

**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
Debtors.	)	Jointly Administered

**ORDER AUTHORIZING AND APPROVING “MAKE WHOLE”  
MECHANISM PROVIDED BY SETTLEMENT AGREEMENT AND RELEASE**

Upon the Debtors’ Motion for Approval of (1) Settlement Agreement under Federal Rule of Bankruptcy Procedure 9019, (2) Allowed, Prepetition General Unsecured Claims by Pepco in the Amount of \$105 Million against Each of Mirant and MAEM, and (3) Assumption of Certain Transition Power Agreements (“TPAs”), filed by Mirant Corporation (“Mirant”) and its affiliated debtors (the “Debtors”), as debtors and debtors-in-possession, on October 28, 2003 (the “Motion”), the Debtors have requested an order approving a mechanism by which, in the event this Court’s approval of the Settlement Agreement and Release between and among Potomac Electric Power Company (“Pepco”), Mirant Americas Energy Marketing, LP (“MAEM”) and Mirant, dated October 24, 2003 (the “Agreement”), is reversed or materially modified on appeal by final, binding order, the parties to the Agreement would be restored to the positions in which they stood as of the date the Agreement was executed (the “Make Whole” mechanism). It appearing that the Court has jurisdiction over this matter and the relief requested in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that due notice of the Motion has been provided as set forth in the certificate of service attached to the Motion, and that no other or further notice need be provided; and the Official Committee of Unsecured Creditors of Mirant

Americas Generation, LLC, having filed an objection to the Motion, dated November 10, 2003 (the "MAG Objection") and the Official Committee of Unsecured Creditors of Mirant Corporation having filed a response to the Motion, dated November 10, 2003 (together with the MAG Objection, the "Objections"); and no other objections or responses having been filed or asserted; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and upon all of the proceedings heard before the Court; and after due deliberation and sufficient cause appearing therefor, it is, therefore, hereby

**ORDERED** that the Objections, to the extent not otherwise resolved hereby, are overruled; and it is further

**ORDERED** that the Debtors' request for approval of the Make Whole mechanism is granted pursuant to Federal Rule of Bankruptcy Procedure 9019; in the event this Court's approval of the Agreement is reversed or materially modified on appeal by final, binding order:

A. the Agreement will terminate in accordance with its terms;

B. Pepco shall have, in accordance with the terms of the Agreement, an agreed allowed claim against MAEM and Mirant with administrative priority status pursuant to 11 U.S.C. §§ 503(b) and 507(a)(1) in an amount equal to the total amount Pepco has paid under the amended TPAs, less the amount Pepco would have paid under the TPAs if the Agreement had not been executed and MAEM and Mirant had performed under the TPAs according to their terms (the "Make Whole Claim"); provided however, that Pepco's recovery in the aggregate on account of the Make Whole Claim shall not exceed the amount of the Make Whole Claim; and

C. MAEM and Mirant shall have, in accordance with the terms of the Agreement, the right to pursue rejection of the TPAs, and if such rejection is approved and MAEM and Mirant are permitted to cease performance under the TPAs, the effective date of

rejection shall be October 31, 2003, and MAEM and Mirant (or either of them) shall have the right to recover from Pepco in the aggregate the amount equal to the difference between (x) the amount Pepco actually paid to MAEM under the TPAs for power delivered after October 31, 2003 and (y) the amount Pepco would have otherwise paid for such power had the TPAs been rejected in fact and in the first instance on October 31, 2003; and it is further

**ORDERED** that notwithstanding anything to the contrary in this Order or the Agreement, the Court is not ruling upon any of the following matters, among others:


A. the right of any Mirant Party to assign the Maryland TPA and the District of Columbia TPA as amended, in accordance with Section 365 of the Bankruptcy Code;

B. the liability of one Debtor to any other Debtor with respect to intercompany claims arising from or related to the TPAs; and

C. whether multiple Debtors (including any Mirant Party) should be substantively consolidated;

and all parties' positions, arguments, objections, claims, disputes, rights and defenses with respect to all such matters are fully and expressly preserved.

Dated: November 19, 2003.

  
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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE