

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (this "Agreement") is dated as of May 30, 2006, by and among (i) Southern Maryland Electric Cooperative, Inc. ("SMECO") and (ii) Mirant Corporation ("New Mirant"); MC 2005, LLC, f/k/a Mirant Corporation ("Old Mirant"); Mirant Mid-Atlantic, LLC; Mirant Potomac River, LLC; Mirant Chalk Point, LLC; Mirant Piney Point, LLC; Mirant MD Ash Management, LLC; and the MC Plan Trust (as defined in Schedule 1) (New Mirant and the other entities identified in this clause (ii) are referred to herein collectively as the "Mirant Settling Parties").

WHEREAS, on June 7, 2000, Old Mirant, f/k/a Southern Energy, Inc., and Potomac Electric Power Company ("Pepco") executed and delivered an Asset Purchase and Sale Agreement for Generating Plants and Related Assets (collectively, with its attachments, schedules and exhibits, as amended from time to time, the "APSA");

WHEREAS, on December 11, 2000, Old Mirant and certain affiliates of Old Mirant (including Mirant Mid-Atlantic, LLC, f/k/a Southern Energy Mid-Atlantic, Inc.; Mirant Potomac River, LLC, f/k/a Southern Energy Potomac River, LLC; Mirant Chalk Point, LLC, f/k/a Southern Energy Chalk Point, LLC, and the successor by merger to Mirant Peaker, LLC, f/k/a Southern Energy Peaker, LLC ("Mirant Chalk Point"); Mirant Piney Point, LLC, f/k/a Southern Energy Piney Point, LLC, and f/k/a Southern Energy Dickerson, LLC; Mirant MD Ash Management, LLC, f/k/a Southern Energy MD Ash Management, LLC, and the successor in interest to Mirant D.C. O&M, LLC, f/k/a Southern Energy D.C. O&M, LLC, and f/k/a Southern Energy Morgantown, LLC; and Mirant Mid-Atlantic Services, LLC, f/k/a Southern Energy PJM Management, LLC, which affiliates of Old Mirant are collectively referred to herein as the "Other Mirant Entities") executed and delivered an Assignment and Assumption Agreement under which, among other things, Old Mirant assigned its rights under the APSA with respect to a Facility and Capacity Credit Agreement, dated March 21, 1989, by and between SMECO and Pepco ("FCC Agreement") to Mirant Chalk Point, f/k/a Southern Energy Peaker, LLC, and assigned its rights under the APSA with respect to a Site Lease Agreement, dated March 21, 1989, by and between SMECO and Pepco ("Site Lease," and together with the FCC Agreement, the "SMECO Agreements"), to Mirant Chalk Point, f/k/a Southern Energy Chalk Point, LLC.

WHEREAS, on December 19, 2000, SMECO, Pepco, and Old Mirant executed and delivered an Agreement and Consent (the "SMECO Consent") under which SMECO consented to Pepco's assignment of the SMECO Agreements to Old Mirant or Old Mirant's permitted assigns;

WHEREAS, on December 19, 2000, Pepco, the Other Mirant Entities, and MRAEM, LP, f/k/a Mirant Americas Energy Marketing, LP f/k/a Southern Energy Marketing, LP ("MRAEM") executed and delivered an Assignment and Assumption Agreement under which, among other things, Pepco assigned its rights under the FCC Agreement to Mirant Chalk Point, f/k/a Southern Energy Peaker, LLC;

WHEREAS, on December 19, 2000, Pepco and Mirant Chalk Point, f/k/a Southern Energy Chalk Point, LLC, executed and delivered an Assignment and Assumption Agreement

(SECP: SMECO and Washington Gas Light at Chalk Point) (the "Chalk Point Assignment") under which, among other things, Pepco assigned its rights under the Site Lease to Mirant Chalk Point, f/k/a Southern Energy Chalk Point, LLC.

WHEREAS, Old Mirant and certain of its subsidiaries and affiliates (the "Debtors") filed, on July 14-15, 2003, and certain dates thereafter, for protection under chapter 11 of the Bankruptcy Code, which cases are jointly administered as In re Mirant Corporation, et. al. in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court"), Case No. 03-46590 (DML) (the "Case");

WHEREAS, on December 9, 2005, the Bankruptcy Court entered an order in the Case confirming the Debtors' Amended and Restated Second Amended Joint Chapter 11 Plan of Reorganization for Mirant Corporation and Its Affiliated Debtors (the "Debtors' Plan");

WHEREAS, on December 14, 2004, Mirant Mid Atlantic Services, LLC, was dissolved and Mirant D.C. O&M, LLC, f/k/a Southern Energy D.C. O&M, LLC, and f/k/a Southern Energy Morgantown, LLC, merged into Mirant MD Ash Management, LLC;

WHEREAS, on December 16, 2005, Mirant Peaker LLC, f/k/a Southern Energy Peaker, LLC, merged into Mirant Chalk Point;

WHEREAS, the Debtors' Plan became effective on January 3, 2006;

WHEREAS, on March 2, 2006, MRAEM was dissolved and ceased to exist;

