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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))
MIRANT CORPORATION, <u>et al.</u> ,)	Chapter 11 Case
Debtors.)	Case No. 03-46590-DML-11
_____)	Jointly Administered
In re))
MIRANT ECOELECTRICA))
INVESTMENTS, I, LTD.)	Chapter 11 Case
Debtor.)	Case No. 03-47927-DML-11
_____))
In re))
PUERTO RICO POWER INVESTMENTS,)	Chapter 11 Case
LTD.)	Case No. 03-47929-DML-11
Debtor.))
_____))

**MOTION FOR AN ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY
CODE DIRECTING THAT ORDERS IN THE CHAPTER 11 CASES OF MIRANT
CORPORATION, ET AL., BE MADE APPLICABLE TO MIRANT ECOELECTRICA
INVESTMENTS, I, LTD. AND PUERTO RICO POWER INVESTMENTS, LTD.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation (“Mirant”) and its affiliated jointly administered debtors (the “Debtors”), as debtors and debtors-in-possession, Mirant EcoElectrica Investments, I., Ltd., as debtor and debtor-in-possession, and Puerto Rico Power Investments, Ltd., as debtor and debtor-in-possession, file this Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Orders in the Chapter 11 Cases of Mirant Corporation, et al., be Made Applicable to Mirant EcoElectrica Investments, I, Ltd. and Puerto Rico Power Investments, Ltd. (the “Motion”) and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14 and 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 The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. New Debtor Petitions. On August 18, 2003, the following Mirant entities filed voluntary petitions in this Court for relief under the Bankruptcy Code: Mirant EcoElectrica Investments I, Ltd (“Mirant EcoElectrica”), Case No. 03-47927, and Puerto Rico Power

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 “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

Investments, Ltd. (“Puerto Rico Power”), Case No. 03-47929 (together, the “New Debtors”). The New Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. The Creditors’ Committees. On July 18, 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.

5. Joint Administration. On July 15, 2003, this Court entered the Order Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX LBR 1015.1 Directing Joint Administration of Cases (the “Original Joint Administration Order”), ordering that the estates of Mirant and certain of its subsidiaries with Case Nos. 03-45688 and 03-45690 through 03-45663 (the “Initial Debtors”) be jointly administered. On August, 20, 2003, the Initial Debtors and the New Debtors jointly filed the Second Motion of the Debtors Pursuant Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and N.D. TX L.B.R. 1015.1 for Order Directing Joint Administration of Cases seeking that the cases of the Initial Debtors and the New Debtors be jointly administered, which motion for joint administration is still pending before this Court as of the date of this Motion.

FACTUAL BACKGROUND

6. Mirant and its direct and indirect subsidiaries, including the New Debtors, comprise a competitive energy concern that generates and sells electricity in North America, the Philippines and the Caribbean. 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. 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, 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 \$542 million loss in earnings before interest, taxes and depreciation ("EBITDA") on a consolidated basis. Mirant's 2002 operating revenues were approximately \$6.4 billion.

RELIEF REQUESTED AND BASIS THEREFOR

8. By this Motion, the Initial Debtors and the New Debtors request that the Court enter an order pursuant to section 105(a) of the Bankruptcy Code directing that all orders entered in the Initial Debtors' chapter 11 cases prior to the date of the filing of this Motion be made applicable to the New Debtors. As of the date hereof, certain motions are still pending before this Court and certain orders have not been entered and placed on the docket in the Initial Debtors' chapter 11 cases. To the extent such motions are granted by the Court and such orders are signed and entered by the Court, the Initial Debtors and the New Debtors request that such orders be made applicable to both the Initial Debtors' and the New Debtors' chapter 11 cases.

9. Section 105(a) of the Bankruptcy Code provides, in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions

of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor’s assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th 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.”); *Bird v. Crown Convenience (In re NWFEX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy ... is that equitable principles govern”); *In re Cooper Properties Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (“the 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 as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

10. Entry of an order directing that the orders entered and pending motions and orders in the Initial Debtors’ cases be made applicable to the New Debtors will obviate the need for duplicative notices, motions, applications, and orders to be filed in the New Debtors’ cases. The Initial Debtors and the New Debtors simply seek to save considerable time and expense for their estates and to reduce the burden on the Court and parties in interest by proceeding in this manner. The New Debtors require the protections and authorizations that are set forth in the orders entered in the Initial Debtors’ chapter 11 cases in order to, themselves, enter chapter 11 in an orderly manner and to maintain their ability to reorganize successfully. The New Debtors would seek the substantive relief granted in the orders previously entered and the motions and orders currently pending in the Initial Debtors’ cases. Those motions and orders address many of the first day and other critical matters with which most debtors (especially large debtors) are faced in the initial stages of a bankruptcy proceeding. For example, the orders address, among

other things, retention and compensation of professionals, bank accounts, cash management and noticing procedures.

