

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.)	
)	Date and Time: June 16, 2004 at
_____)	10:30 a.m.

**DEBTORS' MOTION TO REJECT THE APPLICATION AND MEMBERSHIP
AGREEMENT WITH SOUTHWEST POWER POOL, INC.**

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

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq., as amended) (the "Bankruptcy Code") for authority to reject the Application And Membership Agreement (the "Contract"), dated October 30, 1995, between Southwest Power Pool, Inc. ("SPP") and Mirant

Americas, Inc. (“MAI”)¹ which is attached hereto as Exhibit A, and is described in greater detail below. In support thereof the Debtors represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has jurisdiction to grant the relief requested herein. Specifically, SPP has blanket certificate authority to enter into, and terminate, the Contract pursuant to 18 C.F.R. Part 284, Subpart G of the regulations of the Federal Energy Regulatory Commission (“FERC”), without FERC approval. These jurisdictional matters will be discussed more fully below.

II. PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), the Debtors filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas (“UST”) in these administratively consolidated cases.

5. The Examiner. On April 7, 2004, this Court authorized the UST to

¹ The Contract was entered into between SPP and Southern Energy Marketing, which subsequently merged into MAI.

appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

III. FACTUAL BACKGROUND

6. SPP is a voluntary association comprised of companies involved in financial transactions in the wholesale electric market, including investor owned utilities, cooperative systems, municipals, independent power producers, federal systems and power marketers. SPP is dedicated to maintain reliability of energy supply within a geographical area of 400,000 sq. miles, including areas of Northern Texas, Oklahoma, New Mexico, Alabama, Kansas, and Missouri (the "SPP Region"). Members of SPP participate in studying and ensuring the reliability of the electrical power supply, as well as analyze new and evolving market practices on electric system reliability.

7. As a member of SPP, MAI pays annual dues of \$6,000 and quarterly dues of approximately \$815 per quarter. The quarterly dues are calculated using a formula contained in the Southwest Power Pool, Inc. Bylaws, which are attached hereto as Exhibit B. MAI's total estimated dues for 2004 is approximately \$9,260.00.

IV. RELIEF REQUESTED

8. By this Motion, the Debtors hereby seek approval of the rejection of the Contract under section 365 of the Bankruptcy Code. The Debtors specifically direct this Court's attention to the fact that the Contract is a contract over which FERC has certain jurisdictional authority. However, the Debtors submit that there is no jurisdictional impediment to this Court granting the Motion.

V. BASIS FOR RELIEF

9. 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).

10. The Contract is clearly an executory contract because it requires (i) SPP to provide certain membership privileges and services to MAI and (ii) MAI to pay for these privileges and services in the form of annual dues. Moreover, SPP’s failure to continue to provide these privileges and services would constitute a material breach of the Contracts, excusing the performance of the other party. Therefore, the Contract 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).

Rejection Of the Contract Is Within the Debtors’ Business Judgment.

11. 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).

12. The “business judgment” test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See 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)).

13. The Debtors’ reasonable business judgment is that the Contract is unnecessary and burdensome to the Debtors’ estates. The Debtors entered into the Contract because they intended to expand their business operations into the SPP Region, and sought membership in SPP in order to be involved in decisions concerning the electric power supply in the SPP Region. The Debtors’ planned expansion into the SPP Region has not occurred, and the Debtors currently have no assets located in the SPP Region.

14. Therefore, the Debtors have determined, in their reasonable business judgment, that the Contract should be rejected as an impediment to the Debtors’ ongoing business operations. Since, as discussed above, the Debtors have no need or use for the privileges conferred by membership in the SPP, the Debtors have determined that it is in their best interest to reject the Contract at this time.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he 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 exhibits) via U.S. mail, and the addressees set forth below via U.S. mail (with exhibits) as noted on the 21st day of May, 2004.

Via U.S. Mail

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue, Suite 1600
Austin, TX 78701

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
120 West 45th Street
New York, NY 10036

Paul N. Silverstein
Andrews & Kurth, L.L.P.
805 Third Avenue
New York, NY 10022

Fredric Sosnick
Scott C. Shelley
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022-6069

Deborah D. Williamson
Thomas Rice
Cox & Smith Incorporated
112 East Pecan St., Suite 1800
San Antonio, TX 78205-1505

Bruce R. Zirinsky
Gregory Petrick
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

Jason S. Brookner
Andrews & Kurth, L.L.P.
1717 Main Street, Suite 3700
Dallas, TX 75201

Federal Energy Regulatory Commission
Attn: Dennis Lane
888 First Street, NE
Washington, DC 20426

Southwest Power Pool
Attn: Nick Brown, President
Attn: Tom Dunn, CFO
415 North McKinley, Suite #800
Plaza West Building
Little Rock, AR 72205

/s/ Ian T. Peck

EXHIBIT A



Southwest Power Pool, Inc.

Application and Membership Agreement

I, the undersigned, as a chief officer of SOUTHERN ENERGY MARKETING on its behalf, hereby make application for membership to Southwest Power Pool, Inc. as described in the Southwest Power Pool Articles of Incorporation dated January 1, 1984. In so doing I certify that SOUTHERN ENERGY MARKETING will meet all obligations and responsibilities of membership as contained in the Southwest Power Pool Bylaws dated January 1, 1984.

BY: *J.R.R.* 10/30/95
Signature/Date
John Robinson - Vice President
Name/Title

As President of Southwest Power Pool, Inc. I hereby certify that SOUTHERN ENERGY MARKETING upon execution of this document has fulfilled all requirements for membership in Southwest Power Pool, Inc. SOUTHERN ENERGY MARKETING is hereby granted all rights, interests and privileges of such membership in the services and resources of Southwest Power Pool, Inc.