WHEREAS, pursuant to Section 8.3 of the Debtors' Plan, the MC Plan Trust has become the sole member of Old Mirant and, through various wholly-owned subsidiaries, the successor in interest to MRAEM;

WHEREAS, Section 14.8 of the Debtors' Plan provides that, (i) pending a determination by Final Order of the disputes regarding the proper characterization of the FCC Agreement and whether any claims for damages arising from the rejection of the FCC Agreement should be limited by Section 502(b)(6) of the Bankruptcy Code, the Debtors' postpetition obligations under the FCC Agreement shall be performed by Mirant Chalk Point, f/k/a Mirant Peaker, LLC, and the Debtors' postpetition obligations under the Site Lease shall be performed by Mirant Chalk Point and (ii) neither New Mirant nor any other subsidiary of New Mirant shall have any liability with respect to such interim performance of the FCC Agreement or the Site Lease;

WHEREAS, SMECO and the Mirant Settling Parties have certain disputes with respect to the foregoing matters, including disputes which are currently the subject of litigation, and SMECO and the Mirant Settling Parties desire to settle, on the terms and conditions described herein, such disputes;

WHEREAS, Pepco and the Mirant Settling Parties, among others, are parties to that certain Settlement Agreement and Release dated as of May 30, 2006, (the "Pepco/Mirant Settlement Agreement") pursuant to which the parties thereto agreed to settle, on the terms and conditions contained therein, certain disputes, including disputes with respect to the SMECO Agreements.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, SMECO and the Mirant Settling Parties hereby agree as follows:

1. **DEFINITIONS.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth for such terms in Schedule 1.

2. **SMECO AGREEMENTS AND RELATED ACTIONS.**

(a) **Mirant Obligations Regarding SMECO Agreements.** On (or prior to but effective as of) the Effective Date:

(i) *Assumption of SMECO Agreements.* Pursuant to Section 365 of the Bankruptcy Code, Mirant Chalk Point hereby assumes and agrees to cure all defaults under the SMECO Agreements (other than defaults that constitute Released Claims Against Mirant), and agrees to discharge and otherwise perform when due, without recourse to SMECO or Pepco all obligations and liabilities due to or for the benefit of SMECO thereunder (other than obligations that constitute Released Claims Against Mirant).

(ii) *Liability Under SMECO Agreements.* Upon the Effective Date and notwithstanding any provision herein, in the APSA, in the Assumption/Assignment Agreements, in the SMECO Consent or in any other agreement to the contrary, only Mirant Chalk Point shall have any obligations to SMECO under the SMECO Agreements, and the other Mirant Settling Parties will have no liability to SMECO with respect to the SMECO Agreements or any obligations arising thereunder.

(b) **Dismissal of Actions.** Upon the occurrence of the Effective Date, each of SMECO and the Mirant Settling Parties shall cause all pending appeals, adversary actions or other contested matters between or among the parties hereto relating to any claim, demand, action or cause of action released pursuant to Section 3(a) or Section 4(a), including without limitation those listed on Schedule 2(b), to be dismissed with prejudice. The form of each of the dismissals shall be acceptable to SMECO and the Mirant Settling Parties. Further, each of SMECO and the Mirant Settling Parties shall cause such dismissals to occur and be entered of record as soon as practicable following the Effective Date.

(c) **Future Treatment of SMECO Agreements.** The Mirant Settling Parties and SMECO agree and acknowledge that:

(i) the standard of review for any termination of or changes to any portion of the SMECO Agreements over which the Federal Energy Regulatory Commission ("FERC") has jurisdiction, whether such changes are proposed by SMECO, Mirant Chalk Point, any of the other Mirant Settling Parties, a non-party, or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956);

(ii) the standard of review for any proposed rejection of a SMECO Agreement, or any portion of a SMECO Agreement, by SMECO or any of the Mirant Settling Parties in bankruptcy proceedings shall be the "balancing of the equities" test suggested in *In re Mirant Corp.*, 378 F.3d 511 (5th Cir. 2004); and

(iii) a breach of any of the Assumed APSA, the Back-to-Back Arrangement or any Other Assumed Agreement shall not entitle SMECO or Mirant Chalk Point to terminate, suspend performance under, or exercise any other right or remedy under or with respect to any SMECO Agreement.

3. **RELEASE IN FAVOR OF THE MIRANT SETTLING PARTIES.** SMECO executes the following release in favor of the Mirant Settling Parties and their subsidiaries, affiliates, shareholders, officers, directors and employees (collectively, the "Mirant Releasees"):

(a) Except as provided in Section 3(b), effective as of the Effective Date and for and in consideration of the terms of this Agreement, SMECO, acting for itself and its predecessors, assigns, and successors, does hereby compromise, settle and fully release and forever discharge the Mirant Releasees of and from any and all claims, demands, actions, or causes of action which SMECO had, or may now have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, arising from the following: (i) claims for MCC payments accrued under the FCC Agreement prior to July 15, 2003, (which claims have been assigned to Pepco), (ii) claims for internal or external legal fees and expenses incurred by SMECO related to the Case or any proceeding initiated by the Mirant Settling Parties or SMECO in the Bankruptcy Court or the District Court, and (iii) claims arising under or out of the SMECO Agreements with respect to any default or failure to perform by any of the Mirant Settling Parties that (1) exists as of the date of this Agreement and (2) is within the Knowledge of SMECO (collectively, and except as otherwise provided in Section 3(b), the "Released Claims Against Mirant").

