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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)
Debtors.)	Jointly Administered
)	Date and Time:
)	February 25, 2004 at 12:00 p.m.
)	(Motion for Expedited Hearing Pending)

DEBTORS' MOTION FOR APPROVAL OF (I) THE "SETTLEMENT AGREEMENT AND RELEASE" BETWEEN TRANSWESTERN PIPELINE COMPANY AND MIRANT CORPORATION PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE; AND (II) REJECTION OF VARIOUS GAS TRANSPORTATION AGREEMENTS BETWEEN MIRANT CORPORATION AND TRANSWESTERN PIPELINE COMPANY

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") for approval of:

(i) the "Settlement Agreement and Release," dated February 19, 2004, (the "Settlement Agreement") between Mirant and Transwestern Pipeline Company ("Transwestern") pursuant to

Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (ii) as part of the Settlement Agreement, for authority to reject (a) the “Privileged and Confidential Agreement” dated March 23, 1999; (b) the “Firm Transportation Service Request” dated March 16, 1999; and (c) the “Form of Service Agreement – Form M, Rate Schedule FTS-1 (Contract No. 26719)” dated March 17, 1999 (collectively, the “Contracts”), between Mirant and Transwestern, pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq., as amended) (the “Bankruptcy Code”). 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.

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 Contracts.

5. The Contracts, which are attached hereto as composite Exhibit A,¹ were entered into and executed simultaneously, and jointly establish a transportation agreement for pipeline transportation capacity of 25,000 MMBtu per day of natural gas on a portion of the Transwestern Transportation System. The Transwestern Transportation System stretches from San Juan, New Mexico to Mohave, Arizona. The Debtors entered into the Contracts to supply natural gas to the Debtors' California power plants. The Contracts will expire November 30, 2004.

6. Prior to the Petition Date, Mirant posted \$307,500.00 in cash collateral as security for its obligations under the Contracts. Pursuant to the "Order Granting Transwestern's Motion For Relief From Stay With Respect To Firm Gas Transportation Contract," signed by this Court November 25, 2003, Transwestern applied \$67,288.43 of said cash collateral to pre-petition amounts due and owing by Mirant to Transwestern, leaving Transwestern with a remainder of \$240,211.57 in cash collateral.

B. Summary of Settlement Agreement.

7. The Debtors commenced negotiations with Transwestern in order to reach a compromise that would benefit the Debtors' estates and avoid litigation between the Debtors and Transwestern. The goal of these negotiations was to liquidate and compromise the amount of Transwestern's rejection damage claim against the Debtors' estates, as well as to establish the treatment of the cash collateral Transwestern was holding as security for Mirant's performance

¹ Not all parties were served with the Exhibits. Parties in interest may request a copy of the Exhibits by making a written request to the Debtors' counsel.

pursuant to the Contracts. The parties have successfully reached a compromise, as discussed below.

8. Mirant and Transwestern have entered into a Settlement Agreement,² which is attached hereto as Exhibit B, the principle terms of which include:

- The Debtors will reject the Contracts effective on the later of: (a) the date this Court approves the Settlement Agreement; and (b) the date Transwestern releases the pipeline transportation capacity to a third party, but in no event later than March 1, 2004.
- In full and final satisfaction of all claims of Transwestern arising under or in connection with the Contracts, Mirant will pay Transwestern the amount of \$240,211.57 (the "Settlement Payment").
- The Settlement Payment will be satisfied by the application of the remaining \$240,211.57 cash collateral currently held by Transwestern.
- The parties will mutually release all claims and potential claims relating to or arising from the Contracts (including the rejection thereof), and any claims that might arise in relation to the cash collateral.

IV. RELIEF REQUESTED

9. By this Motion, the Debtors hereby request approval of the Settlement Agreement under Bankruptcy Rule 9019. The Debtors also hereby seek approval of the rejection of the Contracts under section 365 of the Bankruptcy Code effective on the later of: (a) the date this Court approves the Settlement Agreement; and (b) the date Transwestern releases the pipeline transportation capacity to a third party, but in no event later than March 1, 2004.

