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

<hr/>)	
In re:)	Chapter 11
)	
MIRANT CORPORATION. <u>et al.</u>,)	Case No. 03-46590 (DML)11
)	Jointly Administered
Debtors.)	No Hearing Set
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**OBJECTION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC
LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND
NSTAR GAS COMPANY TO DEBTORS' MOTION FOR AN ORDER
PURSUANT TO SECTION 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING A PROCEDURE FOR
THE REJECTION OF CERTAIN EXECUTORY CONTRACTS**

To the Honorable Dennis Michael Lynn, United States Bankruptcy Judge:

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company (collectively, the “NSTAR Companies”) hereby object to the *Debtors’ Motion For An Order Pursuant To Section 365 And 554 Of The Bankruptcy Code Authorizing And Approving A Procedure For The Rejection Of Certain Executory Contracts* (the “Rejection Procedure Motion”) filed by the above-captioned debtors, Mirant Corporation, *et al.*, (collectively, the “Debtors” or “Mirant”). NSTAR objects to relief sought in the Rejection Procedure Motion including requests authorizing:

1. Rejection of executory contracts on five (5) business days notice (“Rejection Notice”);
2. Limiting the parties entitled to service of the Rejection Notice;
3. Requiring objections or oppositions to rejection to be filed within (5) days of the date of the Rejection Notice; and
4. Providing rejection to be retroactive to the date of the Rejection Notice.

In further support of this Objection, the NSTAR Companies state as follows:

I. FACTUAL BACKGROUND

1. On July 14, 2003, Mirant Corporation and approximately 20 affiliated entities filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for Northern District of Texas (the “Court”). The Debtors’ bankruptcy estates are jointly administered.

2. The United States Trustee has not yet appointed a Creditors Committee.

3. The Debtors are energy companies that generates and sell electricity and electrical capacity to among others, utilities, municipal systems, producers, generators and large industrial customers throughout the United States.

II. DEBTORS AGREEMENTS WITH NSTAR

4. The Debtors and the NSTAR Companies are parties to a number of executory contracts. Through these contracts, NSTAR relies on the Debtors to provide electricity and steam to serve over 150,000 customers across the Commonwealth of Massachusetts.

5. The NSTAR Companies' executory contracts with the Debtors include, but are not limited to, a Wholesale Transition Service Agreement, a Competitive Supplier Agreement, Interconnection Agreements, a Steam Supply Agreement, Gas Transportation Agreements, and a Facilities Agreement.

6. A number of these executory contracts are subject to the jurisdiction of the Massachusetts Department of Telecommunications and Energy (the "MDTE") and the Federal Energy Regulatory Commission ("FERC"). All of the contracts are suffused with public interest because they directly address the generation and delivery of power to a substantial percentage of the retail customers in the Commonwealth of Massachusetts.

III. GROUND IN OPPOSITION OF THE REJECTION PROCEDURE MOTION

7. Pursuant to the Rejection Procedure Motion, the Debtors seek to establish a procedure for the stated purpose of expediting the rejection of executory contracts without further Court approval. The Debtors proposed notification and rejection procedures: (i) are wholly inadequate and contrary to the basic due process protections provided by the Federal Rules of Bankruptcy Procedure; (ii) provide for relief contrary to the law of this Court; and (iii) fail to address significant regulatory and other issues related to FERC's jurisdiction over proposed contract terminations under Subchapter II of Federal Power Act, 16 U.S.C. §§ 824, *et seq.* ("FPA").

8. Among other things, the Debtors' proposed rejection procedures provide for the rejection of an executory contract on five (5) business days written notice by fax or mail to any counterparty's last known address. Rejection Procedure Motion, ¶10(a).

9. Similarly, if the Debtors do not receive an objection to a proposed rejection within the window of a five (5) day notice period, the contract is automatically rejected retroactive to the date of Rejection Notice – essentially an emergency rejection of a contract. Rejection Procedure Motion, ¶10(c).

10. The rejection procedures do not, but should, require the Debtors to provide a copy of the Rejection Notice to counsel who has filed a notice of appearance and request for service of pleadings in these proceedings.

11. The Debtors' requirement that objections be filed within five (5) days of the date of the Rejection Notice is insufficient to allow the NSTAR Companies, or any other interested party, an opportunity to determine the ramifications of rejection or basis, if any, for opposing rejection. The proposed abbreviated notice and response period essentially denies a party in interest a meaningful opportunity to be heard with respect to a proposed rejection. Consequently, an interested party will not have adequate notice that their rights will be effected by the Rejection Notice or sufficient opportunity to respond. In that regard, the Rejection Procedure Motion is at odds with the Federal Rules of Bankruptcy Procedure which provide for twenty (20) days notice to all parties in interest, which would include a counter-party to a contract, when an action by a debtor will affect a parties' right or interest. Fed. R. Bankr. P. 2002.

