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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)
	)	Jointly Administered
Debtors.	)	
_____	)	

**MOTION OF DEBTORS TO REJECT THE MAPP CENTER AGREEMENT WITH  
MAPPCOR, A MINNESOTA NONPROFIT CORPORATION**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Motion (the “Motion”) pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) for authority to reject the MAPP Center Agreement (the “Contract”) between Mappcor, a Minnesota nonprofit corporation (“MAPPCOR”) and Mirant Americas, Inc. (“MAI”) (as successor in interest to

Southern Energy Trading and Marketing, Inc.), which is described below in greater detail and attached hereto as Exhibit B.<sup>1</sup> In support thereof the Debtors represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

2. The Cases. 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 and manage. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

**RELIEF REQUESTED**

5. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Contract listed below, effective ten (10) business days from the date of service of this Motion.

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<sup>1</sup> Not all parties were served with the Exhibits. Any party may request a copy of the Exhibits by making a written request therefor to the Debtors’ counsel.

## **BASIS FOR RELIEF**

6. On August 14, 2003, the Court entered an amended order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

7. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

8. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Contract will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

- (a) **Title of the Contract:** MAPP Center Agreement between MAPPCOR and MAI, dated December 18, 1997.

Effective Date of Rejection:

April 22, 2004, subject to paragraph 9 hereof

Parties to the Contract:

MAPPCOR

MAI

Contact Information for Non-Debtors:

MAPPCOR  
Mid-Continent Area Power Pool  
1125 Energy Park Drive  
St. Paul, MN 55108-5001  
Attn: Daniel Skaar, General Manager/CEO

9. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contract, then the Contract shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Contract.

10. Pursuant to the Order, claims arising out of the rejection of the Contract must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Contract, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").

11. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contract who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or

assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

**General Description Relating to the Contracts.**

12. The Debtors entered into the Contract to gain the rights and privileges in MAPP, which is a voluntary association of companies that includes a power market or "pool." MAPP is dedicated to maintain reliability of energy supply within the upper midwest region of the United States.<sup>2</sup> MAPPCOR is a separate organization that contracts with MAPP to operate the pool which furnishes facilities, equipment, personnel and services to assist member committees, councils, task forces, and providing educational programs, material and information to the public, governmental bodies, the National Electric Reliability Council, and others.

**The Contracts May Be Rejected.**

13. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Contracts is clearly executory as it requires: (a) MAPPCOR to provide services to MAI, and (b) MAI to pay for those privileges and services in the form of annual dues. Section 365 allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guaranty Co. v. Old Republic National Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

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<sup>2</sup> Concurrently herewith the Debtors are filing a motion to reject the Restated Agreement with MAPP.

### **Rejection Of The Contract is Within the Debtors' Business Judgment.**

14. Rejection of a Contract requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

15. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)). The Debtors' have determined, after due inquiry, that the Contract is burdensome to their estates and should be rejected.

16. The Debtors have determined, in their reasonable business judgment, that the Contract should be rejected as uneconomical and an impediment to their ongoing business operations. The Debtors have no generating assets located within MAPP and do not intend to

operate in the region governed by MAPP. Therefore, membership in the MAPP pool and receipt of services from MAPPCOR are unnecessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas  
April 8, 2004

HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

By: /s/ Ian T. Peck  
Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian T. Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Craig H. Averch  
State Bar No. 01451020  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 8th day of April 2004.

Eric J. Taube  
Mark C. Taylor  
Hohmann, Taube & Summers, L.L.P.  
100 Congress Avenue  
Suite 1600  
Austin, TX 78701

Deborah D. Williamson  
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Cox & Smith Incorporated  
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Edward S. Weisfelner  
Leslie H. Scharf  
Brown Rudnick Berlack Israels LLP  
120 West 45th Street  
New York, NY 10036

MAPPCOR  
Mid-Continent Area Power Pool  
1125 Energy Park Drive  
St. Paul, MN 55108-5001  
Daniel Skaar

Paul N. Silverstein  
Andrews & Kurth, L.L.P.  
805 Third Avenue  
New York, NY 10022

Jason S. Brookner  
Andrews & Kurth, L.L.P.  
1717 Main Street  
Suite 3700  
Dallas, TX 75201

/s/ Ian T. Peck

**EXHIBIT A**

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

**ENTERED**  
TAWANA J. 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-11
Debtors.	)	Jointly Administered

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER  
PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE  
AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contracts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED** that the Motion is granted; and it is further

**ORDERED** that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

**ORDERED** that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

**ORDERED** that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

**ORDERED** that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

**ORDERED** that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unutil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

**ORDERED** that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2003



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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

**Rejection Procedures**

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

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-11
	)	Jointly Administered
Debtors.	)	
_____	)	

MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
OF [NAME OF COUNTERPARTY]

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.

