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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Date and Time: March 3, 2004 at 12:00
_____	)	p.m.

**DEBTORS' MOTION FOR APPROVAL OF (I) THE "SETTLEMENT AGREEMENT AND RELEASES" WITH TEXAS EASTERN TRANSMISSION, LP PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (II) REJECTION OF VARIOUS AGREEMENTS WITH TEXAS EASTERN TRANSMISSION, LP PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014**

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

Mirant Corporation ("Mirant") and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this motion (the "Motion") for approval of: (i) the "Settlement Agreement and Releases" (the "Settlement Agreement") among Mirant, Mirant Americas Energy Marketing LP ("MAEM") and Texas Eastern Transmission, LP ("TETCO") pursuant to Rule 9019 of the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”); and (ii) as part of the Settlement Agreement, to reject various agreements, as described in greater detail below, between TETCO and MAEM, effective March 31, 2004, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules.

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **II. PROCEDURAL BACKGROUND**

2. The Cases. Mirant Corporation and 82 of its direct and indirect subsidiaries (the “Debtors”) filed voluntary chapter 11 petitions and 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. 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 in these administratively consolidated cases.

### **III. FACTUAL BACKGROUND**

#### **A. The Transportation and Service Agreements.<sup>1</sup>**

5. On October 31, 2000, MAEM and TETCO entered into Transportation Agreement No. 910016, which provides for transportation services under TETCO’s Rate

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<sup>1</sup> The Transportation and Service Agreements are not attached. Parties in interest may request a copy of the agreements by making a written request to the Debtors’ counsel.

Schedule FT-1 for a maximum daily quantity of 30,000 dth/day on the 24 inch pipe with a primary term from November 1, 2001 to October 31, 2011 (the “First Transportation Agreement”).

6. Also on October 31, 2000, MAEM and TETCO entered into Transportation Agreement No. 910019, which provides for transportation services under TETCO’s Rate Schedule FT-1 for a maximum daily quantity of 100,000 dth/day on the 30 inch pipe with a primary term from November 1, 2001 to October 31, 2008 (the “Second Transportation Agreement”).

7. On July 2, 1993, MAEM and TETCO entered into Transportation Agreement No. 711506, which provides for interruptible transportation services under TETCO’s Rate Schedule IT-1 for a maximum daily quantity of 50,000 dth/day with a primary term from November 1, 1993 to June 30, 1994, and continuing from year to year thereafter (the “Third Transportation Agreement”).

8. Also on July 2, 1993, MAEM and TETCO entered into Transportation Agreement No. B11506, which provides for interruptible backhaul transportation services under TETCO’s Rate Schedule IT-1 for a maximum daily quantity of 50,000 dth/day with a primary term from November 1, 1993 to June 30, 1994, and continuing from year to year thereafter (the “Fourth Transportation Agreement”).

9. On June 22, 2000, MAEM and TETCO entered into Transportation Agreement No. 770213, which provides for interruptible transportation services under TETCO’s Rate Schedule LLIT-1 for a maximum daily quantity of 50,000 dth/day with a primary term from June 22, 2000 to June 21, 2001, and continuing from year to year thereafter (the “Fifth Transportation Agreement”).

10. Also on June 22, 2000, MAEM and TETCO entered into Transportation Agreement No. BB0213, which provides for interruptible backhaul transportation services under TETCO's Rate Schedule LLIT-1 for a maximum daily quantity of 50,000 dth/day with a primary term from June 22, 2000 to June 21, 2001, and continuing from year to year thereafter (the "Sixth Transportation Agreement").

11. On November 25, 1996, MAEM and TETCO entered into Transportation Agreement No. 500161, which provides for interruptible storage services under TETCO's Rate Schedule ISS-1 for a maximum storage quantity of 2,920,000 dth/day, a Maximum Daily Injection Quantity of 15,009 dth/day, and a Maximum Daily Withdrawal Quantity of 48,667 dth/day, with a primary term from November 25, 1996 to November 30, 1997, and continuing from year to year thereafter (the "Storage Agreement" and collectively with the First Transportation Agreement, the Second Transportation Agreement, the Third Transportation Agreement, the Fourth Transportation Agreement, the Fifth Transportation Agreement and the Sixth Transportation Agreement, the "Transportation and Storage Agreements").

