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**ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
MIRANT AMERICAS GENERATION, LLC**

**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

**MOTION FOR EXPEDITED HEARING TO CONSIDER THE MOTION
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF MIRANT AMERICAS GENERATION, LLC TO COMPEL DEBTORS
TO ENTER INTO HEDGING TRANSACTIONS FOR THE BENEFIT OF
MIRANT AMERICAS GENERATION, LLC AND MIRANT MID-ATLANTIC, LLC OR,
ALTERNATIVELY, FOR A GRANT OF AUTHORITY TO THE MAGI COMMITTEE
TO ENTER INTO SUCH TRANSACTIONS ON MIRMA AND MAGI'S BEHALF**

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

The Official Committee of Unsecured Creditors (the "MAGI Committee") of Mirant Americas Generation, LLC ("MAGI"), by and through its attorneys Cadwalader, Wickersham & Taft LLP and Cox & Smith Incorporated, hereby files this motion for an expedited hearing to consider the *Motion of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC to Compel Debtors to Enter Into Hedging Transactions for the Benefit of Mirant Americas Generation, LLC and Mirant Mid-Atlantic, LLC or, Alternatively,*

for a Grant of Authority to the MAGI Committee to Enter Into Such Transactions on MIRMA and MAGI's Behalf (the "Motion")¹ and respectfully submit and represent to the Court as follows:

1. The MAGI Committee requests that the Court conduct a hearing on the matters set forth in the Motion on an expedited basis, no later than July 28, 2004.

2. In the Motion, the MAGI Committee seeks entry of an order compelling the Debtors to comply with their fiduciary duties by entering into certain hedging transactions on behalf of Mirant Mid-Atlantic, LLC ("MIRMA") and MAGI. Alternatively, if the Debtors are not compelled to enter into such transactions, the MAGI Committee seeks entry of an order granting the MAGI Committee the authority to enter into such hedging transactions on MIRMA and MAGI's behalf.

3. As set forth in the Motion and the Affidavit of William H. Hardie, III, sworn to on July 12, 2004 and submitted in support thereof, currently tens of millions of dollars in value belonging to the MIRMA estate is at risk of diminution or loss because it is unhedged or unprotected against market volatility. As explained in the Motion, power prices have a dramatic impact on the value of the MIRMA and MAGI estates. Therefore, even a minor change in such prices can affect the value of the unhedged power positions (described in the Motion as the "MAEM Volumes"). Any further delay in implementing the hedging transactions requested in the Motion will continue to expose the MIRMA and MAGI estates, and their creditors, to substantial market risk. Therefore, the MAGI Committee seeks an expedited hearing on its Motion.

4. Despite the risk of loss associated with the continued lack of hedging of the MAEM Volumes and the fiduciary duties the Debtors have to protect against such losses, on

¹ Capitalized, undefined terms utilized herein have the meanings ascribed to them in the Motion.

July 9, 2004 the Debtors filed with the Court a “Request for Opportunity to Be Heard with Respect to an Anticipated Setting of Hearing on Forthcoming Request for Expedited Hearing by the Committee of Unsecured Creditors of Mirant Americas Generation, LLC Concerning Certain Hedging Arrangements” (referred to herein as “Debtors’ Request”), seeking to delay the hearing on the Motion by at least one week or more.² The Debtors’ Request argues that the Motion should not be heard on an expedited basis because “the Debtors’ preparation for argument of this substantive issue simply cannot be completed on a few business days’ notice.” Debtors’ Request at ¶ 3. Although the Debtors’ Request contends that expedited treatment of the Motion is not justified, it admits that the parties have been engaged in discussions on the issue of hedging to protect the MIRMA and MAGI estates’ interests “since at least mid-April” of this year. Debtors’ Request at ¶ 1. These purported arguments aside, nothing in the Debtors’ Request warrants delaying a hearing on the Motion.

5. As noted in the Motion and as admitted by the Debtors themselves, these issues already have been lingering for over four months, with no solution or action by the Debtors. The Debtors have been on notice of the MAGI Committee’s request for action on the hedging issues since March, and of the MAGI Committee’s intention to file a motion on the hedging issues if they could not be consensually resolved. Thus, the Debtors already have had ample time to prepare their “thoughtful and diligent response” to the Motion. Debtors’ Request at ¶ 3. Further, if the MAGI Committee’s request for expedited treatment of the Motion is

² The Debtors’ Request was filed before the Debtors had even received the Motion and the instant request to expedite, which is clear from the statement in the Request that depending on the relief sought by the Motion, expediting “may become more or less appropriate.” Debtors’ Request at ¶ 3. As the Debtors’ own pleading admits expedited treatment of these issues may be warranted, the MAGI Committee questions the wisdom of using estate resources to file pleadings on issues that may not even arise.

granted, the Debtors (and other parties) will have over one week to prepare for the hearing, and not just “a few business days” as the Debtors contend. Given that the issues raised in the Motion involve strategies of, and inaction by, the Debtors, they are in control of most of the relevant facts and witnesses in this matter. It is, therefore, difficult to discern exactly what “significant discovery” the Debtors will need to conduct of the MAGI Committee. Quite simply, after four months of discussions about the issues raised in the Motion, the MAGI Committee is at a loss to understand what insight one additional week will allow the Debtors to develop.