(b) Section 3(a) only releases the specific claims, demands, actions, and causes of action described therein, and does not release any other claim, demand, action or cause of action against the Mirant Releasees or any other person or entity. For further clarity, Section 3(a) does not release the Mirant Releasees from breaches of a SMECO Agreement occurring after the date of this Agreement, existing claims under such agreement that are not within the Knowledge of SMECO, or existing obligations under such agreement for which the Mirant Settling Parties are not in default (or which the Mirant Settling Parties have not failed to perform when due) as of the date of this Agreement. The Released Claims Against Mirant shall not include any claim for breach of this Agreement.

(c) SMECO represents and warrants that, to its Knowledge and as of the date of this Agreement, SMECO is the only owner of the Released Claims Against Mirant, that such Released Claims Against Mirant have not been assigned, encumbered or transferred, and that SMECO has unqualified authority, by the signatory immediately below, to release the same; provided that SMECO has assigned its claims for MCC payments accrued under the FCC Agreement prior to July 15, 2003, to Pepco.

(d) SMECO represents and warrants that, to its Knowledge and as of the date of this

Agreement, no Affiliate of SMECO holds any claims, demands, actions, or causes of action arising under or out of the SMECO Agreements against any Mirant Settling Party or any of their respective Affiliates.

(e) SMECO represents and warrants that, upon the Effective Date, this Agreement effects a full, complete and final settlement, satisfaction and extinguishment of the Released Claims Against Mirant, provided that SMECO has assigned its claims for MCC payments accrued under the FCC Agreement prior to July 15, 2003, to Pepco.

(f) In entering into and executing this Agreement, SMECO has not relied upon any statement or representation pertaining to this matter made by any representative, agent or employee of the Mirant Releasees, or any person, firm, organization or corporation hereby released, or by any person or persons representing them that is not set forth herein; but SMECO has consulted with attorneys of its own independent choosing and has determined this settlement is in its best interest.

(g) SMECO represents and warrants that it has full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by SMECO and constitutes the valid and binding obligation of SMECO; and the execution, delivery and performance of this Agreement by SMECO requires no consent, approval or authorization by or filing with any third party or governmental authority (other than any of the foregoing which has been obtained or made) and does not and will not (with notice, the passage of time or both) contravene or violate any agreement or commitment binding upon SMECO or any provision of applicable law.

(h) Except for such defaults or failures to perform that are Released Claims Against Mirant or postpetition amounts incurred and payable in the ordinary course of business that are not past due, SMECO represents and warrants that, to its Knowledge and as of the date of this Agreement, the Mirant Settling Parties are not in default of and have not failed to perform any obligation owed to SMECO under the SMECO Agreements or any obligation arising under the SMECO Agreements. SMECO further represents and warrants that, to its Knowledge and as of the date of this Agreement, SMECO is not aware of any claim, defense or other matter arising under or out of the SMECO Agreements that could have been asserted by SMECO in the Case and/or in any litigation related to, resulting from, or arising out of the Case that was not so asserted.

(i) Except for such defaults or failures to perform that are Released Claims Against SMECO or postpetition amounts incurred and payable in the ordinary course of business that are not past due, SMECO represents and warrants that, to its Knowledge and as of the date of this Agreement, SMECO is not in default of and has not failed to perform any material obligation owed to any Mirant Settling Party under the SMECO Agreements or any material obligation arising under the SMECO Agreements. SMECO further represents and warrants that, to its Knowledge and as of the date of this Agreement, SMECO is not aware of any claim, defense or other matter arising under or out of the SMECO Agreements that could have been asserted by the Mirant Settling Parties in the Case and/or in any litigation related to, resulting from, or arising out of the Case that was not so asserted.

(j) Based on the Mirant Settling Parties' representation that Old Mirant, MRAEM, Mirant Mid-Atlantic Services, LLC, the Plan Trustees, the MC Plan Trust, and the estate of the MC Plan Trust, (i) will not be party to or performing any of the SMECO Agreements, (ii) are not affiliated with New Mirant and (iii) have been or at some point in the future will be dissolved (or, in the case of the Plan Trustees, have their trusteeships terminated), effective as of the Effective Date and for and in consideration of the terms of this Agreement, SMECO, acting for itself and its predecessors, assigns, and successors, does hereby compromise, settle and fully release and forever discharge Old Mirant, MRAEM, Mirant Mid-Atlantic Services, LLC, the Plan Trustees, the MC Plan Trust, and the estate of the MC Plan Trust of and from any and all claims, demands, actions, or causes of action which SMECO had, or may now have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character against those parties. This release shall not affect in any way the obligations of the Mirant Settling Parties under the other provisions of this Agreement.