12. MAEM's obligations under the Transportation and Storage Agreements are secured by a letter of credit (the "LC") in the aggregate amount of \$4,920,136.00, issued by Wachovia Bank, National Association for the benefit of TETCO.

**B. The Releases.**

13. Mirant has released, on a non-recallable basis, 6,000 dth/day of the capacity provided for in the First Transportation Agreement to Sempra Energy Trading Corp. for a primary term from November 1, 2003 to October 31, 2004, at TETCO's maximum tariff rate (the "Sempra Release").

14. Mirant has released, on a non-recallable basis, 10,000 dth/day of the

capacity provided for in the Second Transportation Agreement to Southern Connecticut Gas Co. (“Southern Connecticut”), for a primary term from November 1, 2003 to October 31, 2008, at TETCO’s maximum tariff rate (the “Southern Connecticut Release”).

15. Mirant has released, on a non-recallable basis, 5,000dth/day of the capacity provided for in the Second Transportation Agreement to Consolidated Edison Energy, Inc. for a primary term from August 1, 2003 to May 31, 2005 at TETCO’s maximum tariff rate (the “ConEd Release”).

16. Mirant has also released, on a recallable basis, 13,000 dth/day of the capacity provided for in the Second Transportation Agreement to Southern Connecticut for the months of November through and including March, for a primary term from November 1, 2002 to March 31, 2007 at TETCO’s maximum tariff rate (the “Southern Connecticut Winter Release” and, collectively with the Southern Connecticut Release, the ConEd Release, and the Sempra Release, the “Releases”).

**C. Summary of Settlement Agreement.**

17. The Debtors commenced negotiations with TETCO in order to reach a compromise that would benefit the Debtors’ estates and avoid litigation between the Debtors and TETCO. The goal of these negotiations was to determine the amount of TETCO’s rejection damage claim against the Debtors’ estates and to establish the effect of the rejection of the Transportation and Service Agreements on the Releases. The parties have successfully reached a compromise, as discussed below.

18. Mirant, MAEM and TETCO hereby request Court approval to enter into

the Settlement Agreement,<sup>2</sup> which is attached hereto as Exhibit A, the principle terms of which include:

- The Debtors will reject the Transportation and Service Agreements effective March 31, 2004.
- The Releases shall remain in effect and all parties shall continue to perform as required thereunder until their respective expiration dates.
- In full and final satisfaction of all claims of TETCO arising under or in connection with the Transportation and Storage Agreements (the “TETCO Claims”): (i) MAEM will pay TETCO the amount of \$4,720,136.00 (the “Settlement Payment”); (ii) MAEM will pay TETCO all amounts due and owing for services provided under the Transportation and Service Agreements, through March 31, 2004 (the “Transportation and Service Agreements Payment”); and (iii) TETCO shall have an allowed, prepetition claim against Mirant and MAEM as a result of the rejection of the Transportation and Service Agreements in the amount of \$20,000,000.00 (the “Allowed Claim”).
- The Settlement Payment will be satisfied by a draw of \$4,720,136.00 by TETCO upon the LC.
- The parties will mutually release all claims and potential claims, including avoidance action claims arising under the Bankruptcy Code, relating to or arising from any payments, proposed amendment, rejection, breach of, or default under the Transportation and Storage Agreements or the LC that occur on or after the date on which the Court may enter an Order approving the Settlement Agreement.<sup>3</sup>

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

19. By this Motion, the Debtors hereby request approval of the Settlement Agreement under Rule 9019 of the Bankruptcy Rules. The Debtors also hereby seek approval of the rejection of the Transportation and Service Agreements under section 365 of the Bankruptcy Code and Rules 6006 and 9014 of the Bankruptcy Rules, effective as of March 31, 2004.

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<sup>2</sup> Unless otherwise defined herein, capitalized terms have the same meanings ascribed to them in the Settlement Agreement.

<sup>3</sup> The Debtors do not believe any such claims exist and the release is merely a formality.