10. The Debtors specifically direct this Court's attention to the fact that the Contracts are ones over which the Federal Energy Regulatory Commission ("FERC") has certain jurisdictional authority. However, the Debtors submit that the rejection of the Contracts may,

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

and should, be approved by this Court. This is because Transwestern has blanket certificate authority to enter into the Contracts pursuant to 18 C.F.R. Part 284, Subpart J of FERC's regulations, and, as such, the Contracts did not require FERC approval prior to the Debtors and Transwestern entering into such agreements. Furthermore, FERC approval is not required in order to terminate the Contracts because the blanket certificate authority granted to Transwestern contains pre-granted automatic abandonment authority. 18 C.F.R. § 284.221(d).

11. Certainly, if the parties have the authority to enter into and terminate the Contracts without seeking individual FERC approval due to Transwestern's blanket certificate authorization, the Contracts can be consensually rejected under Bankruptcy Code section 365, as requested herein. Moreover, FERC has been served with this Motion. In sum, the Debtors submit that there is no jurisdictional impediment to 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.

12. 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.”).

13. 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. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citing 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. Rev. 2001)).

14. 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).

15. 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.*

16. The Debtors have determined that outright rejection of the Contracts could result in a damages claim in excess of the Settlement Payment of \$240,211.57. The Settlement Agreement limits the amount of such damages to the Settlement Payment. The economics of the Settlement Agreement include the assumption (and condition) that Transwestern will be able to “release” the pipeline capacity to a third party by March 1, 2004 which will permit Transwestern to mitigate their damages.

17. Unless the Debtors are allowed to reject the Contracts immediately, the demand charges for March 2004 will be approximately \$130,000.00. This demand charge, for a single month, is over one-half of the total claims allowed by the Settlement Agreement. Any value provided by the Contracts is far exceeded by the expenses³ that Mirant is incurring pursuant to the Contracts, which Mirant must pay irrespective of the amount of natural gas actually scheduled on a daily basis.

18. The proposed Settlement Agreement minimizes the Debtors' losses in regard to the Contracts 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.

19. The Debtors believe that determining the amount of Transwestern's rejection damage claim arising from the Contracts, and establishing the treatment of the cash collateral, are beneficial to their estates. Pursuant to the Settlement Agreement, Transwestern will agree to waive any claims against the Debtors relating to or arising from the rejection of the Contracts. The Debtors believe that litigation of Transwestern'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. Therefore, 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.

³ These expenses include demand charges, commodity charges, other fees, charges, expenses, costs, and surcharges.

(iii) *Other Factors Favoring Settlement.*

20. The Debtors and Transwestern have entered into the Settlement Agreement only after both parties thoroughly analyzed their respective positions and jointly made significant movements and concessions in an effort to resolve the dispute. Pursuant to the Settlement Agreement both the Debtors and Transwestern will receive a release of claims arising out of or in connection with the Debtors' rejection of the Contracts and the cash collateral. Each of the foregoing factors favors granting the Motion.

C. The Contracts Are Executory Contracts That Should Be Rejected.

21. 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).

22. The Contracts are executory contracts because they require (i) Transwestern to provide Mirant with the on-going right to use the Transwestern Transportation System and (ii) Mirant to pay for this right. Moreover, Transwestern's failure to allow Mirant to use its Transportation System would constitute a material breach of the Contracts, excusing the performance of the other party. Therefore, the Contracts 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 Contracts Is Within the Debtors' Business Judgment.

23. 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).

24. 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)).

25. The Debtors have determined, in their reasonable business judgment, that the Contracts should be rejected because they are uneconomical and an impediment to the Debtors' ongoing business operations. Rejection of the Contracts is well within the sound business judgment of the Debtors.

26. At the time the Debtors entered into the Contracts, they intended to use the

Transwestern Transportation System to provide some gas supply to the Debtors' power plants in California. However, due to changes in the market and the Debtors' business operations, the Contracts currently provide minimal value to the Debtors' California power plants. Any value provided is far exceeded by the expenses⁴ that Mirant is incurring pursuant to the Contracts, which Mirant must pay irrespective of the amount of natural gas actually scheduled on a daily basis. Mirant has determined that it can procure natural gas to service the California plants by alternative and more economical means. Therefore, the Debtors have determined that it is in their best interest to reject the Contracts.

⁴ These expenses include demand charges, commodity charges, other fees, charges, expenses, costs, and surcharges.

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 overnight mail, and the addressees set forth below via overnight mail (with exhibit) on the 19th day of February, 2004.

