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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, et al.,	)	Case No. 03-46590(DML)11
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date and Time: February 4, 2004; 12:00 p.m.

DEBTORS' MOTION FOR APPROVAL OF (1) SETTLEMENT AGREEMENT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND (2) REJECTION OF TRANSPORTATION AGREEMENT WITH TENNESSEE GAS PIPELINE COMPANY

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

Mirant Corporation and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") for authorization to enter into a settlement agreement, the key terms of which include (1) the release of certain claims of the Debtors against Tennessee Gas Pipeline Company ("TGP"), (2) the rejection of a transportation agreement dated November 1, 2000 (the "Transportation Agreement") with TGP with rejection damages to be satisfied through a draw on an existing letter of credit. The settlement agreement (the "Settlement Agreement") is appended hereto as Exhibit 1, and its key terms are summarized herein.

I. PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), certain of the Debtors (collectively, the "Initial Debtors") filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code").[1] On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the "New Debtors") commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the "Wrightsville Debtors"). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP; and (ii) Mirant Americas Energy Capital Assets, LLC (the "MAEC Debtors" and collectively with the Initial Debtors, the New Debtors, and the Wrightsville Debtors, the "Debtors"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

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

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[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 Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

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

II. FACTUAL BACKGROUND

A. The Debtors' Business Operations.

1. Mirant and its direct and indirect subsidiaries comprise one of the world's largest generators and marketers of electricity. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers in North America, the Philippines and the Caribbean. Mirant's core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

2. Mirant employs thousands of employees worldwide, some of whom are based at Mirant's corporate headquarters in Atlanta and most of whom are based at operating facilities. In 2002, Mirant recorded a $542 million loss in earnings before interest, taxes and

depreciation on a consolidated basis. Its 2002 operating revenues were approximately $6.4 billion.

B. The Transportation Agreement.

3. Effective November 1, 2000, MAEM and TGP entered into the Transportation Agreement. The Transportation Agreement provides for transportation service under TGP's Rate Schedule FT-A for a maximum daily quantity of 59,000 dth/d, and had a primary term of approximately 1 year. The parties subsequently amended the Transportation Agreement to provide for (1) reduced capacity and (2) a term to extend through March 31, 2007.

4. To secure the payments due under the Transportation Agreement, the Debtors procured a $2.5 million letter of credit issued by Wachovia Bank, N.A. in favor of TGP.

C. The Debtors' Business Judgment Analysis.

5. Soon after the commencement of these cases, the Debtors began analyzing a number of their executory contracts with the goal of identifying unprofitable contracts that they should reject within their business judgment. Among those contracts was the Transportation Agreement. MAEM entered into the Transportation Agreement for the purpose of purchasing capacity to service contracts with third parties that are no longer part of MAEM's portfolio. Thus, the Transportation Agreement no longer serves its intended purpose. The Debtors conducted an analysis to determine whether it would benefit the Debtors' estates to attempt to market the capacity or assign the Transportation Agreement to a third party. The Debtors determined that the terms of the Transportation Agreement are significantly above market and therefore it would not be beneficial for the Debtors to market the capacity or assign the Transportation Agreement to a third party. The Debtors have therefore determined to reject the Transportation Agreement.

6. Recognizing that the Transportation Agreement is of no benefit to the estates, MAEM commenced negotiations with TGP regarding a global compromise that would

benefit both the Debtors' estates and TGP by limiting TGP's rejection damage claim and enabling TGP to immediately begin marketing the excess capacity available under the Transportation Agreement. The Settlement Agreement is the product of those negotiations.

D. Summary of Settlement Agreement.

7. The key terms of the Settlement Agreement are:[2]

- MAEM will reject the Transportation Agreement effective as of the date of the entry of the order granting this Motion.
- In full satisfaction of TGP's claims arising out of MAEM's rejection of the Transportation Agreement, the Debtors will pay TGP $620,000, which payment will be satisfied through a draw by TGP upon an existing letter of credit.
- The Debtors and TGP will execute mutual releases with respect to all claims and/or potential claims relating to or arising from MAEM's rejection of the Transportation Agreement.