BY: *J.P. Maradeis* 11/17/95
Signature/Date

Southwest Power Pool

Assessment & Voting Strength Information Form
As per Section 2.B of the Bylaws (1-1-94)

Net Generating Capacity (MW) 0

1994 Peak Load (MW) 0

Transmission Circuit Miles by Operating Voltage

500 kv	345 kv	230 kv	161 kv	138 kv	115 kv	89 kv	Total

NAME: SOUTHERN ENERGY MARKET, INC.

SYSTEM: _____

DATE: 10/30/95

Please return form to:

Claudia Milam
Southwest Power Pool
Facsimile No. 501-664-9553

EXHIBIT B

Southwest Power Pool, Inc.

B Y L A W S

June 24, 2003

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B Y L A W S
of
Southwest Power Pool, Inc.

1.0 DEFINITIONS

1.1 Affiliate Relationships

Affiliate Relationships are relationships between SPP Members that have one or more of the following attributes in common: (1) are subsidiaries of the same company; (2) one Member is a subsidiary of another Member; (3) have through an agency agreement turned control of a majority of their generation facilities over to another Member; (4) have through an agency agreement turned control of a majority of their transmission system over to another Member; (5) have an exclusive marketing alliance between Members; (6) have a member/owner relationship between two or more Members; or (7) ownership by one Member of 10 percent or greater of another Member..

1.2 Articles of Incorporation

SPP's articles of incorporation containing its mission filed with the state of Arkansas.

1.3 Board of Directors

The Board of Directors of SPP which shall manage the general business of SPP pursuant to the Bylaws.

1.4 Bylaws

These bylaws.

1.5 Criteria

Planning and operating standards and procedures as approved by the Board of Directors.

1.6 Member

An eligible entity which executes a SPP Membership Agreement.

1.7 Membership

The collective Members of SPP.

1.8 Membership Agreement

The contract executed between SPP and an eligible entity seeking to become a SPP member that specifies rights and obligations of parties to the contract.

1.9 NERC

The North American Electric Reliability Council or its successor organization.

1.10 Net Energy for Load

The electrical energy requirements of an electric system are defined as system net generation plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage at energy storage facilities.

1.11 Organizational Group

A group of Member representatives collectively charged with specific responsibilities toward accomplishing SPP's mission, other than the Board of Directors.

1.12 President

The president of SPP as duly elected by the Board of Directors.

1.13 SPP

Southwest Power Pool, Inc., a non-profit corporation organized and operating pursuant to the laws of the state of Arkansas.

1.14 Staff

The technical and administrative staff of SPP as hired by the President to accomplish SPP's mission.

1.15 Transmission Owning Member

A Member that has placed more than 500 miles of non-radial facilities operated at or above 60 kV under the independent administration of SPP for the provision of regional transmission service as set forth in the Membership Agreement.

1.16 Transmission Using Member

A Member that does not meet the definition of a Transmission Owning Member.

2.0 MEMBERSHIP

2.1 Qualifications

Membership in SPP is voluntary and is open to any electric utility, Federal power marketing agency, transmission service provider, and any entity engaged in the business of selling electric energy or purchasing electric energy for resale. Membership also is open to any entity eligible to take service under

the SPP open access transmission tariff. These entities desire the greater efficiency and service reliability gained through better coordination by voluntary association in SPP as constituted herein and in the SPP Articles of Incorporation. Members recognize that such association has a significant effect upon the availability and reliability of the bulk electric power supply of the region, and thereby affects the reliability of the nation's electric power supply.

2.2 Applications

Membership by an entity shall be obtained upon meeting the following requirements:

- a.** Meeting Membership qualifications,
- b.** Applying to the SPP President,
- c.** Executing the Membership Agreement and delivering a signed copy to the President, and
- d.** Paying to SPP its share of working capital.

The President shall review applications, approve those meeting Membership criteria and promptly give written notice of the new Member to all other Members. The Board of Directors will review any disputes arising as to the qualifications of the new Member. Membership will commence at the beginning of the next calendar month following completion of these requirements.

2.3 Member Responsibilities and Obligations

Members recognize that SPP exists and operates for the benefit of the bulk electric transmission system and to ensure the reliability of the nation's power supply. As such, Members are required to act to further these goals, including participation in projects, execution of changes resulting from regulatory changes, and consent to consolidation with another entity through any legal means determined appropriate by the SPP Board of Directors. Failure to comply with this provision will be considered a violation of these Bylaws and the Member may be removed in accordance with the provisions for Removal of Members in the SPP Membership Agreement.

2.4 Removal and Reinstatement

The Board of Directors may terminate the Membership of any Member in accordance with the Membership Agreement. The President shall promptly give written notice of the removal to all other Members. Any former Member seeking to rejoin SPP shall apply to the Board of Directors for reinstatement. In its application for reinstatement, the former Member shall: (i) provide evidence that it has fully paid any accrued financial obligation to SPP; (ii) demonstrate it has corrected the reason for its removal; and (iii) establish that it will be in compliance with SPP Membership requirements.

2.5 Regulatory Agency Involvement

Any regulatory agency having jurisdiction over a Member may participate in all SPP activities. These representatives shall have all rights as Members except the right to vote.

3.0 ORGANIZATIONAL ADMINISTRATION

3.1 Structure

Decision making shall be accomplished primarily through Membership participation in Organizational Groups. Each Member shall provide representation to committees, and by letter to the President, designate such representative to act for it at Organizational Group meetings. Where appropriate for specific research and development projects or on-going activities, working groups will be formed which may not contain representation from every Member. Working group representation will be appointed by the Board of Directors, who shall consider the various types and expertise of Members and their geographic locations, to achieve a widespread and typical representation of the Membership. The chair of any Organizational Group may appoint any ad hoc task forces as necessary to fulfill its mission. Task force appointments shall be made with due consideration of the various types and expertise of Members and their geographic locations. Participation in certain sessions of Organizational Group meetings where market sensitive issues are discussed may be restricted to persons representing entities that have executed NERC's Code of Conduct. Representatives on all SPP Organizational Groups will be documented in the SPP Directory maintained by the SPP Staff. Working group and task force vacancies will be filled on an interim basis by appointment of the President.