20. The Debtors, moreover, hereby request that TETCO's proof of claim be filed no later than the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of the order granting this Motion.<sup>4</sup>

21. The Debtors specifically direct this Court's attention to the fact that the Transportation and Storage Agreements are contracts over which the Federal Energy Regulatory Commission ("FERC") has certain jurisdictional authority. However, the Debtors submit that the Settlement Agreement and the rejection of the Transportation and Storage Agreements may, and should, be approved by this Court. This is because TETCO has blanket certificate authority to enter into the Transportation and Storage Agreements pursuant to 18 C.F.R. Part 284, Subpart J of FERC's regulations, and, as such, the agreements did not require FERC approval prior to the Debtors and TETCO entering into such agreements. Furthermore, FERC approval is not required in order to terminate the Transportation and Storage Agreements because the blanket certificate authority granted to TETCO contains pre-granted automatic abandonment authority. 18 C.F.R. § 284.221(d).

22. Certainly, if the parties have the authority to enter into and terminate the Transportation and Storage Agreements without seeking individual FERC approval due to TETCO's blanket certificate authorization, they can enter into a consensual settlement agreement that provides for the rejection of such agreements under section 265. Moreover, FERC has been served with this Motion. In sum, the Debtors submit that there is no jurisdictional impediment to

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<sup>4</sup> 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 for a counterparty to a rejected unexpired lease or contract to file a timely proof of claim is the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of the order authorizing rejection of the unexpired lease.

this Court granting the Motion.

## V. BASIS FOR RELIEF

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

23. Rule 9019(a) of the Bankruptcy Rules provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). 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.”).

24. 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)).

25. Furthermore, a settlement need not result in the best possible outcome for the debtor, but must not “fall beneath the lowest point in the range of reasonableness.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Basic to the process of evaluating settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 425 (1968).

26. In order to determine whether a settlement is fair and equitable, this Court

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

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

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

27. The Debtors have determined that outright rejection of the Transportation and Service Agreements could result in damage claims exceeding \$70 million, including damage claims asserted by TETCO and by the parties to the Releases. The Settlement Agreement minimizes these damage claims to approximately \$25 million (exclusive of the Transportation and Storage Agreements Payment). This reduction is accomplished, in part, by allowing the Releases to remain in place until they expire by their own terms, eliminating the damage claims against the Debtors arising thereunder.

28. Assumption of the Transportation and Storage Agreements also is not as beneficial as the settlement memorialized in the Settlement Agreement because the Transportation and Storage Agreements are significantly “out of the money” as to MAEM. Although the Debtors have assigned some of the transportation capacity reserved by the Transportation and Storage Agreements through the Releases, the Debtors continue to lose money on the unassigned portion of the transportation capacity and storage rights. The Debtors have also determined that MAEM will incur significant losses once the Releases end. By rejecting the Transportation and Service Agreements now, the Debtors avoid such future losses.

29. The proposed Settlement Agreement minimizes the Debtors’ losses in regard to the Transportation and Storage Agreements when compared to the alternatives of

assumption or outright rejection. Therefore, this factor weighs in favor of settlement.

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

30. Because of the complexity of the Transportation and Storage Agreements, specifically due to the large number of Releases thereunder, litigation regarding the rejection damage claim would be complex and quite possibly involve expert testimony. Moreover, litigation of TETCO's rejection damage claim might have a detrimental impact on the Debtors' reorganization efforts because some of the Debtors' key personnel and management would be focused on managing such litigation rather than the Debtors' emergence from chapter 11. This factor also weighs in favor of settlement.

31. The Debtors believe that determining the amount of TETCO's rejection damage claim arising from the Transportation and Storage Agreements, and establishing the treatment of the Releases, are beneficial to their estates. Pursuant to the Settlement Agreement and exclusive of the Allowed Claim, TETCO will agree to waive any and all future claims against the Debtors relating to or arising from the rejection of the Transportation and Storage Agreements. The Debtors, in their business judgment, have determined that the terms of the Settlement Agreement are beneficial to the Debtors and hereby requested Court approval to enter into an agreement with substantially the same terms.