6. The MAGI Committee has patiently attempted to resolve the issues raised in the Motion for several months. Indeed, since the appointment of the Examiner in these cases, the MAGI Committee made every effort to support his efforts to reach a consensus on these issues, and endorsed his proposed resolution thereof. Nevertheless, this proposed resolution has been rejected by the Debtors and the Mirant Committee, even though the Debtors have admitted that MIRMA and MAGI should be hedged, as requested in the Motion, but they have refrained from doing so because of their conflicting loyalty to Mirant/MAEM.³ After having refused for four months to take action that is consistent with their fiduciary duties, it would be entirely inequitable to allow the Debtors’ conflicts of interest to further delay protection of the MIRMA and MAGI estates. An expedited hearing on this Motion thus is necessary to ensure MIRMA enters into the hedging transactions described in the Motion, thereby insulating its estate and the MAGI estate from negative market fluctuations.

7. Despite the Debtors’ procedurally irregular and unfounded attempt to oppose this request for expedited treatment before it was even filed, the Debtors have failed to

³ Because the Debtors’ Request to delay a hearing on the Motion will further subject the MIRMA and MAGI estates to market risk, the MAGI Committee requests that the Debtors be directed to clarify which particular Debtor is seeking to delay the hearing on the Motion.

raise a cogent argument for further delay of a hearing on these issues. Given that, and the fact that such delay may cause harm to the MAGI and MIRMA estates, the Debtors' Request should be denied. Therefore, the MAGI Committee requests that the Court enter an Order setting an expedited hearing on the Motion for July 28, 2004 at 10:30 a.m.

CONCLUSION

WHEREFORE, the MAGI Committee requests that the Court enter an order scheduling an expedited hearing on the Motion for July 28, 2004 at 10:30 a.m.; and grant the MAGI Committee such other and further relief as the Court deems just and proper.

Dated: July 15, 2004

Respectfully submitted,

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**ATTORNEYS FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF MIRANT
AMERICAS GENERATION, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 15, 2004, a true and correct copy of this *Motion for Expedited Hearing to Consider the Motion of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC to Compel Debtors to Enter Into Hedging Transactions for the Benefit of Mirant Americas Generation, LLC and Mirant Mid-Atlantic, LLC or, Alternatively, for a Grant of Authority to the MAGI Committee to Enter Into Such Transactions on MIRMA and MAGI's Behalf* has been sent via electronic mail to the parties listed below and via United States First Class Mail, postage prepaid, to the parties listed on the Official Shortened Service List (7/9/04).

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MIRANT CORPORATION, <u>et al.</u>,)	Case No. 03-46590 (DML)
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ORDER SETTING EXPEDITED HEARING

Came before the Court for consideration the Request for Expedited Hearing (the “Request”) with respect to the *Motion of the Official Committee of Unsecured Creditors of Mirant Americas Generation, LLC to Compel Debtors to Enter Into Hedging Transactions for the Benefit of Mirant Americas Generation, LLC and Mirant Mid-Atlantic, LLC or, Alternatively, for a Grant of Authority to the MAGI Committee to Enter Into Such Transactions on MIRMA and MAGI’s Behalf* (the “Motion”) filed by the Official Committee of Unsecured Creditors (the “MAGI Committee”) of Mirant Americas Generation, LLC (“MAGI”), by and through its attorneys Cadwalader, Wickersham & Taft LLP and Cox & Smith Incorporated. After considering the Request and the representations made therein, the Court finds that the Request has merit and should be granted. Therefore, it is:

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

ORDERED that the hearing on the Motion is set for July 28, 2004, at 10:30 a.m. CT before the Honorable D. Michael Lynn, United States Courthouse, 501 West Tenth Street, Fort Worth, Texas; and it is further

ORDERED that response and objections to the Motions must be filed and served upon counsel for the MAGI Committee, counsel to the Official Committee of Unsecured Creditors of Mirant Corp., Debtors' counsel and such other persons identified in the Certificate of Service to the Motions to ensure receipt by no later than 4:00 p.m. (prevailing central time) on July 26, 2004; and it is further

ORDERED that the MAGI Committee shall serve immediately a copy of this Order on all parties upon whom the MAGI Committee served the Motion.

END OF ORDER

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