3.2 Proxy

If a Member's designated representative is unable to attend an Organizational Group meeting, it may in writing appoint a substitute representative who shall have such rights to participate and vote as the Member specifies.

3.3 Leadership

3.3.1 Appointment

The chair and vice chair of all Organizational Groups shall be appointed by the Board of Directors, following consultation with the parent group leadership and the SPP Staff. The vice chair shall act for a chair at the request of the chair; or if the chair becomes incapacitated and unable to discharge the functions of the position; or if the position of the chair becomes vacant, until a new chair takes office.

3.3.2 Terms

The terms of the chair and vice chair of all Organizational Groups shall coincide with the two-year term of

the Chair of the Board of Directors. Working Group and Task Force representation will be reviewed for appropriateness by each new Chair of the Board of Directors.

3.3.3 Vacancies

Should any individual having been appointed as a chair or vice chair of any Organizational Group be unable to serve for the term specified, or be unable to serve on a NERC Organizational Group under provisions of these Bylaws, a replacement shall be appointed by the Chair of the Board of Directors for the unexpired term of office.

3.4 Executive Authority

The SPP staff shall be headed by the President, who, for the purposes of carrying out the rights, duties, and obligations of the SPP, and pursuant to budgetary and other authority granted by the Board of Directors, shall be empowered to employ qualified technical and administrative employees, engage office space, employ outside technical and special service organizations, execute contracts, provide for independent regional security coordination and transmission service administration, incur reasonable expenses, and make staff resources available to individual Members or groups of Members on a non-firm, non-priority, first-come-first-serve basis, so as not to interfere with current or future needs and priorities established by SPP.

3.5 Meetings

SPP Organizational Groups shall meet as necessary to accomplish the SPP mission. Except for executive sessions of the Board of Directors, all SPP meetings shall be open. Representatives shall be given at least fifteen days written notice of the date, time, place and purposes of each regular or special meeting. Telephone conference meetings may be called as appropriate by the chair of any Organizational Group with at least one day prior notice. The chair and vice chair of parent groups shall receive copies of all meeting notices.

3.6 Order of Business

The latest edition of Robert's Rules of Order will generally govern all meetings of SPP Organizational Groups on any point not specifically covered in these Bylaws.

3.7 Expenses

The expenses of each representative participating in activities of all SPP Organizational Groups shall be borne by each respective representative.

3.8 Quorum

The quorum for a meeting of any committee or the Membership shall be those Members present and quorum for any other Organizational Group, shall be one-half of the Membership thereof, but not less than three Members; provided, that a lesser number may adjourn the meeting to a later time.

3.9 Voting

Each Member of an Organizational Group shall have one vote. Upon joining, Members shall be assigned to one of two Membership categories for the sole purpose of voting; Transmission Owning Members, or Transmission Using Members. All committee and Membership business must be approved by at least sixty-six percent of the average of the ratio of approving votes to voting Members in each category. If no Members are present within a category, the single present category voting ratio will determine approval. A simple majority of Members present or represented by proxy and voting shall be required for working group and task force action. To facilitate timely administration, voting by mail may be used for actions requiring approval of any Organizational Group outside of regular or called meetings. Voting by mail will occur only at the direction of the group's chair and the action must have a motion and second by Members of the group. Voting by mail will be expeditiously administered by the Staff Secretary by any widely available means. The outcome of votes taken by mail will be reported at the next meeting of the group and recorded in the meeting minutes.

3.10 Appeal

Should any Member or group of Members disagree on an action taken or recommended by any Organizational Group, such Member(s) may appeal and submit an alternate recommendation to the Board of Directors prior to consideration of the action by the Board of Directors.

3.11 Staff Support

The President shall assign to each Organizational Group a SPP Staff member, who shall attend all meetings and act as Staff Secretary and perform other functions as necessary. Staff Secretaries of all Organizational Groups shall be non-voting. Minutes shall be kept of pertinent discussion, business transacted, decisions reached, and actions taken at each meeting of SPP Organizational Groups by the Staff Secretary. Copies of such minutes shall be sent to each representative and the chair and vice chair of the parent Organizational Group. Minutes shall be considered published documents upon their approval.

3.12 Publications and Data Bases

SPP shall publish and distribute printed reports as necessary to fulfill the SPP mission and as the creation

of such reports are approved by the Board of Directors. SPP shall also develop and maintain electronic data bases of relevant technical information as approved by the Board of Directors. All publications will be considered non-proprietary and public information and distribution will not be restricted. The release of information in data bases containing member-specific technical data considered proprietary in nature will be governed by the Membership Agreement and related Criteria and administered by the Staff. In the event member specific non-proprietary technical data is being distributed, SPP will provide written notice of the specific data submitted, to whom it is being submitted and the purpose of such submittal to the respective Member at the same time the data is provided to the requesting party. Publications and technical data will be made available at no charge to Members, other regional councils and their members, and federal and state agencies. Other parties requesting SPP publications or technical data will be charged an amount covering production, handling and delivery costs.

3.13 Dispute Resolution

These procedures are established for the equitable, efficient and expeditious resolution of disputes. These procedures are intended to cover disputes between any two or more Members, between Members and consenting non-members or between SPP and any Member(s) or consenting non-member(s). SPP and Members are strongly encouraged to take part in the complete process herein described prior to judicial litigation or the utilization of other dispute resolution processes. SPP administrative involvement in the proceeding is to coordinate assembly of a non-biased and independent dispute resolution panel to facilitate the resolution of the dispute and to provide meeting coordination and facilities. If SPP is a party to the dispute, its administrative duties shall be turned over to a contracted facilitator mutually selected by the disputing parties. These procedures do not apply to disputes that are covered by the dispute resolution procedures of the SPP transmission tariff.

