

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

ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

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

ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF (1) SETTLEMENT AGREEMENT UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, (2) REJECTION OF CERTAIN AGREEMENTS AND (3) ASSUMPTION OF CERTAIN OTHER AGREEMENTS WITH NATURAL GAS PIPELINE COMPANY OF AMERICA

Upon the motion, of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors-in-possession (collectively, the "Debtors"), for approval of the Settlement Agreement appended hereto as Exhibit 1, the principal terms of which include (1) the release of certain claims of the Debtors against Natural Gas Pipeline Company of America ("NGPL"), (2) the rejection of a Negotiated Rate FTS Agreement No. 119394 (the "FTS Agreement") and two Discounted Rate IBS Agreements, Nos. 119413 and 119465 (the "IBS Agreements") with NGPL, and (3) the assumption of the Negotiated Rate ITS Agreement No. 119412 (the "ITS Agreement") with NGPL (collectively, the "Agreements"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

It is hereby:

ORDERED, that the Motion¹ is hereby **GRANTED** to the extent set forth herein; it is further

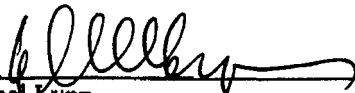
ORDERED, that the attached Settlement Agreement is hereby approved, and the Debtors may undertake and perform the acts required (and in some cases, permitted) by the Settlement Agreement; it is further

ORDERED that the FTS and IBS Agreements are deemed rejected as of November 3, 2003 (the "Rejection Date") and the Debtors shall have no further obligations under those agreements as of the Rejection Date; it is further

ORDERED that in full satisfaction of NGPL's claims arising out of MAEM's rejection of the FTS and IBS Agreements, NGPL will receive \$3,247,163.89, satisfied through a draw by NGPL upon an existing letter of credit with Wachovia Bank and numbered as SM200665W; and it is further

ORDERED that the Debtors' assumption of the ITS Agreement is hereby approved.

Dated: December 3, 2003



D. Michael Lynn,
United States Bankruptcy Judge

AGREED AS TO FORM AND CONTENT

By: 

Natural Gas Pipeline Company of America

¹ Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

Presented By:

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**ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION**

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("this Agreement") is made and entered into this 23rd day of October, 2003, by and among Mirant Americas Energy Marketing, LP ("Mirant"), Mirant Corporation ("Mirant Corp.") and Natural Gas Pipeline Company of America ("Natural") (collectively, the "Parties").

WHEREAS, Mirant Americas Energy Marketing, LP, Mirant Corporation, and many of their affiliates ("the Debtors") have filed for bankruptcy protection;

WHEREAS, the Debtors have the right to reject executory contracts under Section 365 of the U.S. Bankruptcy Code;

WHEREAS, the Parties have been in discussions regarding the following four contracts: Negotiated Rate FTS Agreement No. 119394 ("FTS Agreement") and Discounted Rate IBS Agreement Nos. 119413 and 119465 ("IBS Agreements"), and Negotiated Rate ITS Agreement No. 119412 ("ITS Agreement") (collectively, "the Agreements");

WHEREAS, the Debtors could reject the Agreements, which Natural could oppose, and if rejected, Natural could file a claim against the bankruptcy estate, which itself would be subject to dispute, and Natural believes it would have the right to draw on a letter of credit posted by Debtors for the benefit of Natural ("the Dispute");

WHEREAS, the Parties have settled upon the rejection of three of the Agreements, an assumption of another, the amount of rejection damages, and the form and timing of payment of those damages;

WHEREAS, the Parties wish to settle the Dispute pursuant to the terms, conditions, and consideration set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual promises, agreements, and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Release of claims by Mirant.

Upon the Effective Date of this Agreement, Mirant, for and on behalf of itself and its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, agrees to and hereby does release, acquit, and forever discharge Natural, its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates,



representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, of and from any manner of action or actions, causes of action, claims, damages, demands, executions, expenses, judgments, levies, liabilities, losses, or attorneys' fees, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct, or indirect, relating to the Dispute. Notwithstanding the above, nothing in this paragraph shall affect Mirant's right to bring an action to enforce or interpret this Agreement.

