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 ATTORNEYS FOR TRANSWESTERN PIPELINE COMPANY

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

|   |   |                                 |
|---|---|---------------------------------|
| <b>In re</b>                              | § |                                 |
|   | § | <b>CASE NO. 03-46590(DML)11</b> |
| <b>MIRANT CORPORATION, ET AL,</b>         | § |                                 |
|   | § |                                 |
| <b>DEBTORS</b>                            | § |                                 |
| <hr/>                                     |   |                                 |
| <b>TRANSWESTERN PIPELINE<br/>COMPANY,</b> | § |                                 |
|   | § |                                 |
| <b>MOVANT,</b>                            | § |                                 |
|   | § |                                 |
| <b>VS.</b>                                | § |                                 |
|   | § |                                 |
| <b>MIRANT CORPORATION,</b>                | § |                                 |
|   | § |                                 |
| <b>RESPONDENT.</b>                        | § |                                 |

**TRANSWESTERN’S MOTION FOR RELIEF FROM STAY  
 WITH RESPECT TO FIRM GAS TRANSPORTATION CONTRACT**

Notice Pursuant to Local Rule 4001.1(b): The debtor shall file a response to any motion for relief from the automatic stay within 12 days from the service of the motion. The debtor’s response shall include a detailed and comprehensive statement as to how the Movant can be “adequately protected” if the stay is to be continued. If the debtor does not file a response as required, the allegations in the creditor’s motion for relief from the automatic stay shall be deemed admitted, unless good cause is shown why these allegations should not be deemed admitted, and an order granting the relief may be entered by default.

Transwestern Pipeline Company (“Transwestern”) moves the Court to terminate the automatic stay, pursuant to Bankruptcy Code §362(d), to allow Transwestern to apply a pre-petition prepayment with respect to a pre-petition debt owed on Transwestern’s firm gas transportation

contract with Mirant Corporation, and respectfully states:

1. Mirant Corporation (“Mirant” or the “Debtor”) filed a voluntary petition, under Chapter 11 of the Bankruptcy Code, on July 14, 2003. At the same time, a number of affiliates of Mirant also commenced Chapter 11 cases in this Court. All of the Mirant-related cases are jointly administered under Case No. 03-46591 in this Court. This Court accordingly has jurisdiction to hear this motion pursuant to 28 U.S.C. §157(a) and 28 U.S.C. §1334(a).

2. Transwestern owns and operates interstate pipelines utilized for the transportation of natural gas. Mirant entered into an agreement to purchase transportation capacity on Transwestern’s pipeline system. Specifically, Mirant (as shipper) and Transwestern (as transporter) entered into that certain Service Agreement dated March 17, 1999 (designated “Transwestern Contract No. 26719”).

3. Transwestern Contract No. 26719 is a “firm” gas transportation contract. As such, Mirant is obligated to pay for the contracted capacity, at a price set pursuant to a rate schedule that is incorporated in the contract, for the term of the contract. Transwestern Contract No. 26719 has a term that will continue through April 30, 2005.

4. As is typically the case with gas transportation contracts, Transwestern Contract No. 26719 incorporates and is subject to the terms and applicable rate schedule that are included in Transwestern’s Gas Tariff, as same may be amended from time to time with the approval of the Federal Energy Regulatory Commission (“FERC”).

3. Transwestern’s FERC Gas Tariff includes a provision requiring the shipper to remain creditworthy at all times and allowing Transwestern to require additional assurances of payment by an “uncreditworthy” shipper that wishes to continue to utilize its pipelines. Pursuant to this provision, an “uncreditworthy” shipper may provide the necessary assurance, and thus continue to

utilize the pipeline, through several alternative means – a guaranty of a third party acceptable to Transwestern, a letter of credit, prepayment for transportation services, or other security acceptable to Transwestern.

4. In October 2002, Transwestern determined that Mirant was not creditworthy and that, as a condition to any further use of Transwestern's pipeline, Mirant must provide assurance of its ability to pay in accordance with the FERC Gas Tariff.

5. Mirant elected to meet the creditworthiness requirement by commencing prepayments for gas transportation services. In October 2002, Mirant prepaid for gas transportation in November 2002. Mirant continued to do so in each successive month until this bankruptcy case was filed in July 2003.

6. Mirant made a sufficient prepayment, during the month of June 2003, to cover charges for services to be rendered during the period of July 1 through 14, 2003, under Transwestern Contract No. 26719. Charges under the contract for this prepetition period totaled \$71,750. But at the time this case was filed, on July 14, 2003, Transwestern had not applied the June prepayment to those prepetition July charges.

7. Since the intent of the prepayment was to make an actual payment in advance for services to be rendered, the application of the prepayment to pay the prepaid charges may not, even if it occurred post-petition, violate the automatic stay. Out of an abundance of caution, however, Transwestern seeks relief from the stay for the limited purpose of applying the prepetition prepayment to pay prepetition charges, accrued during the period from July 1 to 14, 2003, in the amount of \$71,750.

8. Relief from the stay for this purpose should be granted for cause, pursuant to Bank-

ruptcy Code §362(d)(1). No purpose would be served by further staying application of the prepayment in accordance with the intent of the parties.

9. Furthermore, Mirant has no equity in the prepayment, and the prepayment is not necessary for an effective reorganization. The automatic stay accordingly should be terminated pursuant to Bankruptcy Code §362(d)(2).

WHEREFORE, Transwestern Pipeline Company prays that the Court terminate the automatic stay, with respect to Transwestern Contract No. 26719, for the limited purpose of allowing Transwestern to apply Mirant's prepetition prepayment to pay prepetition charges, accrued during the period from July 1 to 14, 2003, in the amount of \$71,750.

Respectfully submitted,

By: /s/ H. Miles Cohn  
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**ATTORNEYS FOR TRANSWESTERN  
PIPELINE COMPANY**

CERTIFICATE OF CONFERENCE

The undersigned has spoken to counsel for the Debtor, Jay Wilson, regarding this motion for relief from stay. The Debtor will not oppose the relief requested in this motion.

/s/ H. Miles Cohn  
H. Miles Cohn

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| <b>RESPONDENT.</b>                        | § |                                 |

**ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY  
WITH RESPECT TO TRANSWESTERN FIRM GAS TRANSPORTATION CONTRACT**

On this date came on for consideration Transwestern’s Motion for Relief from Stay with Respect to Firm Gas Transportation Contract. The motion seeks limited relief from the automatic stay with respect to a firm gas transportation contract, described as that certain Service Agreement dated March 17, 1999, between Transwestern Pipeline Company (as transporter) and Mirant Corporation (as shipper) (designated “Transwestern Contract No. 26719”). Specifically, Transwestern Pipeline Company seeks relief from the automatic stay for the limited purpose of allowing Transwestern to apply Mirant’s prepetition prepayment to pay prepetition charges, accrued during the period from July 1 to 14, 2003, in the amount of \$71,750.

The Court, having considered the motion and any responses thereto, and having noted that the Debtor does not oppose the relief requested, is of the opinion that the motion should be granted.

It is, accordingly, ORDERED that the automatic stay is terminated, pursuant to Bankruptcy Code §362(d), with respect to Transwestern Contract No. 26719, for the limited purpose of allowing Transwestern to apply Mirant's prepetition prepayment to pay prepetition charges, accrued during the period from July 1 to 14, 2003, in the amount of \$71,750. The automatic stay is not hereby terminated for any other purpose.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2003.

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UNITED STATES BANKRUPTCY JUDGE