

Sander L. Esserman  
State Bar No. 06671500  
Jo E. Hartwick  
State Bar No. 09175045  
Andrea L. Niedermeyer  
State Bar No. 24032790  
**Stutzman Bromberg Esserman & Plifka**  
**A Professional Corporation**  
2323 Bryan Street, Suite 2200  
Dallas, Texas 75201  
Telephone: (214) 969-4900  
Facsimile: (214) 969-4999

-and-

Roger Frankel (*pro hac vice* application pending)  
Jonathan Guy (*pro hac vice* application pending)  
**Swidler Berlin Shereff Friedman, LLP**  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Telephone: (202) 424-7500  
Facsimile: (202) 424-7643

**ATTORNEYS FOR POTOMAC ELECTRIC  
POWER COMPANY AND ITS AFFILIATES**

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

_____	)	
In re:	)	
	)	Chapter 11
MIRANT CORPORATION, <u>et al.</u> ,	)	
	)	Case No. 03-46590 (DML)
Debtors.	)	Jointly Administered
_____	)	
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. No. 03-04342 (DML)
	)	
POTOMAC ELECTRIC POWER COMPANY,	)	
and FEDERAL ENERGY REGULATORY	)	
COMMISSION,	)	
	)	
Defendants.	)	
_____	)	

**MOTION FOR STAY OF PROCEEDINGS**  
**BY POTOMAC ELECTRIC POWER COMPANY**

Pursuant to Federal Rule of Bankruptcy Procedure 5011(c), Potomac Electric Power Company (“Pepco”) hereby moves for a stay of : (1) the above-captioned Adversary Proceeding No. 03-04342 (the “Adversary Proceeding”), commenced by Mirant Corporation and its affiliated debtors in these jointly administered proceedings (collectively, the “Debtors”) on August 28, 2003 and (2) Debtors’ Motion for Order Authorizing the Debtors to Reject the Back-to-Back Agreement Dated December 19, 2000, and Amendments Thereto, with Potomac Electric Power Company as Executory Contracts [Docket No. 550] (the “Rejection Motion”).

Along with this motion for a stay, Pepco and the Federal Energy Regulatory Commission (“FERC”) have filed a Joint Motion to Withdraw the Reference with respect to both the Adversary Proceeding and the Rejection Motion (the “Joint Motion to Withdraw the Reference”). In light of the mandatory withdrawal provision of 28 U.S.C. § 157(d), continuation of the Adversary Proceeding and the Rejection Motion in this Court will cause the parties to incur undue expense and will result in an inefficient judicial process. The memorandum of law in support of the Joint Motion to Withdraw the Reference (the “Memorandum of Law”) demonstrates that withdrawal of the reference is mandatory in this instance. See generally United States Gypsum Co. v. Nat’l Gypsum Co. (In re Nat’l Gypsum Co.), 145 B.R. 539 (N.D. Tex. 1992) (“National Gypsum”) (mandatory withdrawal of reference warranted where substantial and material consideration of federal statutes in addition to the Bankruptcy Code is necessary to the resolution of the case or proceeding). Accordingly, this Court should stay the Adversary Proceeding and the Rejection Motion until the United States District Court for the Northern District of Texas (the “District Court”) adjudicates the Joint Motion to Withdraw the Reference.

In support thereof, Pepco respectfully states as follows:

**I. GROUNDS FOR RELIEF**

1. The facts underlying this motion are set forth in the Memorandum of Law filed with the Joint Motion to Withdraw the Reference and are briefly summarized below.

2. On August 28, 2003, the Debtors filed the Rejection Motion with the Bankruptcy Court.

3. On August 28, 2003, the Debtors also filed a complaint for injunctive relief and a motion in the Bankruptcy Court seeking an *ex parte* restraining order against Pepco and FERC.

4. On August 28, 2003, in an *ex parte* proceeding, this Court issued a temporary restraining order (the “TRO”) that enjoins Pepco from initiating or continuing any proceedings, or encouraging any person or entity from initiating or continuing any proceedings, before FERC that seek to require the Debtors to continue to perform their obligations under the so-called “Back-to-Back” arrangement that is the subject of the Rejection Motion and certain Transition Power Agreements. The TRO also enjoins FERC from taking any action to require the Debtors to abide by the terms of the Asset Purchase and Sale Agreement (the “APSA”), the Transition Power Agreements, and, apparently, the terms of any other arrangement to which one or more of the Debtors is a party.