(iii) *Other Factors Favoring Settlement.*

32. The Debtors and TETCO are parties to other interruptible transportation agreements that the Debtors are not seeking to reject at this time (the "Interruptible Contracts"). Therefore, the Debtors believe that it is important to maintain a working relationship with TETCO, and that the Settlement Agreement will assist in preserving this relationship.

33. Pursuant to the Settlement Agreement, TETCO has agreed to draw

approximately \$4.7 million on the LC, leaving approximately \$200,000.00 remaining as available credit on the LC to secure the Debtors' obligations under the Interruptible Contracts. This avoids the necessity of the Debtors posting additional collateral, at this time, to secure the Interruptible Contracts and therefore is beneficial to these estates.

**C. The Transportation and Storage Agreements Are Executory Contracts That Should Be Rejected.**

34. 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).

35. The Transportation and Storage Agreements are executory contracts because they require (i) TETCO to provide transportation and storage services to MAEM and (ii) MAEM to pay for these services. Moreover, TETCO's failure to continue to provide these services would constitute a material breach of the Transportation and Storage Agreements, excusing the performance of the other party. Therefore, the Transportation and Storage Agreements are undoubtedly executory contracts that may be rejected under section 365 of the Bankruptcy Code. *See, e.g., In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Power Cooperative, Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

**D. Rejection Of the Transportation and Storage Agreements Is Within the Debtors' Business Judgment.**

36. 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).

37. 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)).

38. In this case, rejection of the Transportation and Storage Agreements is well within the sound business judgment of the Debtors. The Debtors made the decision to reject these agreements based upon their determination that a variety of factors, including depressed market conditions, have resulted in the Transportation and Storage Agreements becoming uneconomical.

39. The Transportation and Storage Agreements are significantly "out of the

money” as to MAEM. Although the Debtors have assigned some of the transportation capacity reserved by the Transportation and Storage Agreements, the Debtors continue to lose money on the unassigned portion of the transportation capacity and storage rights. The Debtors have also determined that MAEM will incur significant losses once the Releases end. By rejecting the Transportation and Storage Agreements now, the Debtors avoid such future losses.

**VI. CONCLUSION**

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

Dated: February 9, 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 provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibit) via U.S. mail, and the addressees set forth below via overnight mail (with exhibit) on the 9th day of February, 2004.

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/s/ Michelle C. Campbell

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement"), entered into as of February 4, 2004, is by and among Mirant Corporation ("Mirant Corp."), Mirant Americas Energy Marketing, LP ("Mirant") and Texas Eastern Transmission, LP ("TETCO"). TETCO, 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");

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

**WHEREAS**, TETCO and Mirant are Parties to a transportation agreement numbered 910016 and dated October 31, 2000, which provides for transportation service under TETCO's Rate Schedule FT-1 for a Maximum Daily Quantity ("MDQ") of 30,000 dth/day on the 24 inch pipe with a primary term from November 1, 2001 to October 31, 2011 (the "First Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to a transportation agreement numbered 910019 and dated October 31, 2000, which provides for transportation service under TETCO's Rate Schedule FT-1 for an MDQ of 100,000 dth/d on the 30 inch pipe with a primary term from November 1, 2001 to October 31, 2008 (the "Second Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to a transportation agreement numbered 711506 and dated July 2, 1993, which provides for interruptible transportation service under TETCO's Rate Schedule IT-1 for an MDQ of 50,000 dth/d with a primary term from November 1, 1993 to June 30, 1994, and continuing from year to year thereafter (the "Third Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to a transportation agreement numbered B11506 and dated July 2, 1993, which provides for interruptible backhaul transportation service under TETCO's Rate Schedule IT-1 for an MDQ of 50,000 dth/d with a primary term from November 1, 1993 to June 30, 1994, and continuing from year to year thereafter (the "Fourth Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to a transportation agreement numbered 770213 and dated June 22, 2000, which provides for interruptible transportation service under TETCO's Rate Schedule LLIT-1 for an MDQ of 50,000 dth/d with a primary term from June 22, 2000 to June 21, 2001, and continuing from year to year thereafter (the "Fifth Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to a transportation agreement numbered BB0213 and dated June 22, 2000, which provides for interruptible backhaul transportation service under TETCO's Rate Schedule LLIT-1 for an MDQ of 50,000 dth/d with a primary term from June 22, 2000 to June 21, 2001, and continuing from year to year thereafter (the "Sixth Transportation Agreement");

