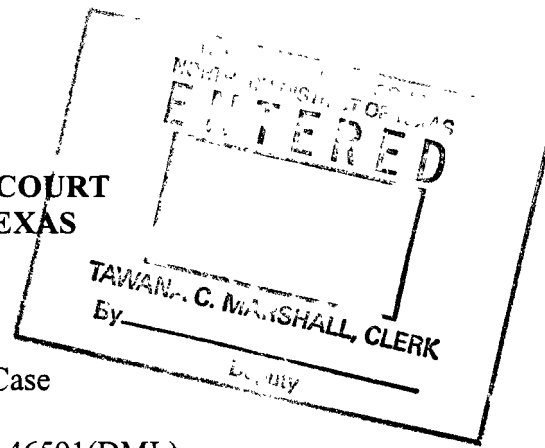


**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**



_____ )	
In re )	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> , )	Case No. 03-46591(DML)
)	Jointly Administered
Debtors. )	
_____ )	Hearing Date: October 1, 2003

**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 THE (1) POWER PURCHASE AND EXCHANGE, FACILITIES OPERATION AND MAINTENANCE, AND FUEL SUPPLY AGREEMENT DATED OCTOBER 8, 1998 AND (2) THE SETTLEMENT AGREEMENT DATED JUNE 28, 2002 WITH BRAZOS ELECTRIC POWER COOPERATIVE, INC.**

Upon the Motion dated September 2, 2003 filed by Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the ("Debtors")) for the entry of an order authorizing the Debtors to reject (1) the "Power Purchase and Exchange, Facilities Operation and Maintenance, and Fuel Supply Agreement" dated as of October 8, 1998 (the "Supply Agreement") and (2) the "Settlement Agreement" dated as of June 28, 2002 (the "Amendment," together with the Supply Agreement, are hereinafter referred to collectively as the "Supply Contract"), which Supply Contract is between Brazos Electric Power Cooperative, Inc. ("Brazos Electric") and Debtor Mirant Americas Energy Marketing, LP ("MAEM"); 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<sup>1</sup> is hereby GRANTED as set forth herein; it is further

**ORDERED**, that the Supply Contract shall be deemed rejected as of October 1, 2003 (the "Rejection Date") and the Debtors shall have no further obligations under the Supply Contract as of the Rejection Date except as specifically set forth herein; it is further

**ORDERED**, that pursuant to the agreement of Brazos Electric and MAEM, the Power Purchase and Sale Enabling Agreement dated September 1, 1999 between Brazos Electric and MAEM and the Transaction Confirmation dated September 11, 1999 entered into by Brazos Electric and MAEM under the Power Purchase and Sale Enabling Agreement (collectively, the "Holnam Contract") shall be deemed rejected as of the Rejection Date and the Debtors shall have no further obligation under the Holnam Contract as of the Rejection Date except as specifically set forth herein; it is further

**ORDERED**, that the rights and obligations of MAEM to utilize the Bosque Generating Facility located in Bosque County, Texas (the "Facility") to convert fuel provided by Brazos Electric into electricity to be delivered to Brazos Electric, and the rights and obligations of Brazos Electric to pay Debtor MAEM for such services shall be set forth in a separate "Tolling Agreement" which MAEM shall enter into and perform in the ordinary course of its business, and which agreement shall be timely delivered to any committee appointed in this case under 11 U.S.C. § 1102; it is further

**ORDERED**, that Brazos Electric shall have an allowed, prepetition claim against Debtor MAEM (or Mirant Corporation) as a result of the rejection of the Supply Contract and the Holnam Contract (the "Allowed Claim") in an amount not to exceed: (a) the positive difference,

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

if any, between (i) the actual costs Brazos Electric reasonably incurs to serve the Brazos Electric Load (as defined in the Contract) from the Rejection Date through December 31, 2003, and (ii) the costs Brazos Electric would have incurred to serve such load under the Supply Contract, and in determining the costs Brazos Electric would have incurred to serve the Brazos Electric Load under the Supply Contract during the period from October 1, 2003 through December 31, 2003, those costs shall include an amount equal to all PCR revenues attributable to San Miguel received by Brazos Electric related to such period except for PCR revenues related to hours in which the San Miguel plant is out of service due to a scheduled outage for which Brazos Electric has provided written notice to MAEM prior to October 1; plus (b) the positive difference, if any, between (i) the actual costs Brazos Electric reasonably incurs to replace the capacity and energy that was to be provided by MAEM under the Holnam Contract from the Rejection Date through December 31, 2003, and (ii) the costs Brazos Electric would have incurred had MAEM supplied such capacity and energy under the Holnam Contract; plus (c) the amount of one million seven hundred thousand dollars (\$1,700,000) for any claims by Brazos Electric related to Price Adjustment Events (as defined in the Supply Contract) and MAEM's failure to fill fuel oil storage facilities with fuel oil in the quantity that existed at the commencement of the Supply Contract in accordance with Section 8.4 of the Supply Agreement; provided, however, that MAEM shall not use any further fuel oil that was in such fuel oil storage facilities on September 2, 2003; it is further