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Attn: Dennis Lane
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Jason S. Brookner
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/s/ Michelle C. Campbell _____

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement"), entered into as of February 19, 2004, is by and between Mirant Corporation (f/k/a Southern Energy, Inc.) ("Mirant") and Transwestern Pipeline Company ("TRANSWESTERN"). TRANSWESTERN 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, 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, TRANSWESTERN and Mirant are Parties to a Firm Transportation Service Agreement dated March 17, 1999 and a Privileged and Confidential Agreement dated March 23, 1999, and Mirant executed a Firm Transportation Service Request dated March 16, 1999 (collectively, the Transportation Agreements"), which provide for 25,000 Dth per day of firm transportation from the San Juan Basin to SoCal Needles with a term beginning May 1, 2000, the in-service date of the Gallup Expansion, and ending five years from such date;

WHEREAS, to insure payment to TRANSWESTERN for obligations due and owing in connection with the Transportation Agreements, Mirant posted cash collateral in the amount of \$307,500 and with permission of the Bankruptcy Court on [enter date of order] TRANSWESTERN applied \$67,288.43 to pre-petition amounts due and owing by Mirant to TRANSWESTERN, leaving TRANSWESTERN with a remainder of \$240,211.57 in cash collateral (the "Collateral");

WHEREAS, Mirant expressed a desire to reject the Transportation Agreements pursuant to section 365 of the Bankruptcy Code and TRANSWESTERN 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 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 Agreements, including rejection of the Transportation Agreements, assertion of rejection damages arising under the Transportation Agreements, and (ii) the Collateral (the "Disputed Issues");

WHEREAS, the Parties have agreed to resolve the Disputed Issues, including the rejection of the Transportation 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, TRANSWESTERN 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 TRANSWESTERN arising under or in connection with the Transportation Agreements, Mirant shall pay TRANSWESTERN the amount of \$240,211.57 (the "Settlement Payment"). TRANSWESTERN and Mirant agree that payment of the Settlement Payment shall be made and satisfied solely through TRANSWESTERN's application of the Collateral. Mirant agrees that (i) TRANSWESTERN is entitled to apply the Collateral for the Settlement Payment due hereunder and (ii) the Settlement Payment is immediately due and owing on the Effective Date without any notice or grace period. Notwithstanding any other provision of this Agreement to the contrary, Mirant agrees to pay to TRANSWESTERN, when due, any amounts payable under the express terms of the Transportation Agreements for the month of February, 2004.

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 addition, a further condition precedent to the effectiveness of this Agreement shall be the execution by a third party acceptable to TRANSWESTERN of a firm natural gas transportation agreement with an effective date of March 1, 2004 with: (a) the same term, maximum daily quantity and receipt and delivery points as those specified under the Transportation Agreements; and (b) a reservation rate of at least \$.15 per MMBtu. In the event the Parties are unable to satisfy both of such conditions precedent on or before March 1, 2004, this Agreement will be deemed null and void. The Parties agree, however, to work cooperatively and in good faith to satisfy such conditions promptly. The Effective Date of this Agreement will be the date that both of the conditions precedent specified above have been satisfied, provided such conditions precedent are satisfied no later than March 1, 2004.

3. **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 TRANSWESTERN, 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.

4. **Release of Claims by TRANSWESTERN.** Upon the Effective Date of this Agreement, TRANSWESTERN, 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 the Disputed Issues.

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

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

7. **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.

8. **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 related to the subject matter described herein 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 the 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.

9. 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.

10. 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.

11. 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 the Parties. Subject to the foregoing sentence, each Party 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).


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 effect 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 all 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 the 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.

TRANSWESTERN PIPELINE COMPANY

By:  _{WOR}

Name: David J. Forman

Title: Gen. V.P. & General Counsel

MIRANT CORPORATION

By:  

Name: John L. O'Neal

Title: Vice President and Chief Commercial Officer

EXHIBIT B

**PRIVILEGED AND CONFIDENTIAL
AGREEMENT**

This Agreement ("Agreement") is entered into this _____ day of _____, 1999, by and between **TRANSWESTERN PIPELINE COMPANY** ("Transwestern") and Southern Energy, Inc. ("Shipper") (Transwestern and Shipper at times collectively referred to herein as "Parties" and individually as "Party").