4. **RELEASE IN FAVOR OF SMECO.** The Mirant Settling Parties execute the following release in favor of SMECO and its subsidiaries, affiliates, shareholders, officers, directors and employees (collectively, the "SMECO Releasees"):

(a) Except as provided in Section 4(b), effective as of the Effective Date and for and in consideration of the terms of this Agreement, the Mirant Settling Parties, acting for themselves and each of their predecessors, assigns, and successors, do hereby compromise, settle and fully release and forever discharge the SMECO Releasees of and from any and all claims, demands, actions, or causes of action which the Mirant Settling Parties had, or may now have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character, arising from or related to any of the following: (i) any claim, defense or other matter arising under or out of the SMECO Agreements that was asserted in the Case and/or in any litigation related to, resulting from, or arising out of the Case (other than claims for contingent liabilities based on SMECO's potential failure to perform under the SMECO Agreements after the date of this Agreement), including without limitation the cases styled *Mirant Corporation, Mirant Peaker, LLC, and Mirant Chalk Point, LLC v. Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company*, Adv. Case No. 04-04073 (Bankr. N.D. Tex.); *Mirant Corporation v. Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company*, Adv. Case No. 05-04258 (Bankr. N.D. Tex.); and *Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company v. Mirant Peaker, LLC, Mirant Chalk Point, LLC, and Mirant Corporation*, Case No. 4:06-CV-00041 (N.D. Tex); (ii) any right to avoid or recover under Sections 544, 545, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, or under any similar state statutes, any payments received by or on behalf of Pepco or SMECO, respectively, under or on account of the SMECO Agreements prior to the Effective Date and (iii) claims arising under or out of the SMECO Agreements with respect to any default or failure to perform by SMECO that (1) exists as of the date of this Agreement and (2) is within the Knowledge of the Mirant Settling Parties (collectively, and except as otherwise provided in Section 4(b), the "Released Claims Against SMECO").

(b) Section 4(a) only releases the specific claims, demands, actions, and causes of action described therein, and does not release any other claim, demand, action or cause of action

against the SMECO Releasees or any other person or entity. For further clarity, Section 4(a) does not release the SMECO Releasees from breaches of a SMECO Agreement occurring after the date of this Agreement, existing claims under such agreement that are not within the Knowledge of the Mirant Settling Parties, or existing obligations under the SMECO Agreements for which SMECO is not in default (or has not failed to perform when due) as of the date of this Agreement. The Released Claims Against SMECO shall not include any claim for breach of this Agreement.

(c) The Mirant Settling Parties represent and warrant that, to their Knowledge and as of the date of this Agreement, one or more of the Mirant Settling Parties is the only owner of the Released Claims Against SMECO, that such Released Claims Against SMECO have not been assigned, encumbered or transferred, and that the Mirant Settling Parties have unqualified authority, by the signatories immediately below, to release the same.

(d) Each of the Mirant Settling Parties represents and warrants that, to its Knowledge and as of the date of this Agreement, no Affiliate of any Mirant Settling Party, other than another Mirant Settling Party, holds any claims, demands, actions, or causes of action arising under or out of the SMECO Agreements against SMECO or any of its Affiliates.

(e) The Mirant Settling Parties represent and warrant that, upon the Effective Date, this Agreement effects a full, complete and final settlement, satisfaction and extinguishment of the Released Claims Against SMECO.

(f) In entering into and executing this Agreement, the Mirant Settling Parties have not relied upon any statement or representation pertaining to this matter made by any representative, agent or employee of the SMECO Releasees, or any person firm, organization or corporation hereby released, or by any person or persons representing them that is not set forth herein; but the Mirant Settling Parties have consulted with attorneys of their own independent choosing and have determined this settlement is in their best interest.

(g) The Mirant Settling Parties represent and warrant that they have full power to execute, deliver and perform this Agreement; this Agreement has been duly authorized, executed and delivered by or on behalf of the Mirant Settling Parties and constitutes the valid and binding obligation of the Mirant Settling Parties; and that the execution, delivery and performance of this Agreement by or on behalf of the Mirant Settling Parties requires no consent, approval or authorization by or filing with any third party or governmental authority (other than any of the foregoing which has been obtained or made) and does not and will not (with notice, the passage of time or both) contravene or violate any agreement or commitment binding upon the Mirant Settling Parties or any provision of applicable law.

(h) Except for such defaults or failures to perform that are Released Claims Against SMECO or postpetition amounts incurred and payable in the ordinary course of business that are not past due, the Mirant Settling Parties represent and warrant that, to their Knowledge and as of the date of this Agreement, SMECO is not in default of and has not failed to perform any obligation owed to any Mirant Settling Party under the SMECO Agreements or any obligation arising under the SMECO Agreements. The Mirant Settling Parties further represent and warrant

that, to their Knowledge and as of the date of this Agreement, the Mirant Settling Parties are not aware of any claim, defense or other matter arising under or out of the SMECO Agreements that could have been asserted by the Mirant Settling Parties in the Case and/or in any litigation related to, resulting from, or arising out of the Case that was not so asserted.

