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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**

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In re	)	
	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	
	)	Case No. 03-46590-DML
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date and Time: December 17,
	)	2003 @ 10:30 a.m.

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**DEBTORS' MOTION PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE  
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9014(a) FOR AN ORDER  
ESTABLISHING UNIFORM SCHEDULE FOR THE FILING AND SERVICE OF  
RESPONSES AND OBJECTIONS TO CONTESTED MOTIONS**

Mirant Corporation and its above-captioned affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, file this motion (the "Motion") pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9014(a) for an Order establishing uniform schedule for the filing and service of responses and objections to motions, and, in support thereof, respectfully 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. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (the “Original Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).<sup>1</sup> On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code (the “New Debtors”), and on October 3, 2003, Wrightsville Power Facility, LLC, Mirant Wrightsville Investments, Inc., Wrightsville Development Funding, L.L.C. and Mirant Wrightsville Management, Inc. commenced chapter 11 cases under the Bankruptcy Code (the “Wrightsville Debtors”). The Original Debtors, the New Debtors and the Wrightsville Debtors are referred to herein as the “Debtors.” The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Original Debtors’ motion for an order requesting that the Original Debtors’ bankruptcy estates be jointly administered. An order providing for the joint administration of the cases of the New Debtors with the cases of the Original Debtors was entered, upon the motion of the New Debtors, on September 8, 2003. This Court also entered an order on September 8, 2003 which provided that certain orders entered in the chapter 11 cases of the Original Debtors are applicable to the

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<sup>1</sup> Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

New Debtors' cases and the New Debtors. An order providing for the joint administration of the cases of the Wrightsville Debtors with the cases of all the other Debtors was entered, upon the motion of the Wrightsville Debtors, on October 21, 2003.

4. Official Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors' committees; one for Mirant Corporation and the other for Mirant Americas Generation, LLC. The appointment lists of members of both official unsecured creditors' committees were filed in their respective chapter 11 cases on July 25, 2003. On September 18, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of an official committee of equity holders for Mirant Corporation. The two unsecured creditors' committees and the equity holders committee will be referred to herein as the "Official Committees."

### **III. FACTUAL BACKGROUND**

#### **A. The Debtors' Business Operations.**

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

sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

6. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded a \$542 million loss in earnings before interest, taxes and depreciation on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

B. Facts Specifically Relevant to the Motion.

7. The Debtors' cases are large and complex, and involve thousands of creditors and numerous parties-in-interest. The Debtors, their creditors and sometimes, parties-in-interest, continuously file numerous motions with the Court seeking a variety of forms of relief. While the Debtors make every effort to attempt to reach consensus on the motions they file and on those that are filed by others with their Official Committees, major constituencies and the parties directly impacted by any particular motion, oftentimes, these motions are contested.

8. The timing and requirements for filing objections and responses to motions in the Northern District of Texas are unclear. Specifically, FED. R. BANKR. P. 9014(a) and L.B.R. 9014.1(a) provide, in general, that no response need be filed to a motion in a contested matter unless ordered by the Court. However, L.B.R. 9007(b) clearly provides that a motion may be granted as being unopposed if no objection is filed twenty (20) days after service if certain specific "negative notice" language is included in the motion, thus implying that objections must be filed no later than twenty (20) days after service. An additional layer of confusion is added by FED. R. BANKR. P. 9006(f), which provides that a party may have an additional three (3) days to

take any required action, including the filing of responsive pleadings, where service has been made by mail.

9. Because of the lack of clarity surrounding the response/objection dates and the ability of parties-in-interest to rely on the “no response necessary” provisions of FED. R. BANKR. P. 9014(a) and L.B.R. 9014.1(a), the Debtors have often received objections to pending motions on the eve of a hearing date in regards to motions which they thought were uncontested. These technically timely, but last minute, objections have resulted in numerous inefficiencies for the Debtors and their estates in the form of last minute hearing preparation, the last minute need to fly witnesses in from out of town, and last minute requests for continuances. Last minute objections and continuances are also a burden on the Court.

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

10. By this Motion, the Debtors request that the Court enter an Order establishing a uniform schedule for the filing and service of responses and objections to all types of motions, except as expressly excluded herein, regardless of whether the movant is a creditor, the Debtors or any other party-in-interest. The Debtors propose the following schedule for the filing and service of objections and responses:

- a. Objections or responses to a motion filed and set for hearing under normal motion scheduling procedures (twenty days notice or more) must be filed and served upon applicable movant’s counsel, Debtors’ counsel, counsel for the Official Committees, and such other persons identified in the Certificate of Service appended to the particular motion no later than 4 o’clock p.m. (prevailing central time) five (5) business days prior to the hearing scheduled on the motion.
- b. Objections or responses to a motion filed and set for hearing under

expedited or emergency motion scheduling procedures (less than twenty days notice) must be filed and served upon applicable movant's counsel, Debtors' counsel, counsel for the Official Committees, and such other persons identified in the Certificate of Service appended to the particular motion no later than 4 o'clock p.m. (prevailing central time) two (2) business days prior to the hearing scheduled on the motion.

c. The Notice of Hearing on a motion prepared by the Debtors or such other applicable movant's counsel will recite the date and time of the hearing and the date and time of the applicable objection/response deadline.

d. The objection/response procedures for motions set forth herein will not apply to (i) motions for relief from the automatic stay, responses to which will continue to be due in accordance with the provisions of L.B.R. 4001.1 or (ii) motions filed in adversary proceedings, which are subject to L.B.R. 7007.1 and Local District Court Rule 7.1 and 12.1.