3.13.1 Instigation

Any Member may begin these dispute resolution procedures by making a request to the President. This request shall be delivered in writing to the President, who will forward copies of this request to the Board of Directors. This written request must contain the authorized signatures of all parties to the dispute. The request must contain: (i) a statement of the issues in dispute, (ii) the positions of each of the parties relating to each of the issues, (iii) the specific dispute resolution procedure desired, and (iv) any agreed-upon modifications or specific additions to the proceedings described in these Bylaws by which the dispute may be resolved.

3.13.2 Dispute Resolution Panel

The President shall immediately provide to each party to the dispute, a list of candidates to be used in

forming a three person dispute resolution panel. This list shall be maintained by SPP and can be added to at any time by any Member and shall contain at least 6 persons meeting the requirements for independent directors. This list shall contain biographical information on each of at least 10 candidates sufficient to establish qualifications as a panel member. The President shall then call a telephone conference meeting. During this meeting, each party shall alternate striking names from the list until those remaining constitute the dispute resolution panel. This panel shall select a chair from its membership. Should any candidate decline to serve or resign from a current appointment for any reason, the candidate whose name was last struck from the list shall automatically be contacted to serve. The President shall assign a Staff representative to assist the panel as secretary. The President shall manage the panel selection process to ensure its completion within one week from receipt of the request.

3.13.3 Resolution Procedures

The types of proceedings available for the resolution of disputes are:

- a. An Advisory Proceeding to assist each party through discussion and advice, on a separate and individual basis without active participation in the joint discussions and negotiations, to resolve the dispute informally by mutual agreement,
- b. A Mediation Proceeding to assist the parties through active participation in the joint discussions and negotiations (including specific recommendations of the issues in dispute) through which the parties indirectly attempt to resolve the dispute informally by mutual agreement, and
- c. A binding or non-binding Dispute Resolution Proceeding to hear formal evidence on factual matters related to the issues submitted, make written findings and conclusions of fact, and issue specific written recommendations (non-binding) or awards (binding) for resolution of each issue in dispute.

The panel chair shall determine meeting arrangements and format necessary to efficiently expedite the resolution of the dispute, and the Staff Secretary shall notify the parties of these details. Each party to the dispute must have at least one representative present at all related meetings with full authority to resolve the dispute. Upon conclusion of this process, the panel chair shall notify the President of its outcome. After consultation with the parties to the dispute and the panel chair to determine the completion of the process as described herein, and/or as modified by the parties, the President shall discharge the panel, and notify the Board of Directors of the results. The parties to the dispute agree to complete the process within 90 days from selection of the panel. The Staff Secretary shall maintain minutes of the panel meetings, which shall become part of SPP historical records.

3.13.4 Expenses

The parties to the dispute shall share equally all reasonable charges for the meeting location, administrative costs, and related travel expenses of panel members. The parties to the dispute shall also

share equally all reasonable compensation for time and service of panel members and related incremental expenses of the SPP Staff. The President shall determine reasonableness of time and service costs for panel members prior to process implementation. The SPP Staff Secretary shall account for these expenses. Each party to the dispute shall be responsible for their respective associated expenses.

3.13.5 Liability

The parties to any dispute which is the subject of these dispute resolution procedures shall hold harmless SPP, its Members, Organizational Groups and each of their directors, officers, agents, employees or other representatives, and the panel members from any liabilities, claims, or damages resulting from any agreement or lack of agreement as a result of the dispute resolution proceedings. The foregoing hold harmless right shall not be extended to the parties to any given dispute or to their directors, officers, agents, employees or other representatives.

3.14 Meeting of Members

The Chair of the Board of Directors shall convene and preside over Meetings of Members for the purpose of electing directors to positions becoming vacant in the ensuing year, and any other necessary business.

3.15 Liability, Insurance and Indemnification

For purposes of this section "SPP" and "its Members" refers to SPP and its officers, directors, employees or agents and "Member" refers to the Members of SPP, as defined in these Bylaws. None of the provisions of this section absolving SPP or its Members, directors, officer, agents, employees or other representatives of liability or any provisions for insurance or indemnification apply to actions which are unlawful, undertaken in bad faith, or are the result of gross negligence or willful misconduct.

3.15.1 Waiver of Liability

- a.** SPP shall not be liable to any Member for damages arising out of or related to any directive, order, procedure, action, or requirement of the SPP, under the then effective SPP Bylaws and Criteria as approved by the SPP Board of Directors.
- b.** No Member shall be liable to any other Member or to SPP for damages arising out of or related to any action by the Member pursuant to any directive, order, procedure, action or requirement of the SPP, under the then effective SPP Bylaws and Criteria as approved by the SPP Board of Directors.
- c.** Each Member waives any future claim it might have against SPP or other Members arising out of or resulting from any directive, order, procedure, action or requirement of SPP, under the then effective SPP Bylaws and Criteria as approved by the SPP Board of Directors.

- d. SPP waives any future claim it might have against any Member arising out of or resulting from any actions taken by a Member pursuant to any directive, order, procedure, action or requirement of the SPP, under the then effective SPP Bylaws and Criteria as approved by the Board of Directors.

3.15.2 Insurance

The President is authorized to procure insurance, if available at a reasonable cost, to protect SPP against damages arising out of or related to any directive, order, procedure, action or requirement of the SPP, under the then effective SPP Bylaws and Criteria as approved by the SPP Board of Directors or the SPP transmission tariff.