2. Release of claims by Natural.

Upon the Effective Date of this Agreement, Natural, for and on behalf of itself and its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, agrees to and hereby does release, acquit, and forever discharge Mirant, its present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, and their present, former and future directors, officers, shareholders, parent companies, divisions, subsidiaries, affiliates, associates, representatives, agents, principals, predecessors, successors, heirs, owners, assigns, executors, administrators, employees, insurers, and attorneys, of and from any manner of action or actions, causes of action, claims, damages, demands, executions, expenses, judgments, levies, liabilities, losses, or attorneys' fees, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct, or indirect, relating to the Dispute, including without limitation any claim for damages for rejection of the FTS Agreement and the IBS Agreements as contemplated by Paragraph 3. Notwithstanding the above, this paragraph shall not affect Natural's right to bring an action to enforce or interpret this Agreement. Nothing in this Agreement shall affect the rights of any affiliate or other entity related to Natural from pursuing their rights and remedies with regards to contracts other than the Agreements.

3. Rejection of FTS Agreement and IBS Agreements.

Natural agrees to the rejection of the FTS Agreement and the IBS Agreements. The Parties shall promptly and jointly move and support their rejection. Natural reserves the right to make any filings with the Federal Energy Regulatory Commission which Natural deems necessary to reflect any of the terms of this Settlement Agreement or actions of the bankruptcy court in connection with this Settlement Agreement.

4. Payment by Mirant.

In full and final satisfaction of all claims of Natural as more fully outlined in Paragraph 2, Mirant shall pay Natural \$3,247,163.89. Natural, Mirant and Mirant Corp. agree that such payment shall be made and satisfied through a draw by Natural upon the existing letter of credit issued by Wachovia and numbered as SM200665W, which is held by Natural as security. Natural shall be entitled to make such draw upon the above-described letter of credit for the liabilities and obligations of Mirant and Mirant Corp. to Natural upon the Effective Date of this Agreement.

5. ITS Agreement.

Throughout the term of the ITS Agreement, Mirant shall at all times, to the extent that Mirant does not otherwise satisfy Natural's creditworthiness requirements, provide Natural with, and maintain in effect during the term of the ITS Agreement, adequate assurance of payment in accordance with the requirements of Natural's FERC Gas Tariff, as may be revised from time to time. The Parties agree that this requirement shall initially be satisfied by a pre-payment in the amount of \$10,000 to secure Mirant's obligations under the ITS Agreement. The Parties acknowledge and agree that (i) Natural's FERC Gas Tariff, Section 16(b), requires that if a Shipper (as defined therein) fails to satisfy Natural's credit criteria, such Shipper may still obtain service thereunder if it provides payment in advance for three (3) months' service and (ii) that Mirant's pre-payment of \$10,000 hereunder is the mutual attempt of the Parties to estimate the uncertain amount of three (3) months' service under the ITS Agreement.

Mirant agrees to assume the ITS Agreement and the parties shall promptly and jointly move for its assumption.

6. Bankruptcy Court Approval; Effective Date

This Agreement is subject to the approval of the U.S. Bankruptcy Court presiding over the Debtors' bankruptcy case. The Parties will work cooperatively and in good faith to obtain that approval promptly. The Effective Date of this Agreement will be the date on which the rejection of the FTS Agreement and IBS Agreements contemplated by Paragraph 3, and the assumption of the ITS Agreement contemplated by Paragraph 5, is approved by the bankruptcy court.

7. Designation of Agency.

Upon execution of this Agreement by the Parties, Mirant shall designate Natural as its exclusive agent under the FTS Agreement effective October 20, 2003, and such agency shall remain in effect until the bankruptcy court either approves or denies this Agreement. As agent, Natural may, among other things, remarket transportation capacity pursuant to the terms and conditions of Natural's FERC Gas Tariff. During the period of its agency, Natural shall determine at its sole discretion the rates, terms, and conditions for any one or more releases of transportation capacity, subject to the provisions of Natural's FERC Gas Tariff. Mirant will pay

no agency or marketing fees to Natural for marketing the capacity. The sole consideration for Natural's marketing efforts will be retention by Natural of any and all revenues received by Natural as a result of the capacity releases. Mirant shall not be entitled to any revenues from the releases which may be greater than the charges which would have been paid by Mirant under the FTS Agreement for the term of the capacity releases, and likewise shall not be liable to Natural for any amount by which any revenues received by Natural from any releases might be less than the charges which would have been paid by Mirant under the FTS Agreement for the term of the capacity releases. Natural shall indemnify Mirant, and hold Mirant harmless, for all acts or omissions relating to the agency for which it or its officers, directors, agents, employees, designees, or any combination thereof, are responsible during the period of its agency.