§§ 101-1330, as amended (the "Bankruptcy Code").<sup>1</sup> The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

#### **RELIEF REQUESTED**

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

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<sup>1</sup> Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

**BASIS FOR RELIEF**

5. On \_\_\_\_\_, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:  
Effective Date of Rejection:  
Parties to the Lease/Contract  
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas  
\_\_\_\_\_, 2003

HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

By \_\_\_\_\_

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Michelle C. Campbell  
State Bar No. 24001828  
WHITE & CASE LLP  
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200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION

**EXHIBIT B**

## MAPP CENTER AGREEMENT

THIS AGREEMENT ("Agreement") is dated and executed on December 18, 1997, (the "Effective Date") between MAPPCOR, a Minnesota nonprofit corporation, and Southern Energy Trading and Marketing, Inc. ("Member"), a Corporation, under the laws of State of Delaware.  
(type of entity)

### WITNESSETH:

WHEREAS, Member is a party to the Restated Agreement and is a member of MAPP;

WHEREAS, MAPPCOR will provide services to Member as described in this Agreement; and

WHEREAS, the Restated Agreement requires each member of MAPP to enter into an agreement with MAPPCOR for the services to be provided by MAPPCOR under the Restated Agreement; and

WHEREAS, Member desires to receive the services to be provided by MAPPCOR;

NOW, THEREFORE, the parties hereto agree as follows:

### ARTICLE ONE DEFINITIONS

**Section 1.01. Definitions.** Capitalized terms used in this Agreement, but not defined herein, shall have the meaning assigned to such terms in the Restated Agreement.

### ARTICLE TWO MAPP CENTER

**Section 2.01. MAPP Center.** MAPPCOR shall maintain and operate the MAPP Center, which shall furnish the facilities, equipment, personnel and services appropriate to carrying out the Restated Agreement, including assisting the MAPP committees, councils, task forces, subcommittees, working groups, and other persons or entities to satisfy the obligations and responsibilities of the Members of MAPP under the Restated Agreement, and providing educational programs, material and information to the public, MAPP Members, government regulatory bodies, NERC and others.

### ARTICLE THREE LIMITATION OF LIABILITY; RELEASE

**Section 3.01. Limitation of Liability.** Member shall retain sole responsibility for the operation of its system and the utilization of information provided by MAPPCOR. MAPPCOR makes no warranties, express or implied, or representations as to the accuracy of the information supplied by it, MAPPCOR shall not be liable to Member whether in contract, tort, warranty, or otherwise, for any claims by Member that result in any manner whatsoever from the operation of the MAPP Center, or the information provided, or the services rendered hereunder, except claims resulting from willful acts or omissions of MAPPCOR.

**Section 3.02. Schedule F, Release.** In consideration of the provision by MAPPCOR of the services specified in Schedule F of the Restated Agreement, Member as a Transmission Provider or a Transmission Customer, as the case may be, to the maximum extent permitted by law, releases and discharges, and shall indemnify and hold harmless, MAPPCOR from any and all liability for any and all damage or other claim Member may have, or that may be asserted on behalf or in the name of Member, to the extent any such claim arises out of or relates to the administration of this Schedule F, or otherwise relates to transmission service provided or sought under such Schedule, including but not limited to (i) unintentional, consequential, direct, compensatory, punitive, special, indirect, or incidental damages, (ii) damages arising from loss of or damage to property and loss of life or personal injury, or (iii) any claims arising from any loss of interchange or coordination sales or revenues, loss of profits, costs or substitute power or transmission service, costs or additional operating expenses, or suits by third parties; provided, however, that MAPPCOR shall not be released, discharged, indemnified or held harmless with respect to any liability for damages or other claims arising from any action by MAPPCOR that is unlawful, undertaken in bad faith, grossly negligent or the product of willful misconduct.

#### **ARTICLE FOUR** **FINANCIAL**

**Section 4.01. Billing for Costs.** MAPPCOR shall bill Member for dues, and costs as allocated and assigned by the Executive committee of MAPP in accordance with and at the times provided in the Restated Agreement.

**Section 4.02. Payment.** Member shall pay each bill submitted by MAPPCOR within the time provided in the Restated Agreement; or, if no time is so provided, within 30 days of the date of the bill.

**Section 4.03. Accounting.** MAPPCOR will maintain its books and records in accordance with generally accepted accounting practices and procedures. Member, at its sole expense, may audit the books and records of MAPPCOR relevant to the transactions contemplated by this Agreement, during normal business hours of MAPPCOR.

**Section 4.04. Credit.** For the purpose of determining the ability of Member to meet its obligations under this Agreement, MAPPCOR may from time to time require reasonable credit review procedures in accordance with standard commercial practices, including, without limitation, audited or unaudited financial statements. Member authorizes MAPPCOR to conduct such credit investigation of Member as MAPPCOR, in its sole discretion, deems necessary and appropriate.

#### **ARTICLE FIVE** **SUCCESSORS; ASSIGNS**

**Section 5.01. Successors.** This Agreement shall be binding upon the successors of Member, and upon the surviving entity in any merger, consolidation, or acquisition involving Member in which Member is not a surviving entity.