**WHEREAS**, TETCO and Mirant are also Parties to an agreement numbered 500161 and dated November 25, 1993, which provides for interruptible storage service under TETCO's Rate Schedule ISS-1 for a Maximum Storage Quantity of 2,920,000 dth, a Maximum Daily Injection Quantity of 15,009 dth/day, and a Maximum Daily Withdrawal Quantity of 48,667 dth/day, with a primary term from November 25, 1996 to November 30, 1997, and continuing from year to year thereafter (the "Storage Agreement"); (collectively, the First Transportation Agreement, the Second Transportation Agreement, the Third Transportation Agreement, the Fourth Transportation Agreement, the Fifth Transportation Agreement, the Sixth Transportation Agreement and the Storage Agreement are hereafter referred to as the "Transportation and Storage Agreements");

**WHEREAS**, to insure payment to TETCO for obligations due and owing in connection with the Transportation and Storage Agreements, Mirant and Mirant Corp., caused Wachovia Bank, National Association ("Wachovia") to issue that certain letter of credit, number SM421240W, as may have been amended from time to time (the "Letter of Credit") in favor of TETCO, among others, as beneficiaries;

**WHEREAS**, Mirant has released, on a non-recallable basis, 10,000 dth/day of the capacity provided for in the Second Transportation Agreement to Southern Connecticut Gas Co. ("Southern Connecticut") for a term from November 1, 2003 to October 31, 2008 at TETCO's maximum tariff rate (the "Southern Connecticut Release");

**WHEREAS**, Mirant has released, on a non-recallable basis, 5,000 dth/day of the capacity provided for in the Second Transportation Agreement to Consolidated Edison Energy, Inc. ("ConEd") for a term from August 1, 2003 to May 31, 2005 at TETCO's maximum tariff rate (the "ConEd Release");

**WHEREAS**, Mirant has released, on a recallable basis, 13,000 dth/day of the capacity provided for in the Second Transportation Agreement to Southern Connecticut for the months of November through and including March (collectively, the "Winter Months"), for a term from November 1, 2002 to March 31, 2007 at TETCO's maximum tariff rate (the "Southern Connecticut Winter Release");

**WHEREAS**, Mirant has released, on a non-recallable basis, 6,000 dth/day of the capacity provided for in the First Transportation Agreement to Sempra Energy Trading Corp. ("Sempra") for a term from November 1, 2003 to October 31, 2004, at TETCO's maximum tariff rate (the "Sempra Release") (collectively, the Southern Connecticut

Release, the ConEd Release, the Southern Connecticut Winter Release, and the Sempra Release shall be referred to herein as the "Releases");

**WHEREAS**, Mirant expressed a desire to reject the Transportation and Storage Agreements pursuant to section 365 of the Bankruptcy Code and TETCO 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 Transportation and Storage Agreements;

**WHEREAS**, the Parties desire to settle any and all claims that any Party would have, or otherwise compromise all disputed or potentially disputed issues, arising from or related to (i) the Transportation and Storage Agreements, including rejection of the Transportation and Storage Agreements (and any objections to such rejection), assertion of rejection damages and payments under the Transportation and Storage Agreements, and (ii) the Letter of Credit (the "Disputed Issues");

**WHEREAS**, the Parties have agreed to resolve the Disputed Issues, including the rejection of the Transportation and Storage Agreements, 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, TETCO, Mirant Corp. and Mirant, each for itself and for its successors and permitted assigns, hereby agree to as follows:

1. **Settlement Payment and Prepetition Claim.** In full and final satisfaction of all claims of TETCO arising under or in connection with the Transportation and Storage Agreements, (i) Mirant shall pay TETCO the amount of \$4,720,136 (the "Settlement Payment"), (ii) Mirant shall pay TETCO all amounts due and owing for service provided through March 31, 2004 under the Transportation and Storage Agreements (the "Transportation and Storage Service Payment"), and (iii) TETCO shall have an allowed, prepetition claim against Mirant (or Mirant Corp.) as a result of the rejection of the Transportation and Storage Agreements in an amount equal to \$20,000,000 (the "Allowed Claim"). TETCO, Mirant and Mirant Corp. agree that payment of the Settlement Payment shall be made and satisfied solely through a draw by TETCO upon the Letter of Credit. Mirant Corp. and Mirant agree that (i) TETCO is entitled to draw under the Letter of Credit for the Settlement Payment due hereunder, (ii) subject to (iii) below, the Settlement Payment is a payment due and owing in connection with the Transportation and Storage Agreements, (iii) the Settlement Payment is immediately due and owing on the Effective Date without any notice or grace period, and (iv) the draw under the Letter of Credit for the Settlement Payment will be for a payment representing the sum due and owing and remaining unpaid (beyond the time allowed for payment, including any related notice or grace period or both) to TETCO in connection with the Transportation and Storage Agreements.

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 on or before March 10, 2004, 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 that the Bankruptcy Court issues an order approving this Agreement, provided such order is issued no later than March 10, 2004.

3. **Capacity; Capacity Releases; Indemnification.** 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 all revenues attributable to the Releases and received by TETCO from April 1, 2004 (the "Transfer Date") through and including the respective expiration dates of such Releases shall be retained by TETCO without any obligation to credit or otherwise apply such revenues to any obligations of Mirant Corp. or Mirant to TETCO. Upon completion of the terms of the Releases all capacity related thereto will revert back to TETCO. All other capacity, which is not affected by the Releases, shall revert to TETCO on the Transfer Date; 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 TETCO from and against any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, and whether arising as a matter of law, in tort, by contract or otherwise, losses, damages, claims, rights of setoff, costs and expenses, interest, awards, judgments and penalties (including attorneys' and consultants' fees and disbursements) arising out of, related to or resulting from TETCO's breach of the Releases. Mirant warrants to TETCO that no other releases of capacity exist other than the Releases.

4. **Release of Claims by Mirant.** Upon the Effective Date of this Agreement, Mirant and Mirant Corp., on behalf of themselves and their 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 TETCO, 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 the Disputed Issues. Notwithstanding the above, nothing in this Paragraph 4 shall be deemed to release the obligations and duties arising under this Agreement nor prevent or affect in any manner TETCO's rights to bring any action to enforce or interpret this Agreement.

5. **Release of Claims by TETCO.** Upon the Effective Date of this Agreement, TETCO, 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 and Mirant Corp., their 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 the Disputed Issues. Notwithstanding the above, nothing in this Paragraph 5 shall be deemed to release the obligations and duties arising under this Agreement nor prevent or affect in any manner Mirant's or Mirant Corp.'s rights to bring any action to enforce or interpret this Agreement.

6. **Rejection of the Transportation and Storage Agreements.** TETCO hereby agrees not to oppose the rejection of the Transportation and Storage Agreements. Mirant shall promptly move for the approval of this Agreement by the Bankruptcy Court, and TETCO shall cooperate with and support Mirant in such application.

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

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. **Representations, Warranties and Covenants.** Each Party represents and warrants to each other and agrees with each other as follows:

- a. Each Party to this Agreement has received independent legal advice from attorneys of its 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. No Party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against any Party as the drafter.
- 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. 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 NEW YORK, EXCLUDING ANY LAWS WHICH RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**12. Mobile-Sierra.** This Agreement shall not be subject to change through any unilateral application by any Party, to any governmental authority, including the Federal Energy Regulatory Commission ("FERC") pursuant to the Natural Gas Act, without the prior mutual written agreement of all Parties, provided, however, that nothing in this Agreement shall limit TETCO's rights to make filings with, or otherwise seek relief from, the FERC to address rate design, cost allocation, cost recovery or tariff matters on a generic basis. Subject to the foregoing sentence, each of the Parties hereby irrevocably waives any right it may or can have to unilaterally seek any change, or to support any application, complaint, or action by any other party or governmental authority seeking a change to this Agreement.