(i) Except for such defaults or failures to perform that are Released Claims Against Mirant or postpetition amounts incurred and payable in the ordinary course of business that are not past due, the Mirant Settling Parties represent and warrant that, to their Knowledge and as of the date of this Agreement, the Mirant Settling Parties are not in default of and have not failed to perform any material obligation owed to SMECO under the SMECO Agreements or any material obligation arising under the SMECO Agreements. The Mirant Settling Parties further represent and warrant that, to their Knowledge and as of the date of this Agreement, the Mirant Settling Parties are not aware of any claim, defense or other matter arising under or out of the SMECO Agreements that could have been asserted by SMECO in the Case and/or in any litigation related to, resulting from, or arising out of the Case that was not so asserted.

(j) Effective as of the Effective Date and for and in consideration of the terms of this Agreement, Old Mirant, the Plan Trustees, the MC Plan Trust, and the estate of the MC Plan Trust do hereby compromise, settle and fully release and forever discharge SMECO of and from any and all claims, demands, actions, or causes of action arising under or out of the SMECO Agreements which Old Mirant, the Plan Trustees, the MC Plan Trust, and the estate of the MC Plan Trust may now have, own, or hold for relief, compensation, damages, losses, or remedy of any kind or character against SMECO. This release shall not affect in any way the obligations of SMECO under the other provisions of this Agreement.

5. **EFFORTS TO CAUSE THE EFFECTIVE DATE TO OCCUR.** This Agreement shall become effective on the Effective Date. Each of the Mirant Settling Parties and SMECO shall use commercially reasonable efforts to cause the Effective Date to occur, including using commercially reasonable efforts to obtain, on an expedited basis, approval of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure by the Applicable Court. In addition, each of SMECO and the Mirant Settling Parties shall support the Settlement Agreement in any communications, whether oral or written, as to the matters that are the subject of the Settlement Agreement with any court of competent jurisdiction, FERC, the Public Service Commission of Maryland, the Public Service Commission of the District of Columbia, the People's Counsel for the State of Maryland, the People's Counsel for the District of Columbia, and all other applicable regulatory agencies.

6. **OTHER SMECO CLAIMS.** Nothing in this Agreement affects any claims between SMECO and its subsidiaries and affiliates and the Mirant Settling Parties and their respective subsidiaries and affiliates not arising under or out of the SMECO Agreements, or arising after the date of this Agreement.

7. **TERMINATION.**

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated (or shall terminate, in the case of clause (ii) below) as follows:



(i) at any time prior to entry of the Approval Order, by the mutual written consent of each of SMECO and New Mirant;

(ii) prior to the Effective Date, automatically if any material term or provision of this Agreement is found by a final, non-appealable judicial order in any proceeding in any jurisdiction to be invalid or unenforceable;

(iii) prior to the Effective Date, by SMECO, in the event of any material breach by any of the Mirant Settling Parties of any of their covenants, representations or warranties contained herein and the failure of such Mirant Settling Party to cure such breach within five days after receipt of written notice from SMECO requesting such breach to be cured;

(iv) prior to the Effective Date, by New Mirant, in the event of any material breach by SMECO of any of its covenants, representations or warranties contained herein and the failure of SMECO to cure such breach within five days after receipt of written notice from New Mirant requesting such breach to be cured;

(b) If either SMECO or New Mirant desires to terminate this Agreement under Section 7(a), the party so desiring such termination shall give written notice of such termination to each of the other parties to this Agreement.

(c) In the event that this Agreement shall be terminated pursuant to this Section 7, all obligations under this Agreement shall be terminated and of no further force or effect without further action by any party hereto and without liability of any party hereto to the others, provided that (i) the foregoing shall not relieve any party in breach of this Agreement at the time of such termination from liability in respect of such breach, and (ii) the following Sections shall survive termination of this Agreement: Section 6, this Section 7(c), Section 8, Section 10(b), Section 10(c), and Sections 10(g) through 10(i). In addition, upon termination of this Agreement, no rights or obligations, nor any claims or defenses, of SMECO or the Mirant Settling Parties existing prior to the date of this Agreement, including, without limitation, the obligations of any of the Mirant Settling Parties or SMECO under the SMECO Agreements, will be prejudiced, compromised, discharged or otherwise affected in any way, and all shall exist as if this Agreement had never been executed, and, in such event, neither this Agreement nor any negotiations or writings in connection with this Agreement shall in any way be construed as or deemed to be evidence of or an admission on behalf of any party hereto regarding any claim or right that such party may have against another party hereto.