3.15.3 Indemnification of Directors, Officers, Agents and Employees

Except for actions which are unlawful, undertaken in bad faith, or are the result of gross negligence or willful misconduct, SPP shall indemnify its directors, officers, agents, employees, or other representatives to the maximum extent allowed by law consistent with these Bylaws. Each director, officer, agent, employee, or other representative of SPP shall be indemnified by SPP against all judgments, penalties, fines, settlements, and reasonable expenses, including legal fees, incurred as a result of, or in connection with, any threatened, pending or completed civil, criminal, administrative, or investigative proceedings to which the incumbent may be made a party by reason of acting or having acted in official capacity as a director, officer, agent, employee, or representative of SPP, or in any other capacity which the incumbent may hold at the request of SPP, as its representative in any other organization, subject to the following conditions:

- a. Such director, officer, agent, employee, or other representative must have acted in good faith and, in the case of criminal proceedings, must have had no reasonable cause to believe that conduct was unlawful; provided, that SPP shall not provide indemnification of any conduct judged unlawful in criminal proceedings. When acting in official capacity, the incumbent must have reasonably believed that conduct was in the best interests of SPP, and, when acting in any other capacity, must have reasonably believed that conduct was at least not opposed to the best interests of the SPP.
- b. If the proceeding was brought by or on behalf of the SPP, however, indemnification shall be made only with respect to reasonable expenses referenced above. No indemnification of any kind shall be made in any such proceeding in which the director, officer, agent, employee, or other representative shall have been adjudged liable to SPP.
- c. In no event, however, will indemnification be made with respect to any described proceeding which charges or alleges improper personal benefit to a director, officer, agent, employee, or other representative and where liability is imposed on the basis of the receipt of such improper

- personal benefit.
- d. In order for any director, agent, employee, or other representative to receive indemnification under this provision, the person shall vigorously assert and pursue any and all defenses to those claims, charges, or proceedings covered herein which are reasonable and legally available and shall fully cooperate with SPP or any attorneys involved in the defense of any such claim, charges, or proceedings on behalf of SPP.
 - e. No indemnification shall be made in any specific instance until it has been determined by SPP that indemnification is permissible in that specific case, under the standards set forth herein and that any expenses claimed or to be incurred are reasonable. These two (2) determinations shall be made by a majority vote of at least a quorum of the Board consisting solely of directors who were not parties to the proceeding for which indemnification or reimbursement of expenses is claimed. If such a quorum cannot be obtained, a majority of at least a quorum of the full Board, including directors who are parties to said proceeding, shall designate a special legal counsel who shall make said determinations on behalf of SPP.
 - f. Any reasonable expenses, as shall be determined above, that have been incurred by a director, officer, agent, employee, or other representative who has been made a party to a proceeding as defined herein, may be paid or reimbursed in advance upon a majority vote of a quorum of the full Board of Directors, including those who may be a party to the same proceeding. However, such director, officer, agent, employee, or other representative shall have provided SPP with (i) a written affirmation under oath that the incumbent, in good faith, believes the conditions of indemnification herein have been met, and (ii) a written undertaking that the incumbent shall repay any amounts advanced, with interest accumulated at a reasonable rate, if it is ultimately determined that such conditions are not met. In addition to the indemnification and reimbursement of expenses provided herein, the President shall, if reasonably practical, purchase insurance that would protect the SPP, its directors, officers, agents, employees, or other representatives against reasonably expected liabilities and expenses arising out of the performance of their duties for the SPP.

3.15.4 Limitations

The provisions of this section are subject to applicable state and federal laws, if any, which limit the ability of a Member to waive liability or enter into agreements of indemnity. Any benefits under this section 3.15 shall not extend to any Member so limited by state or federal law in complying with the provisions thereof.

3.16 Compliance Monitoring

Compliance monitoring of Members and Staff shall be performed to ensure compliance with all

requirements of Membership. SPP compliance monitoring functions shall be performed in concert with related NERC programs. Compliance monitoring shall be an after-the-fact investigative and assessment function. Compliance monitoring functions shall be provided by SPP Staff, independent and separate from security coordination and tariff administration functions. Compliance monitoring functions shall include but are not limited to:

- a. Investigation of all reports or discoveries of non-compliance with approved SPP Bylaws, Criteria, Transmission Tariff, agreements between SPP and its Members and NERC policies and standards,
- b. Access to all information needed to investigate all facets of possible non-compliance,
- c. Performance of in-depth reviews of operations upon approval from the Compliance Working Group,
- d. Comprehensive compliance audits when recurring issues covering a broad spectrum of violations are determined and documented,
- e. Imposition of financial penalties and/or sanctions for non-compliance pursuant to approved Standards, Policies and/or Criteria,
- f. Monitoring the behavior of transmission owners and users and generators to determine if there are any attempts to create transmission constraints to exclude competitors or any other behavior that undermines the provision of transmission service,
- g. Utilization of dispute resolution procedures as necessary to resolve conflicts, and
- h. Coordination of policy modifications to clearly define requirements, standards, and penalties in order to objectively monitor compliance.

4.0 BOARD OF DIRECTORS

4.1 Duties

The Board of Directors shall manage, control and direct the general business of SPP and its duties shall include, but are not limited to the following:

- a. Direct activities of all SPP Organizational Groups,
- b. Select and review the SPP President and Corporate Secretary, who shall serve at the pleasure of the Board of Directors,
- c. Determine positions, duties, qualifications, salaries, benefits and other necessary matters pertaining to the SPP Staff,
- d. Review, approve, disapprove or recommend revision to the actions of any committee, working group, or task force,
- e. Act on appeals,
- f. Approve or revise the annual budget and any additional expenditures,

- g. Convene a Meeting of Members at least annually and additionally as necessary,
- h. Approve amendments to these bylaws,
- i. Approve SPP Criteria containing planning and operating standards and policies and penalties for non-compliance with such Criteria, and
- j. Authorize filings with regulatory bodies.

4.2 Composition and Qualifications

4.2.1 Composition

Provided that Membership is sufficient to accommodate these provisions, the Board of Directors shall consist of 21 persons. Seven directors shall be representatives of Transmission Owning Members, seven directors shall be representatives of Transmission Using Members, and seven directors shall be independent of any Member. Within the Transmission Owning sector, at least two directors shall be representatives of non-investor owned utilities. Within the Transmission Using Member sector, 2 directors shall be representatives of municipal Members (including municipal joint action agencies), 2 directors shall be representatives of cooperative Members and 3 directors shall be representatives of marketer and/or independent power producer and/or other Members. The President shall serve as one of the seven independent directors; provided, that the President shall be excluded from voting on business related to the office of President or the incumbent of that office. No other Staff member shall be permitted to serve as a director. If Membership is insufficient to accommodate these provisions the Nominating Task Force shall make appropriate recommendations to the Membership; provided, that in no instance shall the number of directors in each sector be unequal.