8. Settlement not an admission.

Nothing contained in this Agreement shall be deemed an admission of any kind, whether of guilt, liability, or fact, by or against the Parties or their directors, officers, shareholders, agents, employees, representatives, principals, successors, predecessors, assigns, and heirs. Whether or not this Agreement is consummated or approved, neither this Agreement nor evidence regarding any of the events or negotiations leading up to it shall be admissible in any action or proceeding for any purpose other than enforcement of this Agreement.

9. Representations, warranties, and agreements.

The Parties represent and warrant to each other and agree with each other as follows:

- a. The Parties to this Agreement have received independent legal advice from attorneys of their own choosing with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by each Party, that Party's attorneys reviewed this Agreement at length, and made all desired changes.
- b. Except as expressly stated in this Agreement, no Party to this Agreement has made any statement or representation to any other Party to this Agreement regarding any fact relied upon by such other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation, or promise of the other Party in executing this Agreement, except as expressly stated in this Agreement.
- c. There are no other agreements or understandings between the Parties to this Agreement except as stated in this Agreement.
- d. Each Party to this Agreement, together with its attorneys, has made such investigation of the facts pertaining to this Agreement, and of all the matters pertaining thereto, as it deems necessary.
- e. The terms of this Agreement are contractual, not a mere recital, and this Agreement is the result of negotiations between the Parties to this Agreement, each of which has participated in the drafting of this Agreement through its respective attorneys.

- f. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by each person executing this Agreement.
- g. Each Party to this Agreement has the power and authority to enter into and perform this Agreement, and the execution and performance of this Agreement has been duly authorized by all requisite corporate action.
- h. Each Party to this Agreement agrees that such Party will not take any action that would interfere with the performance of this Agreement by any other Party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.
- i. In entering into this Agreement, each Party recognizes that no facts or representations are ever absolutely certain; accordingly, except as specifically provided in this Agreement, each Party to this Agreement assumes the risk of any mistake, and if any Party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such Party shall not be entitled to set aside this Agreement by reason thereof. This Agreement is intended to be final and binding between and among the Parties, regardless of any mistake of fact, mistake of law, or any other circumstances whatsoever. Each Party relies on the said finality of this Agreement as a material factor inducing that Party's execution of this Agreement.
- j. No Party to this Agreement has heretofore assigned or transferred or purported to assign or transfer to any person, firm, or corporation whatsoever any actions, causes of action, debts, dues, liabilities, controversies, claims, or demands herein released. Each Party hereto agrees to indemnify and hold harmless each other Party hereto against any actions, causes of action, debts, dues liabilities, controversies, claims, counterclaims, crossclaims, third-party claims or demands based on, arising out of, or in connection with any such transfer or assignment or purported transfer or assignment, including all attorneys' fees and costs incurred in connection therewith.

10. Integration.

This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the Parties to this Agreement relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party to this Agreement, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement may not be supplemented or changed orally.

11. Execution in Counterparts.

This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together

constitute but one and the same instrument and agreement. This Agreement shall be deemed to be fully executed on the last date any such counterpart is executed.

12. Section Headings.

The section headings used herein are solely for convenience, shall not be used in interpreting this Agreement, and shall not be construed in any way to limit, modify, or affect the terms of this Agreement.

13. Enforcement of the Settlement.

In the event of a dispute between the Parties arising out of this Agreement or any action that is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, expenses, and costs incurred after execution of this Agreement, but only against a party to the dispute.

14. Severability.

In the event that any portion or provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions and provisions hereof shall remain in full force and effect.

15. Governing Law and Venue.

This Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York (without reference to its choice of law doctrine, other than section 5-1402 and 5-1402 of the New York General Obligations Law).

[The rest of this page is intentionally left blank.]

16. Construction.

The terms of this Agreement are to be construed in an evenhanded fashion as between the Parties. Should it be determined that there is ambiguity or a lack of clarity as regards any of the language of the Agreement, the issue as to the meaning of such language shall be resolved in a manner consistent with the relevant terms of the Agreement and without regard to authorship.

IN WITNESS WHEREOF, the Parties to this Agreement have each approved and executed this Agreement on the dates set forth opposite their respective signatures.

**MIRANT AMERICAS ENERGY
MARKETING, LP, through Mirant Americas
Development Inc., its general partner**

Date: 10/23/03

By: [Signature]
Name: John L. O'Neal
Title: Vice President + Chief Commercial
Officer, North America

MIRANT CORPORATION

Date: 10/23/03

By: [Signature]
Name: John L. O'Neal
Title: Vice President + Chief Commercial
Officer, North America

NATURAL GAS PIPELINE OF AMERICA

Date: 10/23/03

By: [Signature]
Name: Scott E. Parker
Title: President