**ORDERED**, that in determining the amount of the Allowed Claim or of any administrative claim of Brazos Electric, Brazos Electric shall not be entitled to any amounts under Section 4.7(a)(iii) of the Supply Agreement; it is further

**ORDERED**, that for each month in the period from the Rejection Date through December 31, 2003, Brazos Electric shall provide MAEM by the fifteenth day of the following month a report that sets out the calculations of the amounts to be included in the Allowed Claim for such month in sufficient detail to allow MAEM to audit the appropriateness of the charges included and the correctness of the calculations made by Brazos Electric; it is further

**ORDERED**, that Debtors and Brazos Electric mutually release each other from any and all claims and potential claims arising from both of the Supply Contract and from the Holnam Contract (and any guarantees of the Supply Contract and the Holnam Contract); provided however, that such releases shall not apply to (i) Brazos Electric's Allowed Claim; (ii) any administrative expense claim of Brazos Electric and any claim of MAEM, in either case under the Supply Contract and arising after July 14, 2003 through the Rejection Date and priced in accordance with the Supply Contract; (iii) notwithstanding anything herein to the contrary, all postpetition payment obligations of MAEM and Brazos Electric that accrued prior to the Rejection Date, which shall be performed and any amounts that are due after the Rejection Date but which accrued prior thereto shall be paid by MAEM or Brazos Electric to the respective counterparty, as the case may be; or (iv) the rights and obligations of Brazos Electric or MAEM pursuant to Sections 2.1, 2.3, 2.5, 2.8 and 3.2 and Attachment A to the Amendment, regarding payments due from or credits due to either Brazos Electric or MAEM in connection with matters or events occurring prior to the Rejection Date, whether or not any such payment or revenue/credit is due from or to Brazos Electric or MAEM prior to or after the Rejection Date (i.e. any charges and/or credits imposed by the Electric Reliability Council of Texas, Inc. ("ERCOT" or any successor) upon Debtor MAEM as QSE for Brazos Electric, any payments made or revenue paid by ERCOT to Debtor MAEM as QSE for Brazos Electric, or any

adjustments made by the ERCOT to any such charges and/or credits previously imposed, in each case related to the period through the Rejection Date, MAEM and Brazos Electric shall each be liable for all or a portion of such charges and/or credits in accordance with the terms of the Supply Contract). The Supply Contract shall continue to have effect after rejection only to the extent set out in clauses (i) through (iv) of the preceding sentence, and MAEM and Brazos Electric shall pay the charges and/or receive the credits referred to in clause (iv) according to the following procedure: (a) Brazos Electric shall pay MAEM in accordance with the Supply Contract based upon the charges and/or credits billed by ERCOT; and (b) in the event ERCOT subsequently adjusts any such charges and/or credits to MAEM as QSE upon which payments were made between MAEM and Brazos Electric, then the amounts owed will be recalculated based upon the revised charges from ERCOT and MAEM shall determine and notify Brazos Electric of any resulting adjustments to the payments received by MAEM from Brazos within ten business days of receiving ERCOT's invoice to MAEM reflecting the adjustment; and any resulting payment to be made to Brazos Electric by MAEM or payment to be made by Brazos Electric to MAEM, by reason of such adjustment, shall be made within twenty (20) days of such notification; it is further

**ORDERED**, that, for the avoidance of doubt, neither of MAEM nor any other Debtor shall be liable (and Brazos Electric shall not have any Allowed Claim or administrative claim) for any penalty or punitive damages under the Supply Contract or any claims that could be asserted under section 4.7(a)(iii) of the Supply Agreement (or any similar provision in the Holnam Contract) and all such claims shall be released in accordance with the previous paragraph hereof; it is further

**ORDERED**, not withstanding anything herein to the contrary, claims that Brazos or MAEM may have under the Tolling Agreement shall be governed by the Tolling Agreement and the release contained in this Order shall not apply to claims that may arise under the Tolling Agreement. MAEM shall not object to any of Brazos Electric's Allowed Claims or administrative claim based upon any limitation, release or waiver of liability provisions contained in the Tolling Agreement; it is further

**ORDERED**, that, to the extent applicable, the ten-day stay contained in rule 6004(g) of the Federal Rules of Bankruptcy Procedure is waived, and this Order shall therefore be immediately effective.

Dated: October 1, 2003

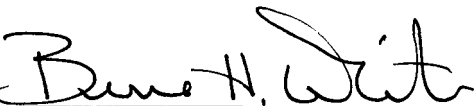


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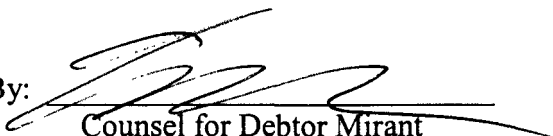
D. Michael Lynn,  
United States Bankruptcy Judge

Acknowledged, accepted and agreed:

PATTON & BOGGS, LLP

By:   
Counsel for Brazos Electric Power  
Cooperative, Inc.

WHITE & CASE, LLP

By:   
Counsel for Debtor Mirant  
Americas Energy Marketing, LP