## 8. INDEMNIFICATION.

(a) In addition to any other rights and remedies the Mirant Releasees may have at law or by agreement, SMECO shall hold harmless and indemnify the Mirant Releasees from and against, and shall compensate and reimburse the Mirant Releasees on demand for, any and all loss, damage, injury, claim, demand, settlement, judgment, award, fine, penalty, fee (including any reasonable legal fee, reasonable expert fee, reasonable accounting fee or reasonable advisory fee), charge, cost (including any reasonable cost of investigation) and/or expense, which is suffered or incurred by any of the Mirant Releasees or to which any of the Mirant Releasees may otherwise become subject at any time and which arises directly from or directly as a result of: (i)

the breach of any representation or warranty made by SMECO in this Agreement, or (ii) the breach of any covenant or agreement of SMECO contained in this Agreement; provided that nothing in this Section 8(a) shall be construed as imposing upon SMECO any obligation to hold harmless or indemnify the Mirant Releasees with respect to rights or obligations arising under a SMECO Agreement.

(b) In addition to any other rights and remedies the SMECO Releasees may have at law or by agreement, New Mirant shall hold harmless and indemnify the SMECO Releasees from and against, and shall compensate and reimburse the SMECO Releasees on demand for, any and all loss, damage, injury, claim, demand, settlement, judgment, award, fine, penalty, fee (including any reasonable legal fee, reasonable expert fee, reasonable accounting fee or reasonable advisory fee), charge, cost (including any reasonable cost of investigation), and/or expense, which is suffered or incurred by any of the SMECO Releasees or to which any of the SMECO Releasees may otherwise become subject at any time and which arises directly from or directly as a result of: (i) the breach of any representation or warranty made by any of the Mirant Settling Parties in this Agreement, or (ii) the breach of any covenant or agreement of the Mirant Settling Parties contained in this Agreement; provided that nothing in this Section 8(b) shall be construed as imposing upon New Mirant any obligation to hold harmless or indemnify the SMECO Releasees with respect to rights or obligations arising under a SMECO Agreement.

9. **RELATIONSHIP TO DEBTORS' PLAN.** This Agreement is intended to resolve disputes existing between the parties regarding the characterization and the assumption or rejection of the SMECO Agreements. These disputes resulted in the inclusion of Section 14.8 in the Debtors' Plan. The parties intend this Agreement to resolve fully those disputes, and, therefore, as of the Effective Date, all portions of the Debtors' Plan and the Bankruptcy Court's December 9, 2005, order confirming the Debtors' Plan relating to or concerning the matters addressed by this Agreement, including Section 14.8 of the Debtors' Plan, are moot and no longer have any application. To the extent that there are any inconsistencies or discrepancies between this Agreement and the Debtors' Plan, or the Bankruptcy Court order approving the Debtors' Plan, the terms of this Agreement shall control.

10. **MISCELLANEOUS.**

(a) This Agreement may be amended, assigned, modified or supplemented only by written agreement executed by the Mirant Settling Parties and SMECO.

(b) All disputes relating to or arising out of this Agreement shall be governed by the laws of the District of Columbia, excluding its choice-of-law rules. The United States District Court for the District of Columbia shall have jurisdiction over any suit, action, or other proceeding pertaining to or arising out of the terms and application of this Agreement or, if any such suit, action or proceeding may not be brought in the United States District Court for the District of Columbia for jurisdictional reasons, the Superior Court for the District of Columbia shall have jurisdiction over any such suit, action or proceeding.

(c) Except as expressly provided herein, this Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted

assigns.

(d) Except as expressly set forth herein, none of the provisions of any SMECO Agreement shall be deemed to be amended, modified or otherwise changed by this Agreement or the transactions contemplated hereby.

(e) This Agreement constitutes the entire agreement and understanding of the parties with respect to the settlement and releases contemplated herein and supersedes all prior agreements and understandings, written or oral, between the parties with respect to such settlement and releases.

(f) The recitals in this Agreement constitute an integral part of the agreement of the parties and are legally binding to the same extent as if the same were set forth in a section of this Agreement.

(g) This Agreement uses the words "herein," "hereof," and "hereunder" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the words "Section," "Schedule," and "Exhibit" refer to Sections of, and Schedules and Exhibits to, this Agreement unless otherwise specified.

(h) Whenever the context so requires, the singular number includes the plural and vice versa, and a reference to one gender includes the other gender and the neuter.

(i) Except where the context otherwise requires, the word "including" (and, with correlative meaning the word "include") means including without limiting the generality of any description preceding that word, and the words "shall" and "will" are used interchangeably and have the same meaning.

(j) All references to "\$" or "dollars" are to U.S. dollars.

(k) All notices required or permitted under this Agreement must be in writing and will be deemed to be delivered and received (i) when actually received by the party to whom notice is sent if personally delivered, (ii) when sent by facsimile (with electronic confirmation of successful transmission) before 5:00 p.m. Eastern Prevailing Time on a business day with a copy of such facsimile sent to the recipient by reputable overnight courier service (charges prepaid) on the same day, or (iii) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid), in each case addressed to the appropriate party or parties, at the address of such party or parties set forth below (or at such other address as such party may designate by written notice to all other parties in accordance with this Section 10(k)):

If to SMECO:

Mark A. MacDougall, Esq.  
Vice President, External Affairs and General Counsel  
SMECO  
15065 Burnt Store Road  
Hughesville, Maryland 20637-1937

With a copy, which shall not constitute notice, to:

Jan I. Berlage, Esq.  
Ballard Spahr Andrews & Ingersoll, LLP  
300 East Lombard Street  
Baltimore, Maryland 21202-3268

If to New Mirant or any of the other Mirant Settling Parties:

Mirant Corporation  
1155 Perimeter Center West  
Suite 100  
Atlanta, GA 30338-5416  
Attn: General Counsel

With a copy, which shall not constitute notice, to

Craig Averch, Esq.  
White & Case LLP  
633 W. 5<sup>th</sup> Street, Suite 1900  
Los Angeles, CA 90071-2007

(l) Except as provided in the Agreement, any and all Released Claims Against Mirant are expunged and disallowed in their entirety and shall not be asserted in any forum, and such disallowed claims shall not be subject to reconsideration under Section 502(j) of the Bankruptcy Code, Rule 3008 of the Federal Rules of Bankruptcy Procedure or any other applicable law.

(m) This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed an original and all of which together will be deemed to be one and the same instrument. This Agreement may be executed by a signature delivered electronically by facsimile or by the use of Adobe portable document format, which shall be deemed the same as an original signature.

(n) From time to time after the date of this Agreement, each of the parties hereto (other than Old Mirant and the MC Plan Trust) shall execute and deliver such documents and provide such assurances and take such actions, as any other party may reasonably request in order to consummate or more effectively to consummate the transactions contemplated hereby.

(o) SMECO and the Mirant Settling Parties acknowledge that (i) this Agreement is the result of negotiations among the parties, and has been reviewed by each party and its counsel, and (ii) all parties contributed to the drafting of this Agreement. Accordingly, this Agreement shall be deemed the product of each party, and no ambiguity shall be construed in favor of or against any party on the basis that it was the draft of the Agreement.

(p) This Agreement is a settlement of disputes and other matters. In executing this Agreement, no party is admitting any liability with respect to any of the claims against it released

in this Agreement or any other matter addressed herein. Neither this Agreement, nor any act performed or document executed pursuant to this Agreement is or may be deemed to be, or may be used by a Mirant Settling Party or SMECO as, an admission of, or evidence of, the validity of any released claim.

(q) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Mirant Settling Party without the prior written consent of SMECO or by SMECO without the prior written consent of New Mirant.

IN WITNESS WHEREOF, the Mirant Settling Parties and SMECO have caused this Settlement Agreement and Release to be signed by their respective duly authorized officers or representatives as of the date set forth above.

SOUTHERN MARYLAND ELECTRIC  
COOPERATIVE, INC.

By *A. Joseph Slater*

Name: A. JOSEPH SLATER  
Title: PRESIDENT & CEO

MIRANT CORPORATION

By *Hugh Davenport*

Name: Hugh Davenport  
Title: Senior Vice President

MC 2005, LLC

By \_\_\_\_\_

Name:  
Title:

MIRANT MID-ATLANTIC, LLC

By *Robert Driscoll*

Name: Robert Driscoll  
Title: President and  
Chief Executive Officer

MIRANT POTOMAC RIVER, LLC

By *Robert Driscoll*

Name: Robert Driscoll  
Title: President and  
Chief Executive Officer

IN WITNESS WHEREOF, the Mirant Settling Parties and SMECO have caused this Settlement Agreement and Release to be signed by their respective duly authorized officers or representatives as of the date set forth above.

SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.

By \_\_\_\_\_

Name:  
Title:

MIRANT CORPORATION

By \_\_\_\_\_

Name:  
Title:

MC 2005, LLC

By: *MC Plan Trust, Sole Member*  
By: *[Signature]*

Name: *Joseph A. Pardo*  
Title: *Co-Trustee*

MIRANT MID-ATLANTIC, LLC

By \_\_\_\_\_

Name:  
Title:

MIRANT POTOMAC RIVER, LLC

By .....

Name:  
Title:

MIRANT CHALK POINT, LLC

By Robert Driscoll

Name: Robert Driscoll  
Title: President and  
Chief Executive Officer

MIRANT PINEY POINT, LLC

By Robert Driscoll

Name: Robert Driscoll  
Title: President and  
Chief Executive Officer

MIRANT MD ASH MANAGEMENT, LLC

By Robert Driscoll

Name: Robert Driscoll  
Title: President and  
Chief Executive Officer

"MC PLAN TRUST"

By \_\_\_\_\_

Name:  
Title:



MIRANT CHALK POINT, LLC

By \_\_\_\_\_

Name:

Title:

MIRANT PINEY POINT, LLC

By \_\_\_\_\_

Name:

Title:

MIRANT MD ASH MANAGEMENT, LLC

By \_\_\_\_\_

Name:

Title:

"MC PLAN TRUST"

By Joseph A. Dardo

Name: Joseph A. Dardo

Title: Co-Trustee

## **LIST OF SCHEDULES AND EXHIBITS**

### **Schedules**

Schedule 1

Definitions

Schedule 2(b)

Adversary Proceedings and Contested Matters

## Schedule 1

When used in the Agreement, the following terms shall have the following meanings.