WITNESSETH

WHEREAS, Transwestern proposes to increase the capacity of its pipeline system through the addition of a new compressor station near Gallup, New Mexico between its existing compressor stations No. 4 and No. 5, and by making other modifications to its facilities (collectively, the "Gallup Expansion");

WHEREAS, the Gallup Expansion will make available to Transwestern's customers firm capacity along Transwestern's mainline from points of receipt east of Thoreau to the California Border, and also provide customers the opportunity to transport on a firm basis additional quantities of natural gas from points of receipt along Transwestern's San Juan Lateral to the California Border, and

WHEREAS, Shipper desires to enter into a contractual agreement with Transwestern to purchase firm transportation service on the Gallup Expansion;

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties hereto agree as follows:

1. **FTS-1 Service.** Transwestern and Shipper agree to enter into and execute simultaneously with the execution of this Agreement the following:
 - a. The Firm Transportation Service Request ("Service Request") attached hereto as Exhibit 1; and
 - b. The Firm Transportation Service Agreement ("Gallup FTS-1 Agreement") attached hereto as Exhibit 2.
2. **Effective Date.** Upon the execution by Shipper of the Service Request, and the execution of both Parties of this Agreement and the Gallup FTS-1 Agreement, each document shall be effective, binding and enforceable subject to the terms specified herein.
3. **Term.** This Agreement shall be effective upon execution and with the exception of the Confidentiality, Choice and Conflict of Law, and Limitation of Liabilities provisions, which shall

a. Discount. The rate stated in Paragraph 4 of the Gallup FTS-1 Agreement shall be superseded by the following discounted rate: \$0.2050 per Dth (the "Discounted Rate"). The Discounted Rate is applicable to the Shipper's Maximum Daily Transportation Quantity ("MDTQ") irrespective of the amount of gas actually scheduled on a daily basis. The Discounted Rate agreed upon herein is inclusive of all demand charges, commodity charges, other fees, charges, expenses, costs, and surcharges. Transwestern shall allocate the Discounted Rate between the demand and commodity components. Except as provided in Paragraphs 5 and 6 below, Shipper agrees that if it utilizes either alternate receipt or alternate delivery points, the Discounted Rate will not be applicable and Transwestern's maximum rates will apply during the time either or both of the alternate points are utilized.

b. Maximum and Minimum Rates. In no event shall the rates exceed the maximum rate or be less than the minimum rate Transwestern is authorized to collect under Transwestern's FERC Gas Tariff, as amended from time to time. In the event the rates agreed to pursuant hereto are or become greater than the maximum rate or less than the minimum rate authorized under Transwestern's FERC Gas Tariff, as amended from time to time, then Shipper and Transwestern agree to immediately decrease the rate(s) herein down to the maximum rate or increase the rate(s) up to the minimum rate.

c. Fuel. In addition to the Discounted Rate, Shipper shall also provide fuel to Transwestern on an in-kind basis for gas actually scheduled under the Gallup FTS-1 Agreement at the maximum applicable rate stated in Transwestern's FERC Gas Tariff.

5. Alternate Receipt Point(s). To the extent capacity is available, pursuant to the General Terms and Conditions of Transwestern's FERC Gas Tariff, as amended from time to time, Shipper may, without affecting its discounted rate set forth in Paragraph 4.a, also nominate receipts at Alternate Point(s) of receipt on Transwestern's system in the direction of flow and within Shipper's Primary Path. Provided, however, that in no event shall the utilization of an Alternate Point(s) of Receipt result in a lower rate than the Discounted Rate specified herein.

6. Alternate Delivery Point(s). To the extent capacity is available, pursuant to the General Terms and Conditions of Transwestern's FERC Gas Tariff, as amended from time to time, Shipper may, without affecting its discounted rate set forth in Paragraph 4.a, also nominate receipts at Alternate Point(s) of delivery on Transwestern's system in the direction of flow and within Shipper's Primary Path. Provided, however, that in no event shall the utilization of an Alternate Point(s) of Delivery result in a lower rate than the Discounted Rate specified herein.

7. Right of First Refusal. Pursuant to Section 13 of Transwestern's Rate Schedule FTS-1, Shipper hereby gives notice to Transwestern that it does not desire to extend the term of the Gallup FTS-1 Agreement, and hereby surrenders any right of first refusal to such capacity.

