

their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

B. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

C. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

D. Mirant and its direct and indirect subsidiaries, including MAEM, comprise one of the world’s largest generators and marketers of electricity.

E. MAEM, a debtor and debtor-in-possession herein, purchases and sells energy, including natural gas and power, to wholesale customers.

F. SMUD is a community-owned utility organized under the laws of the State of California, with its principal place of business in Sacramento, California.

G. As of the Petition Date, MAEM and SMUD were parties to the SMUD Master Natural Gas Purchase Agreement No. H-554 (the “SMUD Agreement”), dated June 3, 1998.

H. Pursuant to the SMUD Agreement, SMUD agreed to purchase natural gas from MAEM through a series of transactions, each for an amount and quantity to be determined later (each, a “Transaction,” and collectively, the “Transactions”). SMUD would periodically submit a confirmation letter (each, a “Confirmation Letter”) to MAEM setting forth the material terms of the Transaction. MAEM would then deliver the gas pursuant to the terms of the relevant Confirmation Letter. Thereafter, at the end of each monthly billing cycle, MAEM would submit to SMUD a monthly bill detailing the total charges for gas delivered pursuant to that month’s aggregate Transactions.

I. From October 1, 2003, through November 30, 2003, MAEM delivered an aggregate 572,785.00 Dth¹ of natural gas to SMUD under various Confirmation Letters.

Pursuant to the terms of the relevant Confirmation Letters, MAEM delivered gas to SMUD consisting of \$1,677,592.34 for Transactions in October and \$329,895.35 for Transactions in November, for a total sum of \$2,007,487.69 (the “Postpetition Gas Claim”).

J. On or about October 22, 2003, MAEM filed a Motion to Reject the SMUD Agreement and the Confirmation Letters (collectively, the “Agreements”). SMUD did not file an objection to the rejection of the Agreements. Accordingly, the SMUD Agreements were rejected effective November 6, 2003, pursuant to the terms of the Court’s order dated August 14, 2003, approving procedures for the rejection of executory contracts.

K. SMUD alleges that, as a result of the rejection of the Agreements, it has rejection damages against MAEM totaling \$2,812,684 (the “SMUD Rejection Claim”).

L. As of this date, SMUD has not remitted the Postpetition Gas Claim to MAEM, alleging that it has a valid right of recoupment against the SMUD Rejection Claim. MAEM alleges that SMUD is not entitled to recoup the SMUD Rejection Claim from the Postpetition Gas Claim (the “Recoupment Dispute”).

M. To provisionally resolve the Recoupment Dispute, the Parties believe that SMUD’s payment of the Postpetition Gas Claim, in exchange for the Debtors’ acknowledgment and agreement that SMUD shall be entitled to an administrative claim, in an amount that shall not exceed the lesser of the Postpetition Gas Claim or the SMUD Rejection Claim, in the event

¹ Dth: *Dekatherm*; the quantity of heat energy equivalent to one million (1,000,000) British Thermal Unites (MMBtu). Dth is the standard quantity for nominations, confirmations, and scheduled quantities in the United States.

that the Court determines that SMUD possesses a valid right of recoupment, subject to the terms and conditions provided for in this Agreed Order, is in the best interest of the parties.

AGREED ORDER

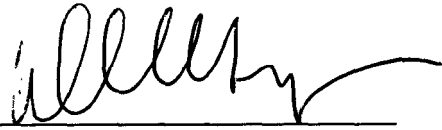
IT IS HEREBY:

1. ORDERED that within three (3) business days after the entry of this Agreed Order by the Court, SMUD shall pay an amount equal to the Postpetition Gas Claim to MAEM.
2. ORDERED that in the event an order is entered by this Court determining that SMUD would have been entitled with respect to the SMUD Rejection Claim to exercise the equitable remedy of recoupment against the Postpetition Gas Claim, SMUD shall be entitled to administrative priority pursuant to section 503(b) of the Bankruptcy Code in an amount not to exceed the lesser of the Postpetition Gas Claim or the SMUD Rejection Claim.
3. ORDERED that SMUD shall be entitled, without first seeking relief from the automatic stay provisions of section 362 of the Bankruptcy Code, to bring a declaratory action in this Court to determine whether it would have been entitled to the equitable remedy of recoupment with respect to its SMUD Rejection Claim.
4. ORDERED that the entry of this Order shall not constitute a waiver by the Debtors of any rights, claims and defenses regarding the amount and/or allowance of the SMUD Rejection Claim.
5. ORDERED that the Court shall retain sole and exclusive jurisdiction with

respect to any matters arising from or related to the implementation of this Agreed Order.

IT IS SO ORDERED.

Dated: March 7, 2004



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM AND CONTENT:

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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))	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,))	Case No. 03-46590-DML
Debtors.))	Jointly Administered

**AGREED ORDER BY AND AMONG MIRANT AMERICAS
ENERGY MARKETING, LP AND THE SACRAMENTO MUNICIPAL
UTILITY DISTRICT RELATING TO AMOUNTS OWED UNDER A
MASTER NATURAL GAS PURCHASE AGREEMENT**

Mirant Americas Energy Marketing, LP (“MAEM”) and the Sacramento Municipal Utility District (“SMUD” and, together with MAEM, the “Parties”), by and through their undersigned counsel, hereby agree as follows:

RECITALS

A. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary chapter 11 petitions. The Debtors continue to manage and operate

their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

B. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

C. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

D. Mirant and its direct and indirect subsidiaries, including MAEM, comprise one of the world’s largest generators and marketers of electricity.

E. MAEM, a debtor and debtor-in-possession herein, purchases and sells energy, including natural gas and power, to wholesale customers.

F. SMUD is a community-owned utility organized under the laws of the State of California, with its principal place of business in Sacramento, California.

G. As of the Petition Date, MAEM and SMUD were parties to the SMUD Master Natural Gas Purchase Agreement No. H-554 (the “SMUD Agreement”), dated June 3, 1998.

H. Pursuant to the SMUD Agreement, SMUD agreed to purchase natural gas from MAEM through a series of transactions, each for an amount and quantity to be determined later (each, a “Transaction,” and collectively, the “Transactions”). SMUD would periodically submit a confirmation letter (each, a “Confirmation Letter”) to MAEM setting forth the material terms of the Transaction. MAEM would then deliver the gas pursuant to the terms of the relevant Confirmation Letter. Thereafter, at the end of each monthly billing cycle, MAEM would submit to SMUD a monthly bill detailing the total charges for gas delivered pursuant to that month’s aggregate Transactions.

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M. To provisionally resolve the Recoupment Dispute, the Parties believe that SMUD’s payment of the Postpetition Gas Claim, in exchange for the Debtors’ acknowledgment and agreement that SMUD shall be entitled to an administrative claim, in an amount that shall not exceed the lesser of the Postpetition Gas Claim or the SMUD Rejection Claim, in the event

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5. ORDERED that the Court shall retain sole and exclusive jurisdiction with

respect to any matters arising from or related to the implementation of this Agreed Order.

IT IS SO ORDERED.

Dated: March __, 2004

HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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