

STATE OF NEW YORK  
ROCKLAND COUNTY

SUPREME COURT

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**In the Matter of the Application of  
SOUTHERN ENERGY LOVETT, LLC, MIRANT NEW YORK,  
INC., MIRANT LOVETT, LLC,**

*Intervenors/Petitioners,*

vs.

**THE ASSESSOR OF THE TOWN OF STONY POINT, ET AL.,**

*Respondents,*

**COUNTY OF ROCKLAND and NORTH ROCKLAND  
CENTRAL SCHOOL DISTRICT,**

*Intervenors-Respondents.*

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Index Nos. 4357/00, 4696/01,  
5122/02, 5279/03, 4264-04,  
4726-05

**STIPULATION OF  
SETTLEMENT AND ORDER**

PRESENT: Hon. Thomas A. Dickerson  
Supreme Court Justice

**WHEREAS**, Petitioner, Southern Energy Lovett, LLC commenced certain of the above-captioned proceedings in the Supreme Court of the State of New York, County of Rockland, pursuant to Article 7 of the Real Property Tax Law to review the assessments on certain of its real properties, identified on Exhibit “A” hereto and collectively referred to as the Lovett Electric Generating Facility (the “**Project Facility**”) located in the Town of Stony Point (the “**Town**”) as set forth on the 2000 final assessment roll of the Town (Index Nos. 4357-00) (the “**2000 Proceeding**”); and

**WHEREAS**, Petitioner, Mirant New York, Inc. (“**Mirant New York**”) commenced certain of the above-captioned proceedings in the Supreme Court of the State of New York, County of Rockland, pursuant to Article 7 of the Real Property Tax Law to review the assessments on the Project Facility as set forth on the 2001, 2002, and 2003 assessment rolls of the Town (Index. Nos. 4696-01, 5122-02, and 5279-03) (the “**2001 – 2003 Proceedings**”); and

**WHEREAS**, Petitioners, Mirant New York and Mirant Lovett, LLC (the “**Company**”) commenced certain of the above-captioned proceedings in the Supreme Court of the State of New

York, County of Rockland, pursuant to Article 7 of the Real Property Tax Law to review the assessments on the Project Facility as set forth on the 2004 and 2005 assessment rolls of the Town (Index. Nos. 4264-04 and 4726-05) (the “**2004 – 2005 Proceedings**”); and

**WHEREAS**, by Decision and Order of this Court dated May 16, 2005, the Company was substituted for Southern Energy Lovett, LLC in the 2000 Proceeding, and further permitted to be added as a named petitioner in the 2001 – 2003 Proceedings; and

**WHEREAS**, by Stipulation and Order of this Court, the 2000 Proceeding and the 2001 – 2003 Proceedings (together, the “**2000 – 2003 Proceedings**”) were joined for purposes of trial; and

**WHEREAS**, the 2000 – 2003 Proceedings have been fully tried, except for post-trial submissions and a decision of the Court; and

**WHEREAS**, beginning in July 2003, Mirant Corporation, along with more than eighty (80) domestic affiliates, including the Company and Mirant New York (collectively, the “**Debtors**”), filed bankruptcy petitions pursuant to Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court, Northern District of Texas (the “**Bankruptcy Court**”) (jointly administered under Case Number 03-46950-DML (the “**Bankruptcy Cases**”); and

**WHEREAS**, on September 30, 2003, the Debtors filed in the Bankruptcy Cases their Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for the Determination of Tax Liability, whereby the Debtors requested the Bankruptcy Court to determine the amount of property tax liability and property tax refund with respect to the Project Facility (the “**505 Motion**”); and

**WHEREAS**, *inter alia*, the Town, County of Rockland (the “**County**”) and North Rockland Central School District, a.k.a. the Haverstraw-Stony Point Central School District (the “**School District**”) opposed the relief requested in the 505 Motion; and

**WHEREAS**, on December 16, 2003, the County filed in the Bankruptcy Cases the following

proofs of claim: (a) Claim No. 7117 against Mirant Bowline, LLC; (b) Claim No. 7118 against Mirant New York; and (c) Claim No. 7119 against the Company; and

**WHEREAS**, on January 8, 2004, the Bankruptcy Court entered an Order Regarding Motions to Dismiss and/or Abstain from Hearing Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 505(a) for a Determination of Tax Liability, pursuant to which the Bankruptcy Court abstained in favor of this Court; and