12. To permit rejection of energy supply contracts in the manner specified in the Debtor's Rejection Procedures Motion would leave a significant number of retail utility customers in the Commonwealth of Massachusetts at substantial risk of significant

energy replacement costs, in that a hasty termination of these agreements would not permit the orderly replacement of these obligations by an other supplier. Such supply arrangements in fact often take several months to procure, and anything less than an orderly transition to a qualified substitute supplier could leave these customers exposed to high replacement costs during the peak demand periods.

13. Furthermore, a number of the executory contracts between the Debtors and the NSTAR Companies are subject to regulation by FERC under the FPA. *See* 16 U.S.C. § 824(b)(1); Town of Norwood v. FERC, 202 F.3d 392, 396 (1st Cir. 2000). In particular, Section 205 of the FPA obligates power generators that intend to cancel contracts or change rate tariffs to file an appropriate notification with FERC at least 60 days in advance of the proposed change date to permit FERC the opportunity to conduct an appropriate review. *See* 18 C.F.R. §§ 35.13, 35.15. FERC's exercise of its review authority is not discretionary, and is intended to protect the public from exorbitant rates or contracts or practices that are contrary to public policy. *See* FERC Order 888-A [1996-200 Regs. Preambles] FERC Stats. & Regs. ¶ 31,048 at 30,306. FERC's jurisdiction extends to all aspects of wholesale electric allocations, contracts and practices affecting wholesale electric rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 371 (1988). Wholesale sales of electric rates cannot be made unless made pursuant to FERC approved tariffs. Duke Energy Trading & Marketing, L.L.C. v. Davis, 267 F.2d 1042, 1056 (9th Cir. 2001).

14. The Debtor's attempt to bypass FERC's primary jurisdiction, and to vest in the Debtors the exclusive ability to reject, among other things, contracts relating to wholesale energy transmission and supply is inappropriate. Indeed, as found in the decision of NRG Energy, Inc., FERC has exclusive jurisdiction to hear and determine a

debtor's request to reject such contracts. 2003 WL 21507685 *3-4 (S.D.N.Y, June 30, 2003). A copy of the NRG decision is attached hereto as Exhibit A. Additionally, the mandatory forum for the review of a FERC decision is a federal court of appeals. Id. at *4 citing 16 U.S.C. § 8251(a).

15. Further, the retroactive relief of rejection sought by the Debtors in its motion is contrary to the established law of this Circuit. See, In re Amber's Stores, Inc., 193 B.R. 819, 827 (Bankr. N.D. Texas. 1996) (noting effective date of rejection is date of entry of Order approving rejection, and Court approval is condition precedent to effective rejection). Pursuant to the Rejection Procedure Motion, if the Court should ultimately authorize rejection of a contract, then the effective date of any such rejection would still be applied retroactively to the date of the Rejection Notice rather than to date of the entry of the Court's Order. Rejection Procedure Motion, ¶10 (e). That is contrary to established law.

16. Finally, the Rejection Procedure Motion provides for limited notice and opportunity for a party to file a proof of claim related to the rejection of an executory contract. Rejection Procedure Motion, ¶10 (f). Any procedure for the rejection of contracts should provide for a minimum of thirty-days notice, after entry of an Order authorizing rejection, for the filing of claims related to the rejection.

WHEREFORE, the NSTAR Companies respectfully request that the Court enter an Order:

- (i) Denying the Rejection Procedure Motion; or in the alternative,
- (ii) Modifying the Rejection Procedure Motion as set forth herein;

(iii) Granting such other relief as is proper.

Respectfully submitted,

Boston Edison Company, *et al.*
By their counsel

Dated: July 25, 2003

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CERTIFICATE OF SERVICE

A true and correct copy of Boston Edison Company et al.'s Objection to Debtors' Motion For An Order Pursuant To Section 365 And 554 Of The Bankruptcy Code Authorizing And Approving A Procedure For The Rejection Of Certain Executory Contracts was served on MIRANT CORPORATION, ET AL.OFFICIAL SHORTENED SERVICE LIST dated July 24, 2003 on July 25, 2003 by First Class Mail, Postage Prepaid.

/s/Joseph A. Friedman

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