8. Subpart B OR G. For transportation of gas to points on Transwestern's system designated as § 311 points, transportation shall be provided pursuant to Subpart B of Part 284 of the Commission's regulations. For all other transportation of gas hereunder, service shall be provided pursuant to Subpart G of Part 284 of the Commission's regulations.

9. Support. So long as Transwestern's application(s) to the FERC and/or other regulatory agencies for authorization of the Gallup Expansion does not in any adverse way conflict with any material terms and conditions of this Agreement, Shipper agrees: (1) to file at the FERC, if requested, a timely intervention fully supporting Transwestern's Gallup Expansion application(s); and, (2) to consult with and obtain approval from Transwestern prior to making (or any of Shippers' affiliates making) any public comment (including its filing at the FERC in support of Transwestern's Gallup Expansion application(s)) regarding Transwestern's Gallup Expansion application(s) as well as any of the issues regarding the Gallup Expansion addressed at any technical, pre-settlement, or settlement conference.

10. Right To Terminate. Notwithstanding Section 2 above, Transwestern's obligation to provide services under the Gallup FTS-1 Agreement shall not commence unless and until Transwestern accepts a FERC Certificate of Public Convenience and Necessity for the Gallup Expansion and the expansion facilities have been tested and placed in service. It is further agreed that in the event that on or before June 1, 2000 Transwestern has not received its FERC Certificates and other acceptable licenses, permits, approvals, right-of-way interests and utilities for construction and operation of the proposed Gallup Expansion in a form acceptable to Transwestern, in its sole discretion, or Transwestern determines, in its sole discretion, that the Gallup Expansion is not economically viable, Transwestern may terminate this Agreement and the Gallup FTS-1 Agreement upon thirty (30) days prior written notice to Shipper.

11. Confidential. No Party shall disclose the terms and provisions of this Agreement, the Service Request, or the Gallup FTS-1 Agreement without prior notice to, and the consent of, the other Party; provided however, Transwestern may file the Gallup FTS-1 Agreement as part of any necessary filings with the FERC. The Parties may, on a confidential basis, disclose this Agreement, the Service Request, or the Gallup FTS-1 Agreement to its auditors, outside counsel, lenders, parent, or affiliates when necessary for business purposes, which Parties shall likewise be bound by the confidentiality provisions; where required by or through any administrative, regulatory, legislative, legal or judicial action; to potential purchasers of facilities related to performing the obligations set forth in this Agreement, the Service Request, or the Gallup FTS-1 Agreement; or where necessary to resolve issues related to the interpretation, applicability or enforcement of this Agreement, the Service Request, or the Gallup FTS-1 Agreement.

12. Waiver. No waiver by any Party of any one or more defaults in the performance of any provision of this Agreement or the Gallup FTS-1 Agreement shall operate or be construed as a waiver of any future default, whether of a like or different character.

13. Choice and Conflict Of Law. THIS AGREEMENT, THE SERVICE REQUEST, AND THE GALLUP FTS-1 AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE SUBSTANTIVE LAW OF THE STATE OF TEXAS.

FURTHER, THE PARTIES STIPULATE THAT THIS AGREEMENT, THE SERVICE REQUEST, AND THE GALLUP FTS-1 AGREEMENT ARE DEEMED TO HAVE BEEN MADE AND ENTERED INTO BY THEM IN THE STATE OF TEXAS, WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE SERVICE REQUEST, OR THE GALLUP FTS-1 AGREEMENT (THE "PROCEEDINGS"), EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND THE UNITED STATES DISTRICT COURT LOCATED IN HARRIS COUNTY, TEXAS, AND IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT, THE SERVICE REQUEST, OR THE GALLUP FTS-1 AGREEMENT PRECLUDES ANY PARTY FROM ENFORCING IN ANY JURISDICTION ANY JUDGMENT, ORDER OR AWARD OBTAINED IN ANY SUCH COURT.

14. Limitations of Liabilities. In no event shall either Party be liable to the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement, the Service Request, or the Gallup FTS-1 Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from such Party's sole, joint or concurrent negligence.

15. Successors and Consent. Transwestern's obligation to enter into the Gallup FTS-1 Agreement and the discounted rate to be provided thereunder are for the benefit of Shipper only, and Shipper may not assign this Agreement, the Service Request, or the Gallup FTS-1 Agreement to another party except an affiliate of Shipper or a party which succeeds to substantially all of the assets or stock of Shipper, without the consent of Transwestern.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement, the Service Request, and the Gallup FTS-1 Agreement to be executed in duplicate originals as of the date first hereinabove written.