**WHEREAS**, on January 12, 2004, the School District filed in the Bankruptcy Cases the following proofs of claim: (a) Claim No. 7624 against the Company; (b) Claim No. 7627 against Mirant Bowline, LLC; (c) Claim No. 7628 against Mirant New York; and (d) Claim No. 7629 against Mirant Corporation; and

**WHEREAS**, on October 18, 2004, the Debtors filed in the Bankruptcy Cases their Consolidated Omnibus Objection to Proofs of Claim Filed by the County of Rockland and the Haverstraw-Stony Point Central School District (Proofs of Claim Nos. 7117-7119 & Claim Nos. 7624, 7627-7629) (the "**Claim Objection**"); and

**WHEREAS**, on January 3, 2005, the Debtors filed in the Bankruptcy Cases their Application Pursuant to 11 U.S.C. § 502(c), Fed. R. Bank. P. 3007, Fed. R. Civ. P. 42(a) and the Claims Estimation Procedures for (i) the Estimation of Proofs of Claim Filed by the County of Rockland and the Haverstraw-Stony Point Central School District and (ii) the Consolidation of the Debtors' Application with the Debtors' Claim Objections (Proofs of Claim Nos. 7117-7119 & Claim Nos. 7624, 7627-7629) (the "**Estimation Application**", and together with the 505 Motion and the Claim Objection, the "**Bankruptcy Litigation**"); and

**WHEREAS**, on January 19, 2005, the Bankruptcy Court adjourned the hearings on the Claim Objection and the Estimation Application to allow this Court to address the New York Proceedings;

and

**WHEREAS**, subsequent to the commencement of the Bankruptcy Cases, the Company and its affiliates did not pay any real property taxes levied against the Project Facility by the Town, the County, the County of Rockland Solid Waste Management Authority (the “**County Solid Waste Authority**”), or the School District (collectively, the “**Tax Jurisdictions**”) with respect to each of the 2003, 2004 and 2005 final assessment rolls of the Town (“**Unpaid Real Property Taxes**”);

**WHEREAS**, following over two years of negotiation, the parties to each of the above-captioned proceedings (the “**New York Proceedings**”) have reached an agreement for compromise and settlement of all the New York Proceedings; and

**WHEREAS**, the parties and the Court have fully reviewed the settlement terms and each has determined that this settlement is in compliance with applicable legal requirements, is in the best interests of all parties, is in the public interest for other taxpayers in the Tax Jurisdictions, and is of significant financial benefit to the Tax Jurisdictions; and

**WHEREAS**, the settlement of the New York Proceedings is an element of and is contingent upon a comprehensive settlement resolving the Bankruptcy Litigation and the Unpaid Real Property Taxes; and

**WHEREAS**, the settlements of the New York Proceedings, the Bankruptcy Litigation, and the Unpaid Real Property Taxes (the “**Settlement**”) are further the subject of a motion in the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for an Order approving the Settlement (the “**9019 Order**”);

**IT IS THEREFORE ORDERED**, that:

1. Upon the entry of this Stipulation of Settlement and Order and the 9019 Order becoming final and non-appealable, the assessments relating to the Project Facility shall be reduced and

corrected on the assessment rolls of the Town in accordance with the schedules set forth in Exhibit “B”, attached hereto. Further upon entry of this Stipulation of Settlement and Order and of the 9019 Order, the New York Proceedings shall be deemed settled on the terms agreed upon by the parties and stated herein and shall be so marked but shall not be removed from the trial calendar of this Court until November 30, 2006 (the “**Dismissal Date**”), at which time the New York Proceedings shall be deemed dismissed with prejudice, subject only to the performance of the Parties’ obligations pursuant to this Stipulation of Settlement and Order and as provided in Paragraph 13 below (the “**Dismissal**”).

2. Upon the reduction and correction of the relevant assessments of the Project Facility as provided in this Stipulation of Settlement and Order, and within thirty (30) days following the Dismissal Date, the Tax Jurisdictions shall pay real property tax refunds, inclusive of interest, penalties and other charges if any, (“**Refunds**”) to the Company (payee: “Mirant Lovett, LLC”) in the following amounts:

Town	\$ 2,964,420
School District	9,486,660
County	411,510
County Solid Waste Authority	<u>37,410</u>
Total Refunds	\$ 12,900,000

Each Tax Jurisdiction shall forward its respective payment to: Mirant Lovett, LLC, 8711 Westphalia Road, Upper Marlboro, Maryland 20774.

3. Also within thirty (30) days following the Dismissal Date and notwithstanding the provisions of RPTL §726, the School District shall pay additional real property tax refunds, inclusive of interest, penalties and other charges if any (“**Remaining Refunds**”) to the Company (payee: “Mirant Lovett, LLC”) in the amount of \$ 15,000,000. Such Remaining Refunds may be retained in whole by the Company or, at its option, directed to the Trust Account (as defined herein)

to satisfy its obligation to make the Settlement Payment (as defined herein).

4. Notwithstanding the reductions in assessment provided for in Paragraph 1 and the provisions of RPTL §726, no refunds of real property taxes shall be payable to the Company, to Mirant New York, or to any other party, by any party other than as expressly provided in this Stipulation of Settlement and Order, and any entitlement to such refunds by the Company or Mirant New York is expressly waived.

5. Prior to the Dismissal Date, the School District and the County shall establish a trust account (the “**Trust Account**”), governed by a trust indenture (the “**Trust Indenture**”), a copy of which is attached as Exhibit “C”, with the County as Trustee for the benefit of the School District. The Trust Account shall be used to make payments to the School District in a manner consistent with the payment in-lieu of tax agreement (“**PILOT Agreement**”), a copy of which is attached as Exhibit “D”.

6. With respect to Unpaid Real Property Taxes, upon the Company’s receipt of Refunds, and in no event later than thirty (30) days following the Dismissal Date, the Company shall pay a stipulated amount of \$ 13,000,000 (“**Back Taxes**”) to the County, as well as all applicable Special District Taxes in the sum of \$ 361,400, as follows:

<u>Tax Jurisdiction</u>	<u>Back Tax Amount</u>	<u>2004 / 2005 Tax Years</u>	<u>2006 Tax Year</u>
Town	\$ 2,824,300	\$ 1,378,800	\$ 1,445,500
School District	9,735,900	4,412,400	5,323,500
County	422,400	191,400	231,000
County Solid Waste Authority	<u>17,400</u>	<u>17,400</u>	<u>0</u>
Total	\$ 13,000,000	\$ 6,000,000	\$ 7,000,000

<u>Special District</u>	<u>Back Tax Amount</u>	<u>2004 / 2005 Tax Years</u>	<u>2006 Tax Year</u>
Town Lighting District #1	\$ 33,600	\$ 0	\$ 33,600
Town Fire District #1	179,000	0	179,000
Town Ambulance District	114,400	0	114,400
County Solid Waste Authority	<u>34,400</u>	<u>0</u>	<u>34,400</u>
Total	\$ 361,400	\$ 0	\$ 361,400

The Company shall pay all lawfully levied or assessed usage charges, to the extent such charges have been unpaid by the Company, within thirty (30) days of its receipt of a notice setting forth such usage charges in detail.

7. Within thirty (30) days following the Dismissal Date, each of the Tax Jurisdictions shall reimburse the County for all amounts advanced by the County on behalf of such Tax Jurisdiction pursuant to the County's duty to indemnify the Tax Jurisdictions for Unpaid Real Property Taxes, to the extent such Unpaid Real Property Taxes are not satisfied by Paragraph 6 above.

8. All penalties and interest that may have accrued with respect to said Unpaid Real Property Taxes shall be waived by the Tax Jurisdictions as to the Company, Mirant New York, and all other Mirant Corporation-related entities, and the Tax Jurisdictions shall adopt or enact such resolution(s) and/or legislation necessary to effectuate said waiver. To the extent of any unpaid and accrued penalties and interest, the same shall be charged back to each of the appropriate Tax Jurisdictions, on a proportionate basis, pursuant to RPTL § 726, limited to the actual costs incurred by the County, to include interest, borrowing costs, and legal fees (such legal fees to be defined as and limited to the legal fees incurred by the County in connection with the Bankruptcy Cases). In addition, the waiver of penalties and interest pursuant to this Stipulation of Settlement and Order shall not be admissible, have any precedential effect or value, or be admitted into evidence in any

proceeding in any jurisdiction, except to the extent required to enforce this Stipulation of Settlement and Order.