ABSENT THE AGREEMENT OF THE PARTIES TO ANY PROPOSED CHANGES TO THIS AGREEMENT, THE STANDARD OF REVIEW FOR CHANGES TO THIS AGREEMENT PROPOSED BY A PARTY, A NON-PARTY OR FERC ACTING SUA SPONTE SHALL BE THE "PUBLIC INTEREST" STANDARD OF REVIEW SET FORTH IN UNITED GAS PIPE LINE CO. V. MOBILE GAS SERVICE CORP., 350 U.S. 332 (1956) AND FEDERAL POWER COMMISSION V. SIERRA PACIFIC POWER CO., 350 U.S. 348 (1956).

**13. 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.

**14. Written Amendment.** No modification of the terms and provisions of this Agreement shall be made except by the execution by all Parties of a written agreement.

**15. 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.

**TEXAS EASTERN TRANSMISSION, LP**  
**by and through its General Partner**  
**Duke Energy Gas Transmission Services, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MIRANT CORPORATION**

By:  \_\_\_\_\_

Name: Curt Morgan

Title: Executive Vice President, North America

**MIRANT AMERICAS ENERGY MARKETING, LP**

By Mirant Americas Development, Inc.

Its general partner

By:  \_\_\_\_\_

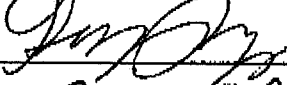
Name: Curt Morgan

Title: Executive Vice President, North America


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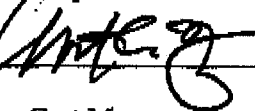
**TEXAS EASTERN TRANSMISSION, LP**  
by and through its General Partner  
Duke Energy Gas Transmission Services, LLC

By:  *GR*  
Name: Gregory J. Rizzo  
Title: Executive Vice President

**MIRANT CORPORATION**

By:  *CM*  
Name: Curt Morgan  
Title: Executive Vice President, North America

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

By:  *CM*  
Name: Curt Morgan  
Title: Executive Vice President, North America

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

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

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
	)	Date and Time: March 3, 2004
_____	)	12:00 p.m.

**ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF (I) THE  
"SETTLEMENT AGREEMENT AND RELEASES" WITH TEXAS EASTERN  
TRANSMISSION CORPORATION PURSUANT TO RULE 9019 OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE; AND (II) REJECTION OF VARIOUS  
AGREEMENTS WITH TEXAS EASTERN TRANSMISSION CORPORATION  
PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014**

Upon the motion,<sup>1</sup> dated February 9, 2004 (the "Motion") of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for approval of: (i) the "Settlement Agreement and Releases" (the "Settlement Agreement") among Mirant, Mirant Americas Energy Marketing L.P. ("MAEM") and Texas Eastern Transmission

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

Corporation (“TETCO”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) as part of the Settlement Agreement, to reject various agreements, between TETCO and MAEM, effective March 31, 2004 (the “Transportation and Storage Agreements”), pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Bankruptcy Rules; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

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

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

**ORDERED**, that the Transportation and Storage Agreements are rejected effective as of March 31, 2004; it is further

**ORDERED**, that MAEM will pay TETCO all amounts due and owing for services provided under the Transportation and Service Agreements, through March 31, 2004 (the “Transportation and Service Agreements Payment”); it is further

**ORDERED**, that TETCO shall have an allowed, prepetition claim against Mirant and MAEM as a result of the rejection of the Transportation and Service Agreements in the amount of \$20,000,000.00 (the “Allowed Claim”); it is further

**ORDERED**, that, in addition to the foregoing amounts, as part of TETCO’s claim, MAEM will pay TETCO the amount of \$4,720,136.00 (the “Settlement Payment”), which will

be satisfied from the LC on the Settlement Date; it is further

**ORDERED**, that the Releases shall remain in effect and all parties shall continue to perform as required thereunder until their respective expiration dates.

**IT IS SO ORDERED.**

Dated: March \_\_\_\_, 2004

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D. Michael Lynn,  
United States Bankruptcy Judge