11. The Debtors believe that the schedule set forth above will result in the efficient consideration of motions, be cost effective for the estates, benefit the Debtors' estates and their creditors, and assist the Court with the efficient administration of these cases. Nothing herein will preclude the Debtors or such other applicable movant from agreeing to grant any particular party-in-interest an extension of time to respond or object to a particular motion nor, of course, will it preclude the Court from granting a request for an extension of the deadline if a mutually satisfactory extension cannot be reached.

## V. APPLICABLE AUTHORITY

A. The Alternate Procedures Should Be Approved by the Court

12. Section 105(a) of the Bankruptcy Code allows this Court to "issue any order,

process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Under Section 105(a) of the Bankruptcy Code, the Court has expansive equitable power to fashion any order or decree that is in the interest of preserving or protecting the value of the debtor’s assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9<sup>th</sup> Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”) (citation omitted). *See also Bird v. Crown Convenience (In re NAFX, Inc.)*, 864 F.2d 588, 590 (8<sup>th</sup> Cir. 1988) (“The overriding consideration in bankruptcy . . . is that equitable principles govern.”)(citations omitted).; *In re Cooper Properties Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (“[T]he Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors so long as that protection is implemented in a manner consistent with the bankruptcy laws.”)(citation omitted).

13. FED. R. BANKR. P. 9014(a) and L.B.R. 9014.1(a) provide, in general, that no response need be filed to a motion in a contested matter unless ordered by the Court. Thus, this Court has the authority to establish uniform schedule of deadlines for the filing of objections and responses to motions.

14. Establishing a uniform schedule for the filing and service of objections and responses to motions is clearly an appropriate use of this Court’s powers under Section 105 of the Bankruptcy Code. The Debtors, their creditors and all parties-in-interest will always know when an objection or response is due, and the Debtors, their creditors and all parties-in-interest will have sufficient notice of pending objections to either respond to or cure them, and to adequately prepare for contested hearings. The Court will also be assured adequate time to



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused to be served a true and correct copy of the foregoing Motion upon all parties on the Limited Service List by First Class United States mail on the 17<sup>th</sup> day of November, 2003 in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Judith Elkin

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

In re	)	
	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590-DML
	)	Jointly Administered
Debtors.	)	
	)	

**ORDER GRANTING DEBTORS’ MOTION PURSUANT TO SECTION 105 OF THE  
BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE  
9014(a) FOR AN ORDER ESTABLISHING UNIFORM SCHEDULE FOR THE FILING  
AND SERVICE OF RESPONSES AND OBJECTIONS TO CONTESTED MOTIONS**

Came before the Court for consideration the Motion Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9014(a) for an Order Establishing Uniform Schedule for the Filing and Service of Responses and Objections to Contested Motions (the “Motion”) filed by Mirant Corporation and its above-captioned affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, on December 17, 2003; and it appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the certificate of service attached to the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is, therefore, hereby

**ORDERED** that the Motion is granted in full and in all respects; and it is further

**ORDERED** that the following schedule for the filing and service of objections and responses shall be in effect in these cases as of the date of this Order:

- a. Objections or responses to a motion filed and set for hearing under normal

motion scheduling procedures (twenty days notice or more) must be filed and served upon applicable movant's counsel, Debtors' counsel, counsel for the Official Committees, and such other persons identified in the Certificate of Service appended to the particular motion no later than 4 o'clock p.m. (prevailing central time) five (5) business days prior to the hearing scheduled on the motion.

b. Objections or responses to a motion filed and set for hearing under expedited or emergency motion scheduling procedures (less than twenty days notice) must be filed and served upon applicable movant's counsel, Debtors' counsel, counsel for the Official Committees, and such other persons identified in the Certificate of Service appended to the particular motion no later than 4 o'clock p.m. (prevailing central time) two (2) business days prior to the hearing scheduled on the motion.

c. The Notice of Hearing on a motion prepared by the Debtors or such other applicable movant's counsel will recite the date and time of the hearing and the date and time of the applicable objection/response deadline.

d. The objection/response procedures for motions set forth herein will not apply to (i) motions for relief from the automatic stay, responses to which will continue to be due in accordance with the provisions of L.B.R. 4001.1 or (ii) motions filed in adversary proceedings, which are subject to L.B.R. 7007.1 and Local District Court Rule 7.1 and 12.1.

Signed: \_\_\_\_\_.

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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

**PREPARED BY:**

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