9. In addition to other payments set forth herein, and within thirty (30) days following the Dismissal Date, the Company shall make a settlement payment (the “**Settlement Payment**”) to the County, as trustee, for deposit in the Trust Account benefiting the School District, in the amount of \$ 15,000,000. The parties agree that the Company may treat such Settlement Payment as a payment in satisfaction of any and all obligations of the Company and Mirant New York to the School District existing prior to the date of execution of this Stipulation and Order of Settlement, including without limitation additional Unpaid Real Property Taxes (whether as direct payment of unpaid property taxes or as repayment of unpaid property tax amounts for which the County indemnified the School District) and costs of litigation and settlement, and in consideration of any past impacts, that operation of the Project Facility, the Bankruptcy Cases, or resolution of the property tax dispute has had on its host community.

10. Except for the obligations arising under the Settlement, upon the Dismissal, each of the Company, Mirant New York, Southern Energy Lovett LLC, and Mirant Corporation, their predecessors, successors, affiliates or subsidiary companies (past and present), shall be discharged and released by each of the Tax Jurisdictions from each and every claim, charge, complaint or cause of action whether known or unknown, pertaining to any and all Unpaid Real Property Taxes and any proceedings associated with the Bankruptcy Cases, and except for the obligations arising under the Settlement, each of the Company, Mirant New York, Southern Energy Lovett, LLC, and Mirant Corporation, their predecessors, successors, affiliates or subsidiary companies (past and present), as petitioners, debtors, debtors-in-possession, or as reorganized debtors, their estates, and any successors-in-interest thereto, to include, but not limited to, under or pursuant to any confirmed plan

of reorganization confirmed by the Bankruptcy Court in the Bankruptcy Cases, shall discharge each of the Tax Jurisdictions and their present and former directors, officers, officials, agents, employees, and representatives in their individual and representative capacities, from each and every claim, charge, complaint or cause of action whether known or unknown, pertaining to any and all Unpaid Real Property Taxes, the New York Proceedings, the Bankruptcy Litigation and any other proceedings or matters associated with or related to the Bankruptcy Cases.

11. No part of the Trust Account, ordered above in Paragraphs 3, 5 and 9, shall be available or used in any manner to satisfy the School District's obligation to the County with respect to Unpaid Real Property Taxes.

12. The Town shall make diligent efforts to complete a town-wide revaluation of all properties no later than the 2007 assessment roll.

13. This Stipulation of Settlement and Order, upon entry of the 9019 Order, sets forth the final approval of the parties with respect to settlement of the New York Proceedings, and is conditioned upon the execution by the Company, Town, School District, County, and County of Rockland Industrial Development Agency (the "**PILOT Parties**") of the PILOT Agreement and the 9019 Order becoming final and non-appealable.

14. In the event that prior to the Dismissal Date any of the PILOT Agreement, this Stipulation of Settlement and Order, the 9019 Order, the Trust Indenture, or a PILOT agreement with respect to the Bowline Electric Generating Facility (the "**Bowline PILOT**") shall have been the subject of any third party action, proceeding or appeal seeking an order or judgment declaring or adjudging such agreement or order to be invalid, illegal, unenforceable or otherwise prohibited by applicable law, the parties agree that each such party named therein shall timely appear in and contest such action or proceeding, and all other parties to this Stipulation of Settlement and Order

shall join in and vigorously prosecute such contest, seeking the immediate dismissal thereof.

If such action or proceeding shall be dismissed in its entirety, then the parties shall adhere to and meet their respective obligations under this Stipulation of Settlement and Order (and the other agreements made a part hereof, including but not limited to the PILOT Agreement) as if such action or proceeding had not been commenced.

In the event such action or proceeding shall not be dismissed on motion or an appeal of the dismissal is filed, then the Tax Jurisdictions and the Company agree to negotiate in good faith regarding the impact of such action, proceeding or appeal, and whether all the same economic effects (for all parties) of this Stipulation of Settlement and Order and the PILOT Agreement can or should be achieved by an alternate means. If the parties have not fully met their respective performance obligations under this Stipulation of Settlement and Order before the Dismissal Date, and any such action, proceeding or appeal is still pending (including the running of any time period in which to file or perfect an appeal) on the Dismissal Date, unless otherwise agreed by the Tax Jurisdictions and the Company, this Stipulation of Settlement and Order, the PILOT Agreement, and all related documents shall be terminated ab initio, and be of no further force or effect and the New York Proceedings shall be fully revived and restored to the Court's docket for determination and judgment, with the exception that the parties shall be obligated to endeavor in good faith to achieve all the same economic effects (for all parties) of this Stipulation of Settlement and Order and the PILOT Agreement, through any means at their disposal.