III. RELIEF REQUESTED

8. By this Motion, the Debtors hereby request Court approval of the Settlement Agreement. As part of the Settlement Agreement, both parties have agreed to release certain claims against one another and satisfy rejection damages through a draw by TGP in the amount of $620,000 pursuant to an existing letter of credit. The Debtors hereby seek approval of that aspect of the settlement under Rule 9019 of the Federal Rules of Bankruptcy Procedure. A second major aspect of the Settlement Agreement is that MAEM will reject the Transportation Agreement, effective as of the date of the entry of the order granting this Motion. The Debtors hereby seek approval of MAEM's rejection of the Transportation Agreement under section 365 of the Bankruptcy Code.

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[2] Note that this motion includes only a summary of the key terms of the Settlement Agreement. Parties should refer directly to the provisions of the Settlement Agreement for more detailed information.

IV. APPLICABLE AUTHORITY

A. The Court Should Approve the Settlement Agreement Under Rule 9019.

9. Bankruptcy Rule 9019(a) provides, in part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve compromises and settlements if they are "fair and equitable and in the best interest of the estate." *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5th Cir. 1997); *see also*, *In re Zale Corp.*, 62 F.3d 746, 754 (5th Cir. 1995) (stating that "the 'fair and equitable' determination does not give the bankruptcy court jurisdiction over settlement conditions that do not bear on the court's duties to preserve the estate and protect creditors."). A decision to accept or reject a compromise or settlement is within the sound discretion of the Court. *See* 9 *Collier on Bankruptcy* ¶ 9019.02 (15th ed. Rev. 2001). "Compromises are favored in bankruptcy" because they minimize the costs of litigation and further the parties' interest in expediting administration of a bankruptcy estate. *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)). The settlement need not result in the best possible outcome for the debtor, but must not "fall beneath the lowest point in the range of reasonableness." *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the process of evaluating proposed settlements, then, is "the need to compare the terms of the compromise with the likely rewards of litigation." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson,* 390 U.S. 414, 425 (1968).

10. A Court will consider the following factors when determining whether a settlement is fair and equitable: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *See*, *Cajun Electric*, 119 F.3d at 356 (citations omitted).

11. It is likely that TGP would assert a rejection damage claim against MAEM in the approximate amount of $2.5 million, representing the present value of fixed capacity payments over the remaining life of the Transportation Agreement. Accordingly, given (1) the uncertainties associated with litigating TGP's rejection damage claim, (2) the risk of a large rejection damage judgment against the estates and (3) the availability under the letter of credit to satisfy the agreed-upon amount of TGP's rejection damage claim against the estates, the proposed compromise is certainly reasonable and in the best interest of the estates.

V. CONCLUSION

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

Dated: Fort Worth, Texas
January 12, 2004

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-and-

By /s/ Michelle C. Campbell

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Application upon all persons listed below and on the Limited Service List via first class mail, postage prepaid on the 12th day of January, 2004.

Tennessee Gas Pipeline Company
9 Greenway Plaza, GW 9-977
Houston, TX 77046

Christopher Young
Tennessee Gas Pipeline
Nine Greenway Plaza
Suite 1882
Houston, TX 77046

/s/ Michelle C. Campbell

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement"), entered into as of December 15, 2003, is by and among Mirant Corporation ("Mirant Corp."), Mirant Americas Energy Marketing, LP ("Mirant") and Tennessee Gas Pipeline Company ("TGP"). TGP, Mirant Corp. and Mirant shall hereinafter sometimes be referred to separately as "Party" or collectively as "Parties."

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

WHEREAS, the Debtors have the right, after notice and approval of the Bankruptcy Court in the Proceeding, to reject executory contracts under Section 365 of the U.S. Bankruptcy Code;

WHEREAS, TGP and Mirant are Parties to a transportation agreement dated November 1, 2000, which provides for transportation service under TGP's Rate Schedule FT-A for a Maximum Daily Quantity ("MDQ") of 59,000 dth/d with a primary term from November 1, 2000 to October 31, 2001 ("Transportation Agreement"); and

WHEREAS, on February 5, 2001, the aforementioned capacity was placed in a Right of First Refusal ("ROFR") open season in which other bids for this capacity were received. Mirant elected to match certain bid(s) for the capacity, but for a reduced MDQ effective April 1, 2003. Therefore, on that date the transportation agreement was amended as follows: (i) the MDQ was reduced to 41,010 dth/d and (ii) the contract term was extended to March 31, 2007 (the "Amended Transportation Agreement"; and

