

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Mirant Corporation and Its Public Utility Subsidiaries Docket No. EC05-58-001

ORDER DISMISSING REQUESTS FOR REHEARING AND CLARIFICATION AS
MOOT

(Issued January 19, 2006)

1. This order dismisses as moot requests for rehearing by first, the District of Columbia Public Service Commission (DC Commission), second, the Maryland Public Service Commission, the Maryland Office of People's Counsel and Office of People's Counsel of the District of Columbia (jointly, Joint Petitioners), and third, Potomac Electric Power Company (Pepco), as well as dismisses as moot a request for clarification by Pepco. In view of the changes from the original transaction as contained in the amended plan of reorganization recently approved by the United States Bankruptcy Court, the requests for rehearing and request for clarification of our order issued on June 17, 2005¹ no longer require Commission action.

Background

2. In the June 17 Order, the Commission approved a transaction under section 203 of the Federal Power Act (FPA)² in which Mirant Corporation and its public utility subsidiaries (collectively, Mirant) proposed an indirect disposition of jurisdictional facilities as part of a proposed intra-corporate restructuring in connection with an, at the time, unapproved plan filed by Mirant and certain of its subsidiaries with the United States Bankruptcy Court. That order is the subject of the requests for rehearing and clarification at issue here.

¹ *Mirant Corporation and Its Public Utility Subsidiaries*, 111 FERC ¶ 61,425 (2005) (June 17 Order).

² 16 U.S.C. § 824b (2000).

3. In 2000, Mirant Corporation had purchased most of Pepco's electric generating facilities and power purchase agreements for \$2.65 billion. The parties' respective rights and obligations were governed by an Asset Purchase and Sale Agreement for Generating Plants and Related Assets, dated June 7, 2000 (the APSA, collectively, with its attachments, schedules, exhibits, ancillary agreements and other documents executed in connection therewith or as a result thereof). Included in the agreements covered by the APSA is a Back-to-Back Agreement, under which Pepco would continue to buy power from suppliers under certain unassigned contracts at the rates specified therein and resell it to Mirant or Mirant's subsidiaries at the same rates.³ In December 2000, pursuant to section 203 of the FPA, the Commission approved the disposition of jurisdictional facilities reflected in the APSA.⁴ Then, in July 2003, Mirant filed for relief under Chapter 11 of the Bankruptcy Code. In January 2005, Mirant filed a plan of reorganization with the Bankruptcy Court (Plan).

4. Specifically, Mirant originally intended to transfer virtually all of its assets to a newly formed corporate entity – New Mirant – but to leave performance of its APSA obligations with the remaining corporation – Old Mirant. The end result would be that Commission-regulated jurisdictional facilities owned by Mirant ultimately would be owned by New Mirant. The Plan itself was never placed before the Commission. Rather, the application with the Commission was for approval of the disposition of Commission-jurisdictional facilities.

5. On June 17, 2005, the Commission approved Mirant's application for disposition of jurisdictional facilities. On July 18, 2005, the DC Commission, Joint Petitioners and Pepco all filed timely requests for rehearing, stating, among other things, that the Commission erred by approving a transaction that may permit Mirant to walk away from its APSA obligations. They also generally argued that the Commission erred in determining that Mirant's section 203 application was consistent with the public interest, and in imposing on the protestors the burden of proving that the application was inconsistent with the public interest. Pepco included a request for clarification, in the alternative, that the Commission did not decide that it was in the public interest for Mirant to cease performing its APSA obligations, and that, accordingly, Mirant does not have blanket authority from the Commission to take such action.

³ See P5 of the June 17 Order.

⁴ *Potomac Elec. Power Co.*, 93 FERC ¶ 61,240 (2000).

6. The Official Committee of Unsecured Creditors of Mirant Corporation (Unsecured Creditors) and Mirant both filed motions seeking leave to answer the rehearing requests and answers.

7. Subsequently, an amended Plan was confirmed by order of the United States Bankruptcy Court on December 9, 2005.⁵ This amended Plan made special provisions for Mirant's agreements with Pepco, noting that they are still being litigated and that the obligations of Mirant in the interim would be performed by a subsidiary of Mirant, Mirant Oregon, and guaranteed by New Mirant, the organization that would now contain Mirant's assets.⁶ Finally, on January 3, 2006, Mirant emerged from bankruptcy.

Discussion

Procedural Matters

8. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,⁷ answers to requests for rehearing are not permitted. Therefore, the Commission will reject the answers of both Mirant and the Unsecured Creditors.

Requests for Rehearing and Clarification

9. In examining the various requests for rehearing and Pepco's request for clarification, we have concluded that, at this point, these requests are moot, given that an amended version of the Plan, and not the original Plan, was confirmed. The amended Plan provides, among other things, for Mirant Oregon to perform under the APSA⁸ and for New Mirant, which will contain Mirant's assets, to act as guarantor. The section 203 application addressed by the June 17 Order provided for the transfer of substantially all of Mirant's jurisdictional assets to New Mirant but did not encompass transferring the APSA to Mirant Oregon or New Mirant acting as guarantor for the obligations thereunder.

⁵ Second Amended Joint Chapter 11 Plan of Reorganization for Mirant Corporation and Its Affiliated Debtors (December 9, 2005) (Amended Plan).

⁶ *Id.* at 22, 40 and 41.

⁷ 18 C.F.R. § 385.713(d) (2005).

⁸ Amended Plan at 40.

The Commission orders:

The rehearing requests and request for clarification are hereby dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.