4.2.2 Qualifications

A Member director shall be an officer or employee of a Member with decision-making responsibility over SPP related activities, and must be the Member's representative to the Membership. Independent directors shall have recent and relevant senior management expertise and experience in one or more of the following utility profession disciplines; finance, accounting, transmission or generation planning or operation, law and regulation, commercial markets, and trading and associated risk management. Independent directors shall not be a director, officer, or employee of, and shall have no direct business relationship, financial interest in, or other affiliation with, a Member or customer of services provided by SPP. Independent directors may indirectly own any securities through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted towards the electric industry or any segments thereof) under which the director does not control the purchase or sale of such securities. Participation in a pension plan of a Member or customer shall not be deemed to be a direct financial benefit if the Member's or customer's financial performance has no material effect on such pension plan.

4.3 Term and Election

Except for the President, directors shall be elected each year at the Meeting of Members to staggered three year terms commencing upon election and continuing until their duly elected successors take office.

Initial staggering of terms will be decided by lottery within each sector. The election process shall be as follows:

- a. At least three months prior to the Meeting of Members when election of new directors is required, the Chair of the Board of Directors shall appoint a Nominating Task Force of six representatives consisting of three representatives from each Membership sector of the Board of Directors,
- b. The Nominating Task Force shall nominate persons equal in number to the directors to be elected, with representatives nominating persons solely for their respective Membership sector, and all six representatives nominating persons for the independent sector,
- c. At least one month prior to the Meeting of Members, the Nominating Task Force shall notify the President in writing of the persons it nominates for election as directors, specifying the nominee for any vacancy to be filled. The President shall prepare the ballot accordingly, leaving space for additional names, and shall deliver same to Members at least two weeks prior to the Meeting of Members,
- d. For purposes of electing directors only, all Members with Affiliate Relationships shall be limited to a single vote within a single Membership category. These Affiliate Relationship Members are free to specify the Membership category in which to cast their vote in cases where Membership is held in both Membership categories and such election shall remain in effect for three years,
- e. At the Meeting of Members, any additional nominee or nominees may be added to the ballot if a motion is made and seconded from within the Membership category to add such nominee or nominees, or if from the entire Membership to add a nominee for an independent director, and
- f. At the Meeting of Members, the required number of directors shall be elected by written ballot. Each Member shall be entitled to vote for each nominee of its choice from within its Membership category and for each independent nominee of its choice, but not for more nominees than the number of directors to be elected in each such category. The Member candidates receiving the most votes within each Membership category will fill Member director vacancies. The six independent candidates receiving the highest percent of the average of approving vote ratios within each Membership category will fill independent director vacancies.

4.4 Resignation and Removal of Directors

Any director may resign by written notice to the President noting the effective date of the resignation. If the resignation notice does not include an effective date, the resignation shall take effect upon receipt of

the notice by the President. The Membership may remove a director with cause, by an affirmative vote taken in the same manner as the director was elected. Removal proceedings may only be initiated by a petition signed by not less than twenty percent of the Members. The petition shall state the specific grounds for removal and shall specify whether the removal vote is to be taken at a special Meeting of Members or at the next regular Meeting of Members. A director sought to be removed shall be given fifteen days to respond to the petition in writing to the President.

4.5 Vacancies

If a vacancy occurs the Board of Directors will elect an interim director representing the same Membership category to serve until a replacement director is elected and takes office. A special election shall be held at the next Meeting of Members to fill the vacancy for the unexpired term. The replacement director shall take office immediately following the election.

4.6 Functioning of the Board of Directors

In reaching any decision and in considering the recommendations of any Organizational Group, the Board of Directors shall abide by the principles in the SPP Articles of Incorporation and these Bylaws.

4.6.1 Meetings and Notice of Meetings

The Board of Directors shall meet at least three times annually and additionally upon the call of the Chair or upon concurrence of at least seven directors. At least fifteen days' written notice shall be given to each director by the President of the date, time, place and purposes of a meeting of the Board of Directors, unless such notice is waived by the Board of Directors. Telephone conference meetings may be called as appropriate by the Chair with at least one day prior notice.

4.6.2 Chair and Vice Chair; Election and Terms

The Board of Directors shall elect from its membership a Chair and a Vice Chair for two year terms, commencing upon election and continuing until their duly-elected successors take office or until their term as a director expires without reelection. The Vice Chair shall act for the Chair at the request of the Chair; or in the event the Chair should become incapacitated and unable to discharge the functions of the office; or the office of Chair becomes vacant, until the next regularly scheduled meeting of the Board of Directors, at which meeting a new Chair shall be elected by the Board of Directors to fill the vacancy. The Chair shall appoint a director to fill a vacant Vice Chair position until the next meeting of the Board of Directors.

4.6.3 Quorum and Voting

Two-thirds of the directors shall constitute a quorum of the Board of Directors; provided, that a lesser number may adjourn the meeting to a later time. Decisions of the Board of Directors shall be by two-thirds majority vote of the directors present or represented by proxy and voting. To facilitate timely administration, voting by mail may be used for actions outside of regular or called meetings. Voting by mail will occur only at the direction of the Chair and the action must have a motion and second by Members of the Board of Directors. Voting by mail will be expeditiously administered by the Staff Secretary by any widely available means. The outcome of votes taken by mail will be reported at the next meeting of the Board of Directors and recorded in the meeting minutes.

4.6.4 Compensation of Independent Directors

Independent directors shall receive compensation as established by the Membership and shall be reimbursed for actual expenses reasonably incurred or accrued in the performance of their duties.

4.6.5 Executive Session

Executive sessions (closed to all but directors and parties invited by the Chair) shall be held as necessary upon agreement of the Board of Directors to safeguard confidentiality of sensitive information regarding employee or legal matters.

