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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**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.)	
)	Hearing Date and Time:
)	September 17, 2003 at 10:30 a.m.

**MOTION OF THE DEBTORS PURSUANT TO 11 U.S.C. § 365 FOR
ENTRY OF AN ORDER APPROVING THE ASSUMPTION OF
CERTAIN ADMINISTRATIVE SERVICE PROVIDER AGREEMENTS**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
SEPTEMBER 17, 2003 AT 10:30 A.M. IN COURTROOM NO. 128,
UNITED STATES BANKRUPTCY COURT, 501 WEST 10th STREET,
FORT WORTH, TEXAS. IF YOU OBJECT TO THE RELIEF
REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY
ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS
OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR
RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT
WITHIN TWENTY-THREE DAYS FROM THE DATE YOU WERE
SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF
YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE;
OTHERWISE, THE COURT MAY TREAT THE PLEADING AS
UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), file this Motion to Assume Certain Administrative Service Provider Agreements (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and 11 U.S.C. § 365 provides the legal predicate for the relief requested herein. The Court has jurisdiction of the matters raised herein.

2. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

3. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), each of the Debtors filed a voluntary petition 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”).¹ On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. commenced chapter 11 cases under the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors’ motion for an order requesting that the Debtors’ bankruptcy estates be jointly administered. A motion for joint administration of the Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. cases is currently pending.

¹ 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.

5. Creditors' Committees. On July 18, 2003, a creditors' committee was appointed for Mirant Corporation. Also on July 18, 2003, a separate creditors' committee was appointed for Mirant Americas Generation, LLC.

THE DEBTORS' BUSINESS OPERATIONS

6. 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 on 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.

7. Mirant employs in excess of 7,000 employees worldwide. 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 ("EBITDA") on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

FACTS RELEVANT TO THE MOTION

8. As part of their business operations, prior to the Petition Date, the Debtors entered into several executory contracts (the "Administrative Service Provider Agreements") with third

parties who provide services related to the administration of the Debtors' employee benefit plans and programs. Such services include, without limitation, (i) administration of employee benefit, pension, trust, and stock option plans; (ii) investment management and consultation; and (iii) relocation management. An index of the Administrative Service Provider Agreements is attached hereto as Appendix "A" and incorporated herein by reference.²

9. On July 15, 2003, this Court entered an order authorizing the Debtors to pay, among other things, the types of employee benefits that are administered and managed pursuant to the Administrative Service Provider Agreements. The Debtors have, as more fully set forth below, determined to assume the Administrative Service Provider Agreements because they are beneficial for the Debtors' estates and necessary for the Debtors' reorganization. By this Motion, the Debtors seek this Court's authority, pursuant to 11 U.S.C. § 365(a), to assume the Administrative Service Provider Agreements.

RELIEF REQUESTED AND BASIS THEREFOR

10. Section 365 of the Bankruptcy Code provides that a chapter 11 debtor, subject to Bankruptcy Court approval, may assume or reject executory contracts at any time prior to plan confirmation. 11 U.S.C. § 365(a) and (d)(2). The debtor's decision to assume or reject an executory contract is an exercise of the debtor's business judgment. See Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985). The business judgment test is not a strict standard, but merely requires a showing that either assumption or rejection of the contract at issue will benefit the debtor's estate. See In re Bildisco, 682 F.2d 72, 79 (3d Cir. 1982), aff'd sub nom., NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984).

11. Section 365(a) of the Bankruptcy Code provides in relevant part:

² The Administrative Service Provider Agreements are lengthy, and are therefore not attached to this Motion. Interested parties may obtain copies of the Administrative Service Provider Agreements upon written request to Debtors' counsel.

[T]he [debtor], subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a).

Upon assumption of an executory contract or unexpired lease, the debtor is required, pursuant to section 365(b)(1) of the Bankruptcy Code, to (a) cure any default, or provide adequate assurance of the prompt cure of any default, and (b) provide adequate assurance of future performance under the contract.

12. The Debtors are in pre-petition monetary default under certain of the Administrative Service Provider Agreements. For each of the Administrative Service Provider Agreements, Appendix "A" identifies the amount (if any) necessary to cure the monetary default under the contract. The aggregate amount necessary to cure the monetary defaults under the Administrative Service Provider Agreements is approximately \$64,460.43. The Debtors have committed no other defaults under the Administrative Service Provider Agreements. The Debtors propose to provide the cure amounts identified on Appendix "A" to the counterparties to the Administrative Service Provider Agreements within fifteen days of the entry of an Order granting this Motion.

13. The Debtors have determined, in their business judgment, that the Administrative Service Provider Agreements are beneficial to the Debtors' estates and necessary for an effective reorganization. Assumption of the Administrative Service Provider Agreements will help stabilize the Debtors' workforce and ensure that the Debtors' employees continue to receive the benefits that they have earned. Accordingly, the proposed assumption of the Administrative Service Provider Agreements is an appropriate exercise of the Debtors' business judgment and should be approved.

14. The Debtors ask that the effective date of the assumption be the Petition Date.

15. The relief requested in this Motion is without prejudice to any rights, interests, claims, or causes of action belonging to the bankruptcy estates, and it does not constitute any waiver of rights, interests, claims, or causes of action belonging to the bankruptcy estates. The Debtors expressly reserve the right to further amend or supplement this Motion to assert additional matters, both technical and substantive, as well as to reject or assume additional unexpired leases or executory contracts.

16. Based on the foregoing, the Debtors' request to assume the Administrative Service Provider Agreements is appropriate under section 365 of the Bankruptcy Code.