Accepted and Agreed to this ____ day of _____, 1999.

Accepted and Agreed to this ____ day of _____, 1999.

TRANSWESTERN PIPELINE COMPANY

SOUTHERN ENERGY, INC.

By: _____

By:  _____

Title: _____

Title: Vice President

FURTHER, THE PARTIES STIPULATE THAT THIS AGREEMENT, THE SERVICE REQUEST, AND THE GALLUP FTS-1 AGREEMENT ARE DEEMED TO HAVE BEEN MADE AND ENTERED INTO BY THEM IN THE STATE OF TEXAS, WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE SERVICE REQUEST, OR THE GALLUP FTS-1 AGREEMENT (THE "PROCEEDINGS"). EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND THE UNITED STATES DISTRICT COURT LOCATED IN HAVOIS COUNTY, TEXAS, AND IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT. WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT, THE SERVICE REQUEST, OR THE GALLUP FTS-1 AGREEMENT PRECLUDES ANY PARTY FROM ENFORCING IN ANY JURISDICTION ANY JUDGMENT, ORDER OR AWARD OBTAINED IN ANY SUCH COURT.

14. Limitations of Liabilities. In no event shall either Party be liable to the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement, the Service Request, or the Gallup FTS-1 Agreement or for any failure of performance related hereto however caused, whether or not arising from such Party's sole, joint or concurrent negligence.

15. Successorized Consent. Transwestern's obligations under the Gallup FTS-1 Agreement and the discounted rate to be provided thereunder are for the benefit of Shipper only, and Shipper may not assign this Agreement, the Service Request, or the Gallup FTS-1 Agreement to another party except an affiliate of Shipper or a party which succeeds to substantially all of the assets or stock of Shipper, without the consent of Transwestern.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement, the Service Request, and the Gallup FTS-1 Agreement to be executed in duplicate originals as of the date first hereinabove written.

Accepted and Agreed to this 23rd day of March, 1999.

Accepted and Agreed to this 23rd day of March, 1999.

TRANSWESTERN PIPELINE COMPANY

SOUTHERN ENERGY, INC.

By: Steve M. Harlow
Title: Regional Vice President of Marketing

By: [Signature]
Title: Vice President

APPENDIX A
POINT(S) OF RECEIPT

Shipper: Southern Energy, Inc.

Date: 3/23/1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/DTE/DAY*
Elbornfield	56498	New Mexico	San Juan	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

signature

APPENDIX B
POINT(S) OF DELIVERY

Shipper: Southern Energy, Inc.

Date: 3/27, 1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/DIY/DAY*
SoCal Needles	10487	Arizona	Mohave	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

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APPENDIX A
POINT(S) OF RECEIPT

Shipper: Southern Energy, Inc.

Date: 3/23, 1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/TH/DAY*
Bloomfield	56498	New Mexico	San Juan	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

SHIP

APPENDIX C
TERM

Shipper: Southern Energy, Inc.

Date: 3/23, 1999

This Agreement shall become effective upon execution by both Transporter and Shipper, provided, however, that Transporter's obligation to provide services hereunder shall not commence unless and until Transporter accepts a FERC Certificate of Public Convenience and Necessity for the Gallup Expansion and the expansion facilities have been tested and placed in service. It is further agreed that in the event that on or before June 1, 2000 Transporter has not received its FERC Certificate and other acceptable licenses, permits, approvals, right-of-way interests and utilities for construction and operation of the proposed Gallup Expansion in a form acceptable to Transporter, in its sole discretion, or Transporter, in its sole discretion, determines that the Gallup Expansion is not economically viable, Transporter may terminate this Gallup FTS-1 Agreement upon thirty (30) days prior written notice to Shipper.

This Agreement shall have a term of five (5) years from and after the in service date of the proposed Gallup Expansion.