5.0 ORGANIZATIONAL GROUPS REPORTING TO THE BOARD OF DIRECTORS

This section describes the Organizational Groups reporting to the Board of Directors and their general scope responsibilities. Nothing in this section is meant to limit the responsibilities or activities of these Organizational Groups in their efforts to fulfill SPP's mission.

5.1 Operations Policy Committee

Representatives to the Operations Policy Committee shall be the officer or employee designated by each Member. The Operations Policy Committee shall:

- a.** Recommend practices for system design, regional transmission service tariff, interconnection, and operation that will help to assure efficient and reliable power supply among the systems in SPP,
- b.** Continue coordination of its efforts with the efforts of NERC, including periodic review of NERC Policies and Standards and their applicability to SPP and its Members,
- c.** Review Member operating plans and problems that are pertinent to SPP planning and operation,
- d.** Maintain an annual series of load flow and short circuit models and associated stability data bases representing the current and planned electric network of the region, and maintain a data base of all transmission facilities within SPP,
- e.** Review and assess the current and planned electric system of the region,
- f.** Make use of studies available from other regions,

- g.** Recommend to the Board of Directors criteria for planning and operations,
- h.** Coordinate interregional and intraregional plans and facilitate planning and operations between interregional and intraregional entities,
- i.** Develop a coordinated plan for intraregional transmission for greater efficiency and reliability of electric power supply,
- j.** Recommend to the Board of Directors and to Members, individual or joint action to improve the operation of the systems comprising SPP, and
- k.** Respond to activities as requested by the Strategic Planning Committee,
 - l.** Monitor the current state and evolution of the electric energy supply industry and proactively recommend commercial practices that meet industry needs and promote commerce,
 - m.** Work with all SPP Organizational Groups to promote a high standard of operational reliability, and
 - n.** Continue coordination of its effort with the effort of the North American Energy Standards Board (NAESB) and the ISO/RTO Council (IRC), including periodic review of NAESB business practices and IRC policies and their applicability to SPP and its members.

5.2 Strategic Planning Committee

The Strategic Planning Committee (SPC) reports to and is subject to the control of the Board of Directors. The Strategic Planning Committee is responsible for the development and recommendation to the Board of Directors of strategic direction for the corporation. The SPC is to be comprised of at least eight and no more than twelve members, including a Chair and Vice Chair, who are appointed by the Board of Directors pursuant to SPP Bylaws. At all times, a majority of the members must be elected Directors. Every attempt will be made to maintain a membership with balanced representation from Transmission Owning Members and Transmission Using Members. At least two members will be non-stakeholder Directors with one being the SPP President. Business shall be done in accordance with SPP Bylaws. There are no term limitations. The Strategic Planning Committee shall:

- a.** Gather information from SPP members, customers, Staff, regulatory jurisdictions, market monitors, and legislative bodies on industry trends, forecasts and directions.
- b.** Assess the industry environment in which SPP will be operating.
- c.** Assess SPP's capabilities and competencies against the industry environment, including coordination with neighboring entities.
- d.** Develop and recommend to the SPP Board of Directors a mission and vision statement and accompanying goals and objectives as needed.

- e. Formulate strategies to ensure achievement of SPP's mission statement, goals, objectives and responsibilities and recommend necessary modifications to SPP processes to carry out these strategies.
- f. Work with other SPP organizational groups in developing related action plans, schedules and budgets.

5.3 Employee Benefits Working Group

The Employee Benefits Working Group reports to and is subject to the control of the Board of Directors with representatives named by the Board of Directors. The Employee Benefits Working Group shall:

- a. Interpret SPP employee benefit plans for intent and ambiguity,
- b. Resolve all questions concerning eligibility for benefits,
- c. Compute the amount of benefits payable under the plans,
- d. Employ persons to render advice under the plan,
- e. Appoint trustees and define rights, powers and duties of trustees,
- f. Evaluate performance of investment managers,
- g. Adopt rules and regulations of the plan,
- h. Recommend amendments to the plan,
- i. Establish a claims procedure,
- j. Establish and carry out funding policy,
- k. Annually in July evaluate performance of investments,
- l. Annually in September review the employee compensation plan, and
- m. Make recommendations to the Board of Directors as necessary to; appoint and remove investment managers for all plans, designate portion of contribution to the plans, participate in trust agreement, direct trustee concerning payments made out of trust fund, set investment goals, employ consultants to advise on plans, amend all plans, terminate plans, and authorize participation in all plans.

5.4 Compliance Working Group

The Compliance Working Group reports to and is subject to the control of the Board of Directors with six representatives named by the Board of Directors. This Working Group shall oversee the process of monitoring compliance to SPP and NERC policies and shall:

- a. Independently review activities of the Staff,
- b. Hear and rule on appeals from Members regarding penalty assessment or fine distribution prior to dispute resolution proceedings,
- c. Recommend criteria changes necessary for enforcement of mandatory compliance and in

response to unclear enforcement provisions of criteria, and

- d. Grant specific additional authority to the Staff's compliance monitoring function when needed to perform challenging investigations.

5.5 Finance Working Group

The Finance Working Group reports to and is subject to the control of the Board of Directors with three representatives named by the Board of Directors. This Working Group shall oversee SPP finances and shall:

- a. Review a preliminary budget prepared by the SPP Staff and recommend an annual budget for consideration of the Board of Directors,
- b. Review quarterly statements of actual expenses versus budget and make reports to the Board of Directors,
- c. Review the annual audit and make a report to the Board of Directors, and
- d. Provide guidance to the Staff in finance decisions.

6.0 NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

SPP participates as a regional organization in NERC activities. The Board of Directors shall appoint representatives to NERC organizational groups as necessary. SPP may pay associated travel expenses of these representatives upon receipt by the President of an expense report as normally filed within the representative's system.

7.0 FISCAL ADMINISTRATION

All Members shall provide financial support to pay all costs and expenses authorized by the Board of Directors. The fiscal year shall coincide with the calendar year.