11. Had the New Debtors filed their petitions at the same time as the Initial Debtors, they would have been movants with respect to all of the orders entered in the chapter 11 cases of the Initial Debtors or currently sought by the Initial Debtors and would have provided the same justification for such orders. By proceeding in the manner of this Motion, the New Debtors seek to recognize that fact and to streamline the motion practice for requesting such relief, while at the same time providing the same requisite justification for such relief as if the New Debtors were separately seeking such relief.

12. The Debtors believe that the relief requested herein is appropriate to carry out the provisions of the Bankruptcy Code. Also, similar procedures have been authorized in other complex chapter 11 cases.); In re EOTT Energy Partners, L.P., et al., Case No. 02-21730 (RSS) (Bankr. S.D.Tex. 2002); In re Enron Corp., et al., Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. 2002); In re Genesis Health Ventures, Inc., et al., Case No. 00-2692 (JHW) (Bankr. D. Del. 2000); In re Sun Healthcare Group, Inc., et al., Case No. 99-3657 (MFW) (Bankr. D. Del. 1999).

NOTICE

13. As of the filing of this Motion, no trustee or examiner has been appointed in the Initial Debtors' or the New Debtors' chapter 11 cases. Notice of this Motion has been provided to the Office of the United States Trustee for the Northern District of Texas; the Initial Debtors' Limited Service List; the holders of the fifty largest unsecured claims against the New Debtors on a consolidated basis; and certain governmental entities, counsel and parties-in-interest; all as set forth in more detail on the Certificate of Service attached hereto. The Initial Debtors and the New Debtors submit that no other or further notice need be provided.

14. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, the Initial Debtors and the New Debtors respectfully request entry of an order granting the relief requested herein, and such other and further relief to which they may be justly entitled.

Dated: August 20, 2003

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By /s/ Judith Elkin

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List via facsimile and email transmission, where indicated, or via overnight courier, on the 20th day of August, 2003.

/s/ Judith Elkin

**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-11
)	Jointly Administered
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INVESTMENTS, I, LTD.)	Case No. 03-47927-DML-11
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In re)	Chapter 11 Case
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PUERTO RICO POWER INVESTMENTS, LTD.)	Case No. 03-47929-DML-11
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Debtor.)	
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**ORDER GRANTING MOTION FOR AN ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE DIRECTING THAT
ORDERS IN THE CHAPTER 11 CASES OF MIRANT CORPORATION, ET AL.,
BE MADE APPLICABLE TO MIRANT ECOELECTRICA INVESTMENTS, I, LTD.
AND PUERTO RICO POWER INVESTMENTS, LTD.**

Came before the Court for consideration the Motion for An Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Certain Orders in the Chapter 11 Cases of Mirant Corporation, et al., be Made Applicable to Mirant EcoElectrica Investments, I, Ltd. and Puerto Rico Power Investments, Ltd. (the “Motion”) filed by Mirant Corporation (“Mirant”) and its affiliated jointly administered debtors (the “Initial Debtors”), as debtors and debtors-in-possession, and by Mirant EcoElectrica Investments, I, Ltd. (“Mirant EcoElectrica”), as debtor and debtor-in-possession, and Puerto Rico Power Investments, Ltd. (“Puerto Rico Power”), as

debtor and debtor-in-possession (Mirant EcoElectrica and Puerto Rico Power referred to collectively as the “New Debtors”). After reviewing the pleadings on file, hearing the evidence adduced and considering the representations of counsel for the Initial Debtors and the New Debtors, the Court finds that, in an exercise of its equitable authority under section 105(a) of the Bankruptcy Code, the Motion has merit and should be granted. The Court also finds that, given the circumstances and the nature of the relief requested, no further notice need be given. Therefore, it is hereby

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

ORDERED that all orders entered in the Initial Debtors’ chapter 11 cases prior the date of entry of this Order be and hereby are applicable to the New Debtors’ chapter 11 cases; and it is further

ORDERED that to the extent certain motions pending before the Court in the Initial Debtors’ chapter 11 cases at the time of the filing of the Motion are granted by the Court, such orders granting such motions be and hereby are applicable to both the Initial Debtors’ and the New Debtors’ chapter 11 cases; and it is further

ORDERED that to the extent certain orders that had not been entered and placed on the docket in the Initial Debtors’ chapter 11 cases as of the time of the filing of the Motion are signed and entered by the Court after the filing of the Motion, such orders be and hereby are applicable to both the Initial Debtors’ and the New Debtors’ chapter 11 cases.

Signed this ___ day of August, 2003.

UNITED STATES BANKRUPTCY JUDGE

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