very purpose of section 1121 of the Bankruptcy Code—to afford the Debtors a meaningful and reasonable

⁵The business plan set forth in the Debtors' "pre-packaged bankruptcy plan" is not feasible today, and certainly not preferable under the circumstances. The pre-packaged plan assumed earnings of approximately \$200 million from the commercial activities and discretionary trading around the Debtors' asset base. But the actual level of activity and earnings from January to August of 2003 is not what was expected. This is due, in large part, to the erosion of confidence in the Debtors within the energy sector because of the financial crisis and the uncertainty of the Debtors' ability to complete an out of court reorganization, and the knowledge that the Debtors will not be emerging from bankruptcy quickly pursuant to a pre-packaged plan. The pre-packaged plan also contemplated significant asset sales that were expected to generate \$800 billion. However, as the energy sector has continued to decline, and truly competitive markets have failed to materialize, it is not financially viable to sell such significant assets under current market conditions. Thus, a complete evaluation of the Debtors' business and assets from the bottom up is necessary.

opportunity to negotiate with creditors and propose and confirm a consensual plan of reorganization.

74. Moreover, expiration of the Exclusive Periods and the threat of multiple plans filed by other parties would likely lead to adversarial situations that would cause a deterioration in the Debtors' business operations, the value of their assets and their ability to negotiate a consensual restructuring. There is a risk that expiration of the Exclusive Periods may signal to their trading parties that there is a loss of confidence in the Debtors and their reorganization efforts. This would further undermine the Debtors' business operations and the prospects for reorganization. In addition, termination of exclusivity would afford parties with parochial interests the opportunity to strip Mirant of necessary assets or confirm a stop gap plan that would allow certain creditors to liquidate their positions at favorable prices, but would not maximize long term value, to the detriment of other creditors and parties in interest.

(vii) The Debtors Have Paid Postpetition Debts As They Become Due.

75. Finally, a debtor's payment of postpetition obligations as they come due militates towards a finding that the debtor is not abusing its exclusivity period. See, e.g., Trainer's, 17 B.R. at 247, McLean, 87 B.R. at 834. Significantly, the Debtors' reorganization efforts have not come at the expense of their administrative creditors. The Debtors have met postpetition obligations as they come due. As a result, the extensions requested in this Motion will not result in accruing significant administrative liabilities.

76. Accordingly, the Debtors should be afforded a full and fair opportunity to negotiate, propose and seek acceptance of a chapter 11 plan. The Debtors believe that the requested extension of their Exclusive Periods is warranted and appropriate under the circumstances, particularly in light of the fact that this is the Debtors' first request. The Debtors submit that the requested extension is realistic and necessary, will not prejudice the legitimate

interest of creditors and other parties in interest, and will afford them a meaningful opportunity to pursue a feasible business plan and a consensual plan of reorganization, all as contemplated by chapter 11 of the Bankruptcy Code.

77. The Debtors are seeking a 280-day extension of the Exclusive Periods. The Debtors believe that a nine-month extension of the Exclusive Periods will afford the parties an opportunity to resolve threshold issues such as the rejection of PEPCO contracts; allow Mirant to develop a realistic business plan; and help focus the parties on negotiating an acceptable plan of reorganization as opposed to a shorter extension, which serves to focus the parties on a second exclusivity motion.

VII. STATEMENT PURSUANT TO LOCAL BANKRUPTCY RULE 3016.1

78. In compliance with Local Bankruptcy Rule 3016.1, the steps the Debtors must take to file a plan include, without limitation:

- (1) Improvement of operations performance, including a full-scale effort to coordinate the North American operations to ensure the most cost-efficient operations at discreet plants;
- (2) Improvement of accounting functions, including updating accounting information necessary to facilitate integration of businesses;
- (3) Development of price forecasting, i.e., forecasting future gross margins and modeling methodology;
- (4) Development of collateral forecasting, i.e., the capability of predicting the collateral requirements of the Debtors' businesses for hedging and optimization;
- (5) Creation of synergies among the domestic and international businesses;

(6) Development of new metrics to manage the Debtors' businesses in a manner that makes it more easily understood both internally and externally;

(7) Development of a proposed business plan and projections given the current state of the energy industry, which will include strategic planning to move into more competitive markets and achieve margins in the new regulatory environment;

(8) Validation of the proposed business plan and projections;

(9) Resolution of PEPCO/FERC contract issues;

(10) Continue analysis of executory contracts;

(11) Continue to stabilize trading operations, including, re-characterizing the Debtors' commercial business, refocusing efforts to become a marketing-focused organization and simplifying the book structure (which will help with accounting issues, measuring performance and managing risk);

(12) Continue the negotiation and development of trading policies and procedures;

(13) Continue to analyze business operations and restructure operations where appropriate to create additional efficiencies;

(14) Stabilize employee turnover and incentivize employees to remain with the Debtors;

(15) Resolve pending investigations and litigation;

(16) Reconcile and assess claims filed against the estates;

(17) Discuss and negotiate the terms of the business plan with the Committees;

(18) Value the business of the Debtors;

(19) Develop a proposed and appropriate capital structure for each of the reorganized Debtors;

- (20) Discuss and negotiate the proposed and appropriate capital structure for each of the reorganized Debtors; and
- (21) Draft a plan of reorganization and disclosure statement.⁶

⁶ At this early stage of the case, a specific and definitive timetable for each of the foregoing steps would not be meaningful, realistic or appropriate.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Motion upon all persons on the Limited Service List on the 17th day of October, 2003 via first class mail, postage prepaid, in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Robin Phelan

**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.)	
)	
)	

**ORDER PURSUANT TO PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY
CODE FOR ORDER EXTENDING THE EXCLUSIVE PERIODS IN WHICH TO
PROPOSE AND SOLICIT ACCEPTANCES TO A PLAN OR
PLANS OF REORGANIZATION**

Upon consideration of the motion (the “Motion”) dated October 17, 2003 of the debtors and debtors-in-possession in the above-styled chapter 11 cases (collectively, the “Debtors”), pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), for the entry of an order extending the Debtors’ exclusive periods for filing a chapter 11 plans (the “Exclusive Filing Period”) and soliciting acceptances thereof (the “Exclusive Solicitation Period,” and collectively, with the Exclusive Filing Period, the “Exclusive Periods”), all as more fully set forth in the Motion; and due notice of the Motion having been given to the parties identified therein; and no other or further notice being necessary or required; and it further appearing that cause exists to extend the Debtors’ Exclusive Periods; and that the relief requested in the Motion is in the best interests of the Debtors and other parties in interest; and upon the Motion and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing, it is hereby:

ORDERED that the Motion is granted; it is further

ORDERED that, pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Filing Period is extended to and including August 17, 2004; and it is further

ORDERED that, pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Solicitation Period is extended to and including October 15, 2004; and it is further

ORDERED that the relief granted herein is without prejudice to the Debtors' right to request further extensions of the Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SIGNED: _____

D. Michael Lynn
United States Bankruptcy Judge