WHEREAS, Mirant has released, on a non-recallable basis, 11,910 dth/d of the Amended Transportation Agreement capacity to Consolidated Edison Company of New York, Inc. "ConEd" for a primary term from April 1, 2003 to March 31, 2004, at a discounted rate of 1.57 cents less than TGP's maximum daily demand rate (the "ConEd Release"); and

WHEREAS, Mirant has released, on a non-recallable basis, 29,100 dth/d of the Amended Transportation Agreement capacity to Sempra Energy Trading Corp. ("Sempra") for a primary term from April 1, 2003 to October 31, 2004, at TGP's maximum tariff rates (the "Sempra Release")(collectively, the ConEd Release and the Sempra Release shall be referred to herein as the "Releases");

WHEREAS, Mirant expressed a desire to reject the Amended Transportation Agreement pursuant to section 365 of the Bankruptcy Code and TGP indicated that it would assert claims in the Proceeding against the Debtors for any damages they would incur as a result of the proposed rejection of the Amended Transportation Agreement; and

WHEREAS, the Parties desire to settle any claims that TGP would have as a result of the rejection of the Amended Transportation Agreement and objections TGP would have to any motion to reject filed in the Proceeding.

WHEREAS, the Parties have agreed to the rejection of the Amended Transportation Agreement, the amount of rejection damages and the form, timing, and payment of such damages; and.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, TGP and Mirant, each for itself and for its successors and permitted assigns, hereby agree to as follows:

1. **Settlement Payment.** In full and final satisfaction of all claims of TGP as more fully outlined in Paragraph 5, Mirant shall pay TGP the amount of $620,000 (the "Settlement Payment"). TGP, Mirant and Mirant Corp. agree that such payment shall be made and satisfied through a draw by TGP upon the existing letter of credit issued by Wachovia Bank, N.A. and numbered as SM421733W, which is held by TGP as security. TGP shall be entitled to make such draw upon the above-described letter of credit for the liabilities and obligations of Mirant and Mirant Corp. to TGP upon the Effective Date of this Agreement.

2. **Bankruptcy Court Approval; Effective Date.** The receipt of Bankruptcy Court approval of this Agreement is a condition precedent to the effectiveness of this Agreement. In the event the Parties are unable to obtain such approvals, this Agreement will be deemed null and void. The Parties agree, however, to work cooperatively and in good faith to obtain that approval promptly. The effective date of this Agreement will be the date on which the rejection of the Amended Transportation Agreement contemplated by Paragraph 6 is approved by the Bankruptcy Court (the "Effective Date"). The Parties agree that approval of the rejection by the Bankruptcy Court shall effectively act as the termination of the Amended Transportation Agreement for all purposes.

3. **Capacity Releases.** The Parties agree that the Releases shall remain in effect and each Party shall continue to perform as required thereunder until their respective expiration dates; provided, however, that Mirant, its respective successors and permitted assigns, and its and their directors, officers, employees and agents shall be indemnified and held harmless by TGP from and against any and liabilities and obligations, whether arising as a matter of law, in tort, by contract or otherwise, losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including attorneys' and consultants' fees and disbursements), arising out of, related to or resulting from TGP's breach of the Releases on or after the Effective Date of this Agreement. Upon completion of the terms of the Releases all capacity related thereto will revert back to TGP. Mirant warrants to TGP that no other releases of capacity exist other than the ConEd and Sempra Releases.

4. **Release of Claims by Mirant.** Upon the Effective Date of this Agreement, Mirant, on behalf of itself and its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, does hereby release, acquit and forever discharge TGP, its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, parents, affiliates, subsidiaries, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors , of and from any and all, joint and/or several claims, charges, demands, damages, actions, causes of action, suits in equity, expenses, executions, judgments, levies, liabilities, losses, attorneys' fees, liquidated or unliquidated, fixed, contingent, direct or indirect, whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to the Parties, relating to or arising out of any claim for damages for rejection of the Amended Transportation Agreement as contemplated in Paragraph 6 below.

5. **Release of Claims by TGP.** Upon the Effective Date of this Agreement, TGP, on behalf of itself and its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors, does hereby release, acquit and forever discharge Mirant, its owners, successors, heirs, assigns, executors, administrators, predecessors, legal representatives, parents, affiliates, subsidiaries, divisions, associates, representatives, principals, agents, servants, employees, shareholders, officers and directors , of and from any and all, joint and/or several claims, charges, demands, damages, actions, causes of action, suits in equity, expenses, executions, judgments, levies, liabilities, losses, attorneys' fees, liquidated or unliquidated, fixed, contingent, direct or indirect, whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to the Parties, relating to or arising out of any claim for damages for rejection of the Amended Transportation Agreement as contemplated in Paragraph 6 below.