7.1 Operating Budget

The SPP Staff and the Finance Working Group will prepare an annual budget of expenditures for the next fiscal year and an estimate for an additional two years. The proposed budget shall be submitted to the Board of Directors not less than two weeks prior to the meeting at which the budget is to be considered for approval. Once approved by the Board of Directors, the budget shall constitute the authority for expenditures for the ensuing year. Modifications to the budget during the fiscal year must be recommended to the Board of Directors by the Finance Working Group. The President shall have the authority to approve unbudgeted expenditures of up to \$250,000 individually or in the aggregate during the fiscal year. The President may approve unbudgeted expenditures in excess of \$250,000 but less than \$1,000,000 with the concurrence of the Finance Working Group. Unbudgeted expenditures in excess of

\$1,000,000 require prior approval of the Board of Directors.

7.2 Annual Membership Fee

All SPP members will be subject to an annual membership fee to recover the cost incurred by the SPP related to maintaining reliability criteria and related compliance. Members without "Net Energy for Load" will pay an annual membership fee of \$6,000, or as otherwise established by the Board of Directors. The SPP Board of Directors shall determine the annual membership fee for the upcoming year at the Annual Meeting of Members. Those members serving load will be subject to a fee based on their annual Net Energy for Load for the preceding year, all other members will be subject to a flat fee. SPP will not refund membership fees.

7.3 NERC Assessment

The NERC assessment is to be a direct pass-through and will be charged to the membership per the assessment formula outlined below at the time SPP is invoiced by NERC:

$$A = [0.25(1/N) + 0.75(B/C)] X,$$

where; A = Member's Share of NERC Assessment,
 N = Total number of Members,
 B = The Member's previous year Net Energy for Load within SPP,
 C = Total of factor B for all Members, and

X = Actual NERC Assessment to SPP

7.4 Monthly Assessments

SPP will assess all costs not otherwise collected via a monthly assessment. Costs recovered under the assessment will include all operating, financing, and capital costs associated with the performance of SPP's functions as assigned by the Board of Directors. Significant among these are costs associated with regional security coordination and the provision of transmission service. SPP shall determine the assessment rate based on its annual budgeted net expenditures divided by estimated annual Schedule 1-A billing units for service sold under SPP's tariff and member load eligible to take, but not taking, Network Integration Transmission Service under SPP's tariff. The SPP Board of Directors may review the assumptions used in determining the assessment rate at any time and may adjust the assessment rate appropriately should conditions warrant. Each load-serving member shall then be assessed the monthly assessment rate applied to its load eligible to take Network Integration Transmission Service under the SPP tariff. Further, each load-serving member shall receive a credit against the monthly assessment for that month's Schedule 1-A fees paid for Network Integration Transmission Service and for Point-to-Point Transmission Service that had a delivery point within the SPP region, under SPP's transmission service tariff.

7.5 Fiscal Agent

The President shall serve as the Fiscal Agent of SPP. The President shall keep an up-to-date record of receipts and disbursements and furnish reports to the Board of Directors and the Finance Working Group.

7.6 Auditors

The Finance Working Group shall annually engage an independent certified public accounting firm to perform an annual audit of SPP's financial records and prepare a report on the financial condition of SPP.

The Finance Working Group shall present the audit report to the Board of Directors upon completion.

7.7 Financial Obligation of Withdrawing Members

The financial obligation of a withdrawing or a terminated Member, in conjunction with terms and conditions of SPP's membership agreement, is calculated as follows:

$$A = [0.25(1/N) + 0.75(B/C)] X,$$

where; A = Member's withdrawal or termination obligation,
N = Total number of Members,
B = The Member's previous year Net Energy for Load within SPP,
C = Total of factor B for all Members, and
X = SPP long-term financial obligations.

8.0 AMENDMENTS

Except for modifications to Section 4.0, BOARD OF DIRECTORS, these Bylaws may be amended, repealed, or added to in the same manner as any other business before the SPP organizational structure, culminating with approval of the Board of Directors. Section 4.0 of these Bylaws and the Articles of Incorporation may be amended, repealed, or added to only by approval of the Membership.

9.0 EFFECTIVE DATE AND TRANSITION PROVISIONS

These Bylaws shall become effective February 19, 2002 and remain in force thereafter as may be amended. These Bylaws hereby cancel and supersede SPP Bylaws dated January 1, 2000; provided, that these Bylaws do not relieve any Member from any financial obligation incurred thereunder. Binding obligations entered into by authority of officers or the Board of Directors under these Bylaws are hereby assumed and confirmed as obligations of SPP under these Bylaws.

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.)	
)	
_____)	

**ORDER GRANTING DEBTORS' MOTION TO REJECT THE APPLICATION AND
MEMBERSHIP AGREEMENT WITH SOUTHWEST POWER POOL, INC.**

Upon the motion,¹ dated May 21, 2004 (the "Motion") of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors and debtors-in-possession (collectively, the "Debtors"), for authority reject the Application and Membership Agreement (the "Contract"), dated October 30, 1995, between Southwest Power Pool, Inc. ("SPP") and Mirant Americas, Inc. ("MAI"), pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"); and it appearing that the Court has jurisdiction over this matter; and it

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

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 Contract is rejected effective as of the date this Order is entered; it is further

ORDERED that, pursuant to the *Order Pursuant To Bankruptcy Rule 3003(c) For Entry Of An Order (I) Establishing A Bar Date For Filing Certain Proofs Of Claim; (II) Establishing Ramifications For Failure To Comply Therewith; (III) Approving Proof Of Claim Form And Consolidated Notice Of (A) Case Commencement, (B) Bar Date, and (C) Meeting Of Creditors Under Section 341(a) of the Bankruptcy Code; And (IV) Approving Notice And Publication Procedures*, entered on August 21, 2003, the last date to file a timely proof of claim against the Debtors arising from the rejection of the Contracts is the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of this Order.

IT IS SO ORDERED.

Dated: June ____, 2004

D. Michael Lynn,
United States Bankruptcy Judge