NOTICE

17. Bankruptcy Rules 6006 and 9014 generally require that any request to assume an executory contract must be made only by motion and upon notice to the other party to the contract, other parties in interest, and the United States Trustee. As indicated on the attached Certificate of Service, the Debtors have complied with such rules.

18. No previous motion for the requested relief has been made to this or any other court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has authorized BSI as service agent to cause to serve a true and correct copy of the foregoing Motion upon all persons identified in Appendix “A” and on the Limited Service List on the 25th day of August, 2003 via first class mail, postage prepaid, in accordance with the Federal Rules of Bankruptcy Procedure.

/s/ Ian Peck

Appendix "A"

Index of Contracts to be Assumed by Debtors

Tab	Debtor	Counterparty and Address	Assumed Contract	Approximate Cure Amount
1.	Mirant Services, LLC	Aon Consulting, Inc. 1100 Reynolds Boulevard Winston-Salem, NC 27105 Attn: Renee Whitley, Senior VP	Benefits Administrative Outsourcing Services Agreement dated April 1, 2001	\$2,700.43
2.	Mirant Services, LLC (f/k/a Southern Energy Resources, Inc.)	T. Rowe Price Trust Company P.O. Box 89000 Baltimore, MD 21289-2409 Attn: Kent del Carmen	Trust Agreement, effective Dec. 19, 2000, in connection with the Southern Energy Resources, Inc. Employee Savings Plan	\$0
3.	Mirant Services, LLC (f/k/a Southern Energy Resources, Inc.)	T. Rowe Price Trust Company P.O. Box 89000 Baltimore, MD 21289-2409 Attn: Kent del Carmen	Trust Agreement, effective Dec. 19, 2000, in connection with the Southern Energy Resources, Inc. Bargaining Unit Employee Savings Plan	\$0
4.	Mirant Services, LLC (f/k/a Southern Energy Resources, Inc.)	T. Rowe Price Retirement Plan Services, Inc. 4555 Painters Mill Road Owings Mills, MD 21117 Attn: Mirant Services, LLC Plan Services Team	Plan Recordkeeping Agreement, effective Dec. 19, 2000, in connection with the Southern Energy Resources, Inc. Employee Savings Plan	\$0
5.	Mirant Services, LLC (f/k/a Southern Energy Resources, Inc.)	T. Rowe Price Retirement Plan Services, Inc. 4555 Painters Mill Road Owings Mills, MD 21117 Attn: Mirant Services, LLC Plan Services Team	Plan Recordkeeping Agreement, effective Dec. 19, 2000, in connection with the Southern Energy Resources, Inc. Bargaining Unit Employee Savings Plan	\$0
6.	Mirant Services, LLC	U.S. Trust Company, N.A. 600 Fourteenth Street, N.W. Suite 400 Washington, D.C. 20005-3314 Attn: Norman Goldberg	Investment Management Agreement	\$17,260.00
7.	Mirant Corporation	Mercer Investment Consulting, Inc. 3475 Piedmont Road NE Suite 800 Atlanta, GA 30305-2954 Attn: Jim Ellis	Investment Consulting Service Agreement dated Nov. 1, 2002	\$33,500.00
8.	Mirant Services, LLC	State Street Bank and Trust Company State Street Retiree Services P.O. Box 1389 Boston, MA 02104 Attn: Kevin Day	Master Trust Agreement dated April 20, 2001	\$1,000.00

Tab	Debtor	Counterparty and Address	Assumed Contract	Approximate Cure Amount
9.	Mirant Services, LLC	Hewitt Associates LLC 100 Half Day Road Lincolnshire, IL 60069 Attn: General Counsel	Pension Administrative Services Agreement dated April 1, 2001	\$0
10.	Mirant Corporation	Salomon Smith Barney, Inc. 388 Greenwich Street New York, NY 10013 Attn: Brian Moore	Stock Option Plan Services Agreement dated Sept. 27, 2000	\$0
11.	Mirant Services, LLC	Cendant Mobility Services Corporation 40 Apple Ridge Road Danbury, CT 06810 Attn: Contract Administration	Relocation Management Agreement dated June 17, 2002, as amended by the Amendatory Agreement between Cendant Mobility Services Corporation, Mirant Corporation and Mirant Services LLC dated June 27, 2003	\$10,000.00

**THE UNITED STATES BANKRUPTCY COURT
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MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML
)	Jointly Administered
Debtors.)	
)	Hearing Date and Time:
)	September 17, 2003 at 10:30 a.m.

**ORDER GRANTING MOTION OF THE DEBTORS PURSUANT TO
11 U.S.C. § 365 FOR ENTRY OF AN ORDER APPROVING THE ASSUMPTION
OF CERTAIN ADMINISTRATIVE SERVICE PROVIDER AGREEMENTS**

On September 17, 2003 this Court held a hearing on the Motion of the Debtors Pursuant to 11 U.S.C. § 365 for Entry of an Order Approving the Assumption of Certain Administrative Service Provider Agreements (the "Motion") filed by Mirant Corporation ("Mirant") and its affiliated debtors (the "Debtors"), as debtors and debtors-in-possession. After reviewing the pleadings on file and considering the representations of counsel, the Court finds that the Motion has merit and should be granted. Therefore, it is hereby

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

ORDERED that the Debtors be and hereby are authorized to assume the Administrative Service Provider Agreements identified on Appendix "A" to the Motion effective as of the Petition Date; and it is further

ORDERED that the parties be and hereby are authorized and directed to execute any and all documents and take any further actions necessary to effectuate the Debtors' assumption of the Administrative Service Provider Agreements.

Dated: September ____, 2003.

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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