EXHIBIT 1

CONFIDENTIAL

SECRET

Form of Service Agreement - Form M
Rate Schedule FTS-1

Date: 03/17/1999

Shipper's Name and Address for
Notices and Invoices:

Address for Invoice
(If different)

SOUTHERN ENERGY, INC.
900 ASHWOOD PARKWAY
ATLANTA, GA 30338-4780
Attn: RICK KADLE

SOUTHERN ENERGY, INC.
900 ASHWOOD PARKWAY
ATLANTA, GA 30338-4780
Attn: KATHLEEN COMENSKI

Contract No: 26719

Terms: From 12/31/1999 To 11/30/2004 or 5 years from the in-service
date of the Gallup Expansion

Rate: Unless Transporter agrees to charge Shipper: (i) a discounted rate below the maximum rate; or (ii) a negotiated rate either below the minimum rate or above the maximum rate, set forth on the currently effective rate sheets for Rate Schedules FTS-1, Shipper shall pay Transporter each month for transportation service rendered hereunder at the maximum rates or charges in effect from time to time under Rate Schedule FTS-1, or any effective superseding rate schedule on file with the Commission.

This transportation shall be provided pursuant to Subpart G of Part 284 of the Federal Energy Regulatory Commission's regulations.

The contract maximum daily transportation quantities and primary receipt and delivery points are set forth on Appendix A, and Appendix B attached hereto and incorporated herein.

Other: The parties agree that a facsimile of this agreement, when properly executed and transmitted, shall be considered for all purposes to be an original contract, and shall be deemed for all purposes to be signed and constitute a binding agreement. To submit a transportation service agreement via FAX, the entire agreement must be faxed to Transwestern Market Services. The agreement must also be properly and fully executed. Upon Transwestern's acceptance and execution, an executed copy will be returned via FAX to the number appearing on the faxed offer or such other number as directed.

Any notice, statement, or bill provided for in this Agreement shall be in writing and shall be considered as having been given if delivered personally, or if mailed by United States mail, postage prepaid, or if sent by express mail, overnight delivery, telex, telecopy or other mutually agreeable means of electronic transmission, to Shipper when sent to the address set forth on this Agreement and to Transwestern when sent to the following:

All Notices/Accounting Matters:
Transwestern Pipeline Company
P.O. Box 1188
Houston, Texas 77251-1188
Attn: Market Services

Payments to Designated Depository:
Transwestern Pipeline Company
Account No. 3750494206
ABA No. 111000012
Bank: Nations Bank of Texas, N.A.
Dallas, Texas 75204-0607

This Agreement shall incorporate and in all respects shall be subject to the "General Terms and Conditions" and the applicable Rate Schedule(s) set forth in Transwestern's FERC Gas Tariff, as may be revised from time to time. Transwestern may file and seek Commission approval under Section 4 of the Natural Gas Act (NGA) at any time and from time to time to change any rates, charges or other provisions set forth in the applicable Rate Schedule(s) and the "GENERAL TERMS AND CONDITIONS" in Transwestern's FERC Gas Tariff, and Transwestern shall have the right to place such changes in effect in accordance with the NGA, and this Transportation Service Agreement shall be deemed to include such changes and any changes which become effective by operation of law and Commission Order, without prejudice to shipper's right to protest the same.

Transwestern Pipeline Company

SOUTHERN ENERGY, INC.

By: _____

By: _____

Title: Regional Vice President of Marketing

Title: _____

Date: 03/17/1999

Date: 03/17/1999

SERVICE AGREEMENT - FORM M
(continued)

APPENDIX A
to
GAS TRANSPORTATION AGREEMENT
BETWEEN
TRANSWESTERN PIPELINE COMPANY
and
SOUTHERN ENERGY, INC.

MAXIMUM DAILY TRANSPORTATION QUANTITY (MAXDTQ): 25000 Dth.

<u>Primary Point of Receipt (1) (2)</u>	<u>Point Name</u>	<u>Maximum Daily Receipt Quantity (3)</u>
56498	BLOOMFIELD COMPRESSOR	25,000

<u>Primary Point of Delivery (4)</u>	<u>Point Name</u>	<u>Maximum Daily Delivery Quantity (3)</u>
10487	SOCAL NEEDLES	25,000

(1) For purposes of this Appendix, any receipt point on Transwestern's system may be used as an Alternate Receipt Point, subject to the terms and conditions of Rate Schedule FTS-1.

(2) Shipper agrees to tender, or cause to be tendered, gas for transportation at the Point(s) of Receipt identified above at pressures sufficient to effect delivery into Transporter's facilities not to exceed the maximum allowable operating pressure; provided, however, Transporter shall have no obligation to provide compression and/or alter its system operation to enable Shipper to effectuate said deliveries.

