

**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. 03-46591(DML)
Debtors.	)	Jointly Administered
	)	
	)	

**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. § 365(a) AND F.R.B.P. 6006 AND 9014 AUTHORIZING THE DEBTORS TO REJECT (i) THE GAS MASTER SERVICE AGREEMENT DATED FEBRUARY 2002; (ii) THE TRANSACTION AGREEMENT DATED FEBRUARY 2002; AND (iii) THE MASTER MONTHLY NETTING, CLOSE-OUT NETTING AND MARGIN AGREEMENT DATED AUGUST 22, 2001 WITH KERN OIL & REFINING CO.**

Upon the Motion, dated October 23, 2003, filed by Mirant Corporation and its affiliated debtors (collectively, the "Debtors") for the entry of an order authorizing the Debtors to reject (i) the Gas Master Service Agreement dated as of February 2002 (the "Service Agreement"); (ii) the Transaction Agreement dated as of February 2002; and (iii) the Master Monthly Netting, Close-Out Netting and Margin Agreement dated as of August 22, 2001 (the "Netting Agreement," and, with the Service Agreement and the Transaction Agreement, collectively, the "Contracts") between Kern Oil & Refining Co. ("Kern Oil") and Debtor Mirant Americas Energy Marketing, LP ("MAEM"); Kern Oil having filed a response to the Motion asserting, among other things, that the Contracts are forward contracts and that the Debtors entered into a postpetition agreement with Kern Oil (the "Response"); 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 Motion is hereby GRANTED as set forth herein; it is further

**ORDERED** that, to the extent that the Contracts are executory contracts that have not already terminated by their terms, the Contracts are rejected; it is further

**ORDERED** that pursuant to the resolution of the Postpetition Claims (as defined and described below), the Contracts will be deemed terminated on: (i) the date the Motion was filed; (ii) the date the Response was filed; (iii) the date this Order is entered; or (iv) December 1, 2003 (the "Termination Date") and the Debtors will have no further obligations under the Contracts as of the Termination Date except as may otherwise be determined by this Court in resolving the Postpetition Claims; it is further

**ORDERED** that, pursuant to the *Order Pursuant To Bankruptcy Rule 3003(c) For Entry Of An Order (I) Establishing A Bar Date For Filing Certain Proofs Of Claim; (II) Establishing Ramifications For Failure To Comply Therewith; (III) Approving Proof Of Claim Form And Consolidated Notice Of (A) Case Commencement, (B) Bar Date, and (C) Meeting Of Creditors Under Section 341(a) of the Bankruptcy Code; And (IV) Approving Notice And Publication Procedures* entered on August 21, 2003, the last day for Kern Oil to assert a claim by reason of the rejection of the Contracts is the later of (i) December 16, 2003 at 5:00 p.m. Prevailing Eastern Time, the last day for filing proofs of claim in all of the above-captioned cases; or (b) the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of this Order; and it is further


**ORDERED** that, notwithstanding anything to the contrary in the Motion, nothing in the Motion or this Order is intended to nor will the same affect the rights or remedies of Southern California Gas Company ("Socal Gas") or MAEM in connection with the Irrevocable and Unconditional Standby Letter of Credit dated February 22, 2002, as amended ("LC"), and issued for the benefit of Socal Gas in support of certain liabilities and obligations of MAEM, which

rights and remedies are expressly reserved and are not affected by this Order, nor does the Court determine whether and under what circumstances, if any, Social Gas will be obligated to return the LC; and it is further

**ORDERED** that, except for the rejection and termination of the Contracts as set forth herein, nothing in this Order shall impair, impede, or effect any claims or causes of action (or any related defenses) of either the Debtors or Kern Oil arising from or related to: (i) the ultimate nature or characterization of the Contracts (including whether the Contracts are forward contracts) and the parties' respective rights thereunder; and (ii) any postpetition conduct, actions, contracts, or offsets including, without limitation, the allegations in the Response and propriety of the offsets made by Kern Oil (subparagraphs (i) and (ii) being referred to collectively herein as the "Postpetition Claims"). Both the Debtors and Kern Oil reserve all rights, remedies, and defenses related to any Postpetition Claims and may seek further and other relief relating to the Postpetition Claims by separate motion or adversary proceeding; and it is further

**ORDERED** that the Court makes no specific finding as to the nature or character of the Contracts. More specifically, the Court makes no specific finding as to whether the Contracts are "forward contracts" within the meaning of section 101(25) of the Bankruptcy Code or are otherwise "Trading Contracts" within the scope and effect of previous orders entered by the Court. The parties' respective rights with respect to these matters are fully reserved as set forth above.

Dated: November 19, 2003

  
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D. Michael Lynn,  
United States Bankruptcy Judge