15. Nothing herein shall represent or constitute an admission by any party of any fact or matter, the parties acknowledging that the assessment reductions and other payments to be made by any party hereto are in settlement of litigation only, nor shall any provision of this Stipulation of Settlement and Order be admissible in any court in any jurisdiction other than in an action in this

Court or in the Bankruptcy Court to enforce its express terms.

**IT IS FURTHER ORDERED**, that the Town shall consolidate all tax parcels comprising the Project Facility on the Town assessment roll into a single tax identification number, or into as few tax identification numbers as is reasonably possible under New York law.

**IT IS FURTHER ORDERED**, that RPTL §727 is waived for each of the 2006 – 2012 Town assessment rolls relative to the respective tax parcels comprising the Project Facility.

**IT IS FURTHER ORDERED**, that the terms of and relief granted in the Stipulation of Settlement and Order, the PILOT Agreement, and all related documents and agreements shall be binding upon future owners of the Project Facility and the parties' successors and assigns.

**IT IS FURTHER ORDERED**, that this Court will retain jurisdiction for any disputes arising out of this Stipulation of Settlement and Order and any instruments executed by the parties in furtherance thereof.

**TOWN OF STONY POINT**

By: \_\_\_\_\_  
Philip A. Marino  
Supervisor

**HAVERSTRAW-STONY POINT CENTRAL  
SCHOOL DISTRICT**

By: \_\_\_\_\_  
Dr. Dodge Watkins  
Superintendent

**COUNTY OF ROCKLAND**

By: \_\_\_\_\_  
C. Scott Vanderhoef  
County Executive

**MIRANT LOVETT, LLC**, a Delaware limited liability company

By: Its Managing Member, Mirant New York, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Jeffrey R. Perry  
President

**MIRANT NEW YORK, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Jeffrey R. Perry  
President

**ENTER**

Dated: \_\_\_\_\_, 2006  
White Plains, New York

\_\_\_\_\_  
Thomas A. Dickerson  
Supreme Court Justice

**EXHIBIT "A"**

**Schedule of Tax Parcels**

<b>Stony Point</b>
10.04-2-2
10.04-2-3
10.04-2-4
10.04-2-5
10.04-2-6
10.04-2-7
10.04-2-8
10.04-2-9
10.04-2-10
10.04-2-11
10.04-2-12
10.04-2-13
10.04-2-14
10.04-2-15
10.04-2-16
10.04-2-17
10.04-2-18
10.04-2-19
10.02-3-17

**Exhibit "B"**

**Ordered Reductions in Assessed Value**  
**(By Year and Parcel Number)**

**Town of Stony Point**

<b>Year of Final Assessment Rolls</b>	<b>Tax Identification Number</b>	<b>Town's Assessed Value</b>	<b>Ordered Assessed Value</b>	<b>Ordered Reduction</b>
2000	10.04-2-7 LX	84,210,000	44,758,220	39,451,780
2001	10.04-2-7 LX	84,210,000	47,503,850	36,706,150
2002	10.04-2-7 LX	84,210,000	51,375,050	32,834,950
2003	10.04-2-7 LX	84,210,000	56,148,275	28,061,725
2004	10.04-2-7 LX	67,040,000	41,907,510	25,132,490

For each of the years in question (2000-2004), Petitioner's challenge of the assessed value for each tax identification number provided below is herewith dismissed (subject to the other provisions of this Stipulation of Settlement and Order).

<b>Tax Identification Number</b>
10.02-3-17 MH
10.04-2-10 HM
10.04-2-11 IF
10.04-2-12 IV
10.04-2-13 JR
10.04-2-14 KK
10.04-2-15 LD
10.04-2-16 LW
10.04-2-17 MP
10.04-2-18 NI
10.04-2-19 OB
10.04-2-2 IG
10.04-2-3 IZ
10.04-2-4 JS
10.04-2-5 KL
10.04-2-6 LE
10.04-2-8 MQ
10.04-2-9 NJ

**Exhibit “C”**

**Lovett Trust Indenture**

**Exhibit “D”**

**Lovett PILOT Agreement**