1. "Affiliate" means, with respect to any Person, all Persons that would fall within the definition assigned to such term in Section 101(2) of the Bankruptcy Code, if such Person was a debtor in a case under the Bankruptcy Code.
2. "Agreement" has the meaning set forth in the first paragraph.
3. "Applicable Court" has the meaning set forth in the Pepco/Mirant Settlement Agreement.
4. "APSA" has the meaning set forth in the first Whereas provision.
5. "Assumed APSA" has the meaning set forth in Pepco/Mirant Settlement Agreement.
6. "Assumption/Assignment Agreements" means, collectively, (i) that certain Assignment and Assumption Agreement, dated December 19, 2000, by and among Pepco and certain of the Debtors (other than Mirant), (ii) the Chalk Point Assignment, and (iii) that certain Assignment and Assumption Agreement, dated December 11, 2000, by and between certain of the Debtors.
7. "Back-to-Back Arrangement" has the meaning set forth in the Pepco/Mirant Settlement Agreement.
8. "Bankruptcy Code" means title 11 of the United States Code.
9. "Bankruptcy Court " has the meaning set forth in the sixth Whereas provision.
10. "Case" has the meaning set forth in the sixth Whereas provision.
11. "Chalk Point Assignment" has the meaning set forth in the fifth Whereas provision.
12. "Debtors" has the meaning set forth in the sixth Whereas provision.
13. "Debtors' Plan" has the meaning set forth in the seventh Whereas provision.
14. "Effective Date" has the meaning set forth in the Pepco/Mirant Settlement Agreement.
15. "FCC Agreement" has the meaning set forth in the second Whereas provision.
16. "FERC" has the meaning set forth in Section 2(c)(i).
17. "Final Order" means (a) an order or judgment of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other

proceedings for reargument or rehearing shall then be pending, or (b) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such order.

18. "Knowledge," when used with respect to any party hereto, means the actual knowledge, as of or before the date of the Agreement, of a member of senior management of such party, including any officer at the Vice President or higher level.
19. "MCC" has the meaning set forth in the FCC Agreement.
20. "MC Plan Trust" means the Trust established pursuant to the terms of that certain Plan Trust Declaration dated as of January 3, 2006, by and among the Debtors and the Plan Trustees.
21. "Mirant Chalk Point" has the meaning set forth in the second Whereas provision.
22. "Mirant Releasees" has the meaning set forth in Section 3.
23. "Mirant Settling Parties" has the meaning set forth in the first paragraph.
24. "MRAEM" has the meaning set forth in the fourth Whereas provision.
25. "New Mirant" has the meaning set forth in the first paragraph.
26. "Old Mirant" has the meaning set forth in the first paragraph.
27. "Other Assumed Agreements" has the meaning set forth in the Pepco/Mirant Settlement Agreement.
28. "Other Mirant Entities" has the meaning set forth in the second Whereas provision.
29. "Pepco" has the meaning set forth in the second Whereas provision.
30. "Pepco/Mirant Settlement Agreement" has the meaning set forth in the fourteenth Whereas provision.
31. "Person" means an individual, corporation, partnership, limited liability company, joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

32. "Plan Trustees" means Mr. Auren Primack, Phoenix Advisors, LLC, and Kurtzman Carson Consultants LLC in their capacity as trustees of the MC Plan Trust.
33. "Released Claims Against Mirant" has the meaning set forth in Section 3(a).
34. "Released Claims Against SMECO" has the meaning set forth in Section 4(a).
35. "Site Lease" has the meaning set forth in the second Whereas provision.
36. "SMECO" has the meaning set forth in the first paragraph.
37. "SMECO Agreements" has the meaning set forth in the second Whereas provision.
38. "SMECO Consent" has the meaning set forth in the third Whereas provision.
39. "SMECO Releasees" has the meaning set forth in Section 4.

## Schedule 2(b)

Upon the occurrence of the Effective Date, SMECO and the Mirant Settling Parties shall cause all pending appeals, adversary actions or other contested matters between or among the parties hereto relating to any claim, demand, action or cause of action released pursuant to Sections 3(a) or 4(a) to be dismissed with prejudice, including, without limitation, the following causes of action:

1. Mirant Corporation, Mirant Peaker, LLC, and Mirant Chalk Point, LLC v. Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company, Adv. Case No. 04-04073 (Bankr. N.D. Tex.)
2. Mirant Corporation, et al. v. Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company, Adv. Case No. 05-04258 (Bankr. N.D. Tex.)
3. Motion of Debtors (I) to Reject the Facility and Capacity Credit Agreement and the Site Lease with Southern Maryland Electric Cooperative, Inc.; and (II) for Disgorgement of Funds Paid Postpetition Pursuant to 11 U.S.C. §§ 105, 503, and 549, Bankr. N.D. Tex., Doc. No. 12406
4. Southern Maryland Electric Cooperative, Inc., and Potomac Electric Power Company v. Mirant Peaker, LLC, Mirant Chalk Point, LLC, and Mirant Corporation, No. 4:06-CV-00041 (N.D. Tex.)