5. On September 5, 2003, FERC and Pepco filed the Joint Motion to Withdraw the Reference and the accompanying Memorandum of Law. As set forth in the Memorandum of Law, withdrawal of the reference with respect to the Adversary Proceeding and the Rejection Motion is mandatory. The District Court has previously held that withdrawal of the reference is mandatory when (1) the proceeding involves a substantial and material consideration of both the Bankruptcy Code and non-Bankruptcy Code federal law; (2) the non-Bankruptcy Code federal

law has more than a *de minimis* effect on interstate commerce; and (3) the motion for withdrawal of the reference is timely filed. National Gypsum, 145 B.R. at 541; see also 28 U.S.C. § 157(d). As set forth in the Memorandum of Law, each of these criteria is satisfied here.

6. A stay of proceedings is contemplated in connection with a motion to withdraw the reference. The Local Rules of the Court indicate that one of the factors the Bankruptcy Court shall consider at a status conference on the Joint Motion to Withdraw the Reference is whether a motion to stay has been filed and, if so, the status of such motion. N.D. TX L.B.R. 5011.1(b).

7. A stay of the Adversary Proceeding and the Rejection Motion will not be prejudicial to the Debtors.

## **II. NOTICE**

8. No trustee or examiner has been appointed in these chapter 11 cases. Separate official committees of unsecured creditors have been appointed for Mirant Corporation and for Mirant Americas Generation, LLC. Notice of this motion to stay the proceedings has been provided to the parties listed on the attached certificate of service. In light of the nature of the relief requested herein, Pepco submits that no other or further notice is required.

9. No prior request for the relief sought in this motion has been made to this or any other court.

## **III. MEMORANDUM OF LAW**

10. This motion does not raise any novel issues of law. Pepco has filed and relies upon the Memorandum of Law in support of the Joint Motion to Withdraw the Reference, which sets forth the relevant factual background and legal issues. Accordingly, Pepco respectfully requests that the Court waive any requirement that a separate memorandum of law be submitted with respect to this motion.

WHEREFORE, Pepco respectfully requests that this Court enter an Order: (a) staying any further proceedings with respect to the Adversary Proceeding and the Rejection Motion until the District Court adjudicates the Joint Motion to Withdraw the Reference; and (b) granting such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

Dated: September 5, 2003

**STUTZMAN BROMBERG  
ESSERMAN & PLIFKA  
A Professional Corporation**

By: /s/ Andrea L. Niedermeyer

Sander L. Esserman  
State Bar No. 06671500  
Jo E. Hartwick  
State Bar No. 09175045  
Andrea L. Niedermeyer  
State Bar No. 24032790

2323 Bryan Street, Suite 2200  
Dallas, Texas 75201-2689  
Telephone: (214) 969-4900  
Facsimile: (214) 969-4999

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Roger Frankel (*pro hac vice* application pending)  
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**SWIDLER BERLIN SHEREFF  
FRIEDMAN, LLP**

3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Telephone: (202) 424-7500  
Facsimile: (202) 424-7643

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**CERTIFICATE OF CONFERENCE**

On this 5<sup>th</sup> day of September, 2003, I telephoned Robin Phelan and Judith Elkin of Haynes and Boone, LLP, counsel for the Debtors, to confer regarding the relief sought by this Motion. Neither Mr. Phelan nor Ms. Elkin were available. I left each of them a voice message regarding this Motion and the relief requested and asked that they call me to confer. I also informed them in those voice messages that if I did not hear from them we would file the Motion, but remain available to confer with them in that regard.

/s/ Jo E. Hartwick  
Jo E. Hartwick

## **CERTIFICATE OF SERVICE**

I certify that on this 5th day of September, 2003, the foregoing Motion for Stay of Proceedings by Potomac Electric Power company by was sent by facsimile and by overnight mail to:

Thomas E. Lauria, Esquire  
White & Case LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, FL 33131  
Facsimile: (305) 358-5744  
Attorney for Debtors

Robin Phelan, Esquire  
Haynes and Boone, LLP  
901 Main Street, Suite 3100  
Dallas, TX 75202  
Facsimile: (214) 651-5940  
Attorney for Debtors

Thomas Rice, Esquire  
Cox & Smith Inc.  
112 East Pecan Street, Suite 1800  
San Antonio, TX 78205  
Facsimile: (210) 226-8395  
Attorney for MAGI Committee

Bruce R. Zirinsky, Esquire  
Cadwalader, Wickersham and Taft  
100 Maiden Lane  
New York, NY 10038  
Facsimile: (212) 504-6666  
Attorney for MAGI Committee

Richard W. Douglas, Esquire  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, NY 10017  
Facsimile: (212) 455-2502  
Attorney for Mirant Committee

Jason S. Brookner, Esquire  
Andrews & Kurth L.L.P.  
1717 Main Street, Suite 3700  
Dallas, TX 75201  
Facsimile: (214) 659-4401  
Attorney for Mirant Committee

Office of the United States Trustee  
1100 Commerce Street, Room 9C60  
Dallas, TX 75242  
Facsimile: (214) 767-8971

/s/ Andrea L. Niedermeyer  
Andrea L. Niedermeyer