**Section 5.02. Assignment.** Except for the assignment or pledge of an interest in this Agreement to the United States acting through the Rural Utilities Service, Member shall not assign this Agreement without the consent, in writing, of the board of directors of MAPP COR, which consent shall only be withheld if the assignee is not a member of MAPP, or upon a determination that there is a substantial likelihood that the assignee will not fulfill the obligations of Member under this Agreement, or that the Executive Committee of MAPP has not consented to the assignment of Member's interest in the Restated Agreement.

**ARTICLE SIX**  
**TERM**

**Section 6.01. Term.** The term of this Agreement shall commence on the Effective Date and shall continue until the termination of Member's membership in MAPP, subject, however, to Member continuing financial obligations upon suspension, withdrawal or termination, or the successor to Member that ceases to be a Member of MAPP as a result of a merger or consolidation pursuant to Section 5.3.2 of the Restated Agreement.

**ARTICLE SEVEN**  
**MEMBER'S REPRESENTATIONS**

**Section 7.01. Representations.** Member represents and warrants that the following are true in all respects:

- (a) Member is an entity described in the preamble of this Agreement, duly organized, validly existing, and in good standing under the laws specified in the preamble.
- (b) The execution, delivery and performance of this Agreement by Member has been duly authorized by all necessary governance action and is enforceable in accordance with its terms.
- (c) Such execution, delivery and performance does not, and the transactions contemplated will not (i) result in a material breach or constitute a material default under any agreement or instrument to which Member is a party or by which it is bound, or (ii) require the consent or approval of any other person or governmental agency or authority.

**ARTICLE EIGHT**  
**NEGOTIATION; ARBITRATION**

**Section 8.01. Negotiation.** The parties shall attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiation between representatives appointed by the parties who have authority to settle the controversy. The disputing party shall give the other party written notice of the dispute. Within 20 days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the person who will represent that party.

The representatives shall meet at a mutually acceptable time and place within 30 days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

**Section 8.02. Arbitration.** If the dispute has not been resolved within 60 days of the disputing party's notice, or if the party receiving the notice will not meet within 30 days, any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by three arbitrators, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The place of arbitration shall be Hennepin County, Minnesota. The arbitrators are not empowered to award damages in excess of actual damages, including punitive damages, nor are the arbitrators empowered to modify or alter any express condition or provision of this Agreement or to render an award that by its terms has the effect of altering or modifying any express condition or provision of this Agreement. The provisions of this Section 8.02 are not applicable to a party that does not have legal authority to engage in binding arbitration.

## **ARTICLE NINE** **GENERAL PROVISIONS**

**Section 9.01. Choice of Law.** Subject to the provisions of Sections 13.15 (compliance with Applicable Laws) and 13.16 (Effect of Canadian Laws) and to the extent permitted by law, the laws of the State of Minnesota, with the exception of its laws governing choice of law, or United States federal law or Canadian Laws as applicable, shall control the obligations established by this Agreement and the performance and enforcement thereof.

**Section 9.02. Incorporation by Reference.** The provisions of Sections 13.15 (Compliance with Applicable Laws) and 13.16 (Effect of Canadian Laws) are incorporated herein by reference and made a part hereof.

**Section 9.03. Waiver.** The waiver of any of the rights or remedies arising pursuant to this Agreement on any one occasion by any party shall not constitute a waiver of any rights or remedies in respect to any subsequent breach or default of the terms of this Agreement.

**Section 9.04. Entire Agreement.** This Agreement supersedes any prior agreements and contains the entire agreement of the parties and all representations with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement, including any agreement entitled "Coordination Center Agreement".

**Section 9.05. Amendments.** Any amendments to this Agreement shall be in writing and signed by all parties hereto.

**Section 9.06. Counterparts.** This Agreement may be executed in counterparts, any one of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one agreement.

**Section 9.07. Captions.** Captions are for convenience only and shall not be deemed part of the contents of this Agreement.

**Section 9.08. Parties in Interest.** This Agreement shall be binding upon and enure solely to the benefit of the parties hereto and their permitted assigns, and nothing in this Agreement, expressed or implied, is intended to confer upon any other person any rights or remedies of any nature under or by reason of this Agreement.

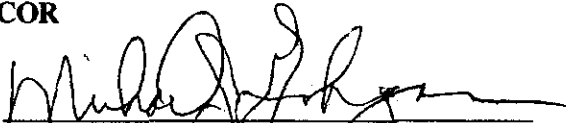
**Section 9.09. Currency.** All payments to be made pursuant to this Agreement shall be in lawful money of the United States.

**Section 9.10. Uncontrollable Forces.** A party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces, except that the obligation to pay money in a timely manner is absolute and shall not be subject to this section. A party unable to fulfill any obligation by reason of Uncontrollable Forces will exercise due diligence to remove such debility with reasonable dispatch, but such obligation shall not require the settlement of a labor dispute except in the sole discretion of the party experiencing such labor dispute.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed by their authorized representatives.


**MAPPCOR**

By:

  
Name: Michael J. Gahagan  
Title: Interim General Manager

**SOUTHERN ENERGY TRADING AND MARKETING, INC.**

By:

  
Name: Gary Morsches  
Title: Vice President