6. **Rejection of the Amended Transportation Agreement.** TGP hereby agrees to the rejection of the Amended Transportation Agreement. The Parties shall promptly and jointly move and support its rejection.

7. **Surviving Claims.** Except as provided herein, nothing in this Agreement compromises, discharges or otherwise affects any other dispute between the Debtors and TGP.

8. **Settlement Not an Admission.** Nothing contained in this Agreement shall be deemed an admission of any kind, whether of guilt, liability, or fact, by or against the Parties or their directors, officers, shareholders, agents, employees, representatives, principals, successors, predecessors, assigns, and heirs. Whether or not this Agreement is consummated or approved, neither this Agreement nor evidence regarding any of the events or negotiations leading up to it shall be admissible in any action or proceeding for any purpose other than enforcement of this Agreement

9. <u>Representations, Warranties and Covenants.</u> The Parties represent and warrant to each other and agree with each other as follows:

a. The Parties to this Agreement have received independent legal advice from attorneys of their own choosing with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by each Party, that Party's attorneys reviewed this Agreement at length, and made all desired changes.

b. Except as expressly stated in this Agreement, no Party to this Agreement has made any statement or representation to any other Party to this Agreement regarding any fact relied upon by such other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation, or promise of the other Party in executing this Agreement, except as expressly stated in this Agreement.

c. There are no other agreements or understandings between the Parties to this Agreement except as stated in this Agreement.

d. Each Party to this Agreement, together with its attorneys, has made such investigation of the facts pertaining to this Agreement, and of all the matters pertaining thereto, as it deems necessary.

e. The terms of this Agreement are contractual, not a mere recital, and this Agreement is the result of negotiations between the Parties to this Agreement, each of which has participated in the drafting of this Agreement through its respective attorneys.

f. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by each person executing this Agreement.

g. Each Party to this Agreement has the power and authority to enter into and perform this Agreement, and the execution and performance of this Agreement has been duly authorized by all requisite corporate action.

h. Each Party to this Agreement agrees that such Party will not take any action that would interfere with the performance of this Agreement by any other Party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.

i. In entering into this Agreement, each Party recognizes that no facts or representations are ever absolutely certain; accordingly, except as specifically provided in this Agreement, each Party to this Agreement assumes the risk of any mistake, and if any Party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such Party shall not be entitled to set aside this Agreement by reason thereof except if that fact was

specifically warranted to by the other Party. This Agreement is intended to be final and binding between and among the Parties, regardless of any mistake of fact, mistake of law, or any other circumstances whatsoever. Each Party relies on the said finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

j. No Party to this Agreement has heretofore assigned or transferred or purported to assign or transfer to any person, firm, or corporation whatsoever any actions, causes of action, debts, dues, liabilities, controversies, claims, or demands herein released. Each Party hereto agrees to indemnify and hold harmless each other Party hereto against any actions, causes of action, debts, dues liabilities, controversies, claims, counterclaims, crossclaims, third-party claims or demands based on, arising out of, or in connection with any such transfer or assignment or purported transfer or assignment, including all attorneys' fees and costs incurred in connection therewith.

10. Integration. This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the Parties to this Agreement relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party to this Agreement, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement may not be supplemented or changed orally.

11. Choice of Law. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND SUBJECT TO, THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY LAWS WHICH RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

12. Severability. It is understood and agreed that if any one or more of the provisions contained within this Agreement shall later be found to be void, voidable, ineffective or unenforceable, that finding shall have no affect on the remainder of the Parties' agreements undertakings or considerations which shall remain in full force and effect.

13. Written Amendment. No modification of the terms and provisions of this Agreement shall be made except by the execution by both parties of a written agreement.

14. **Execution in Counterparts.** This Agreement may be executed in as many counterparts as deemed necessary and when so executed shall have the same effect as if all parties had executed the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate originals by their duly authorized officers as of the date first written above.

TENNESSEE GAS PIPELINE COMPANY

By____________________

Title__________________

MIRANT AMERICAS ENERGY MARKETING, LP
By Mirant Americas Development, Inc.
Its general partner

By____________________

Title VP________________

MIRANT CORPORATION

By____________________

Title VP________________