(3) Aggregate may not exceed MAXDTQ as shown above.

(4) Transporter agrees to transport and deliver gas to Shipper, or for Shipper's account, at the above Point(s) of Delivery; provided, however, Transporter shall have no obligation to provide compression and/or alter its system operation to effectuate said deliveries.

EXHIBIT 2

1984

1985

1986



Please send request to:

Transwestern Pipeline Company
Attn: Market Services
P.O. Box 1185
Houston, Texas 77251-1185
Teletype No. 713-846-8000

Internal Use Only	
Request Number	_____
Date Received	_____
Date Validated	_____

Section I - Shipper Information

Full Legal Name Southern Energy, Inc.		Classification	
Address 900 Ashwood Parkway		<input checked="" type="checkbox"/> End User	<input type="checkbox"/> Intra-state
City/State/Zip Atlanta, Georgia 30338-4780		<input type="checkbox"/> Interstate	<input checked="" type="checkbox"/> LDC
Telephone No. / Teletype No. (770) 821-7000 / (770) 821-7251		<input type="checkbox"/> Other	<input type="checkbox"/> Interstate
Address for invoice and billing Same		State of Incorporation Delaware	
Address for notices Same		Address for protests Same	
Shipper - RANDY DUNCAN Rick Waddle		Attention Rick Waddle	

Section II - Service Requested

NOTE: Request for additional delivery points or an increase in the Contract Quantity will constitute new service (i.e. a new contract)

Authority <input type="checkbox"/> NGPA 311 <input type="checkbox"/> NGA 70 <input checked="" type="checkbox"/> Blanket Certificate	Contracts <input checked="" type="checkbox"/> New Service <input type="checkbox"/> Amendment Original CR. No. _____	Type of Services <input type="checkbox"/> Interruptible Transportation (ITS) <input checked="" type="checkbox"/> Firm Transportation (FTS) <input type="checkbox"/> Park 'N Ride (PNR)
TOTAL CONTRACT QUANTITY 25,000	DATE THE EARLIER OF 12/1/99 OR THE IN SERVICE DATE 12/1/99	PROPOSED DATE 12/1/99
If the Service requested is "on behalf of" (OBO) another entity other than shipper, complete the following as it pertains to 311 or blanket certificate service.		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No OBO Letter Attached?		
Party Status: <input type="checkbox"/> Intra-state <input type="checkbox"/> Interstate		
If OBO 311 Party, Location (by State) of 311 Party's Facilities		
Name	Telephone Number	
Address		

APPENDEK A
POINT(S) OF RECEIPT

Shipper: Southern Energy, Inc.

Date: _____, 1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/DTH/DAY*
Bloomfield	56498	New Mexico	San Juan	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

APPENDIX A
POINT(S) OF RECEIPT

Shipper: Southern Energy, Inc.

Date: _____ 1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/DTH/DAY*
Bloumfield	56498	New Mexico	San Juan	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

APPENDIX B
POINT(S) OF DELIVERY

Shipper: Southern Energy, Inc.

Date: _____, 1999

P.O.I. NAME	P.O.I. #	STATE	COUNTY	MAXDTQ VOLUME/DTH/DAY*
SoCal Needles	10487	Arizona	Mohave	25,000

* The Parties agree that the total MAXDTQ requested for receipt at points listed on Appendix A shall equal the total MAXDTQ requested for delivery at points listed on Appendix B.

APPENDIX C
TERM

Shipper: Southern Energy, Inc.

Date: _____ 1999

This Agreement shall become effective upon execution by both Transporter and Shipper, provided, however, that Transporter's obligation to provide services hereunder, shall not commence unless and until Transporter accepts a FERC Certificate of Public Convenience and Necessity for the Gallup Expansion and the expansion facilities have been tested and placed in service. It is further agreed that in the event that on or before June 1, 2000 Transporter has not received its FERC Certificates and other acceptable licenses, permits, approvals, right-of-way interests and utilities for construction and operation of the proposed Gallup Expansion in a form acceptable to Transporter, in its sole discretion, or Transporter, in its sole discretion, determines that the Gallup Expansion is not economically viable, Transporter may terminate the Gallup FTS-A Agreement upon thirty (30) days prior written notice to Shipper.

This Agreement shall have a term of five (5) years from and after the in-service date of the proposed Gallup Expansion.