

MIRANT CORP  
Form 425  
September 21, 2010

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the**  
**Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): September 20, 2010**

**Mirant Corporation**

**(Exact Name of Registrant as Specified in Charter)**

**Delaware**  
**(State or Other Jurisdiction**  
  
**of Incorporation)**

**001-16107**  
**(Commission**  
  
**File Number)**

**20-3538156**  
**(IRS Employer**  
  
**Identification No.)**

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**1155 Perimeter Center West, Suite 100, Atlanta, Georgia**

(Address of Principal Executive Offices)

**Registrant's telephone number, including area code: (678) 579-5000**

**30338**

(Zip Code)

**N/A**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01. Entry into a Material Definitive Agreement.**

On September 20, 2010, Mirant Corporation ( Mirant ) and RRI Energy, Inc. ( RRI Energy ) entered into certain agreements which provide for the companies to borrow \$1.925 billion upon the closing of their proposed merger. In addition, RRI Energy has entered into a revolving credit facility to be available upon the closing of such merger. Completion of these financings is subject to the satisfaction of certain customary conditions.

***Senior Secured Term Loan Facility and Revolving Credit Facility***

On September 20, 2010, RRI Energy (to be renamed GenOn Energy, Inc. on the closing date of the merger) entered into a credit agreement with JPMorgan Chase Bank, N.A., as administrative agent, Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman Sachs Bank USA, Morgan Stanley Senior Funding, Inc., Royal Bank of Canada, The Royal Bank of Scotland plc, the other lenders from time to time party thereto and, from and after the closing date, Mirant Americas, Inc. (to be renamed GenOn Americas, Inc. on the closing date). The credit agreement includes new senior secured credit facilities, with RRI Energy and Mirant Americas as borrowers, consisting of:

A \$700 million seven-year senior secured term loan facility, to be funded at the closing of the merger, with a rate of LIBOR + 4.25% (with a LIBOR floor of 1.75%); and

A \$788 million five-year senior secured revolving credit facility, with an undrawn rate of 0.75% and a drawn rate of LIBOR + 3.50%.

The new revolving facility and new term loan facility are collectively referred to as the new credit facility. The new credit facility is expected to close and fund on the closing date of the merger and such closing and funding is subject to satisfaction of various conditions precedent, including:

the companies receiving at least \$1.9 billion in gross cash proceeds from the senior unsecured notes offering described below (or other issuance of senior unsecured notes) and borrowings under the new term loan facility (without giving effect to any original issue discount); and

the closing of the new credit facility having occurred on or prior to December 31, 2010; provided, however, that the deadline for the closing for the new term loan facility and for the new revolving commitments of each consenting revolving lender shall be extended to March 31, 2011 if revolving lenders holding not less than \$750,000,000 of revolving commitments consent to such extension.

Upon the closing of the new credit facility, RRI Energy's obligations under the new credit facility will be guaranteed by certain of RRI Energy's existing and future direct and indirect subsidiaries. In addition, upon the closing of the new credit facility, the obligations and guarantees under the new credit facility will be secured by a first priority security interest in substantially all of RRI Energy's assets, subject to certain exceptions set forth in the definitive documentation for the new credit facility.

Upon the closing of the new credit facility, its terms will require RRI Energy to maintain, as at the end of each quarter, a ratio of consolidated secured debt (net of up to \$500 million in cash) to EBITDA (as defined in the credit agreement) of not more than 3.50 to 1.00. The new credit facility also includes covenants that will restrict RRI Energy's ability to, among other things, (a) incur additional indebtedness, (b) pay dividends, prepay subordinated indebtedness or purchase capital stock, (c) encumber RRI Energy's assets, (d) enter into business combinations or divest RRI Energy's assets, (d) make investments or loans, (e) enter into transactions with affiliates and (f) engage in sale and leaseback transactions, subject in each case to certain exceptions or basket amounts. The new credit facility provides for acceleration of RRI Energy's obligations and termination of commitments thereunder upon the occurrence and continuance of certain events of default, including, without limitation:

(i) failure to pay principal when due, (ii) failure to pay for a period of five business days interest and other amounts when due, (iii) default in the performance of certain covenants contained in the credit agreement, subject to grace or cure periods set forth therein, (iv) failure to pay amounts, after applicable grace periods, due under, or acceleration of, certain material debt, (v) any money judgment is rendered against RRI Energy which is not stayed for any period of 60 days, (vi) any change of control (as defined in the credit agreement) occurs and (vii) certain bankruptcy and insolvency events.

**Senior Unsecured Notes**

On September 20, 2010, Mirant entered into a purchase agreement with RRI Energy, GenOn Escrow Corp. ( GenOn Escrow ), a newly formed Delaware subsidiary of Mirant, and J.P. Morgan Securities LLC, as representative of the several initial purchasers listed in the purchase agreement. The purchase agreement relates to two series of senior unsecured notes:

\$550 million of 9.875% senior unsecured notes due 2020 to be initially issued by GenOn Escrow; and

\$675 million of 9.5% senior unsecured notes due 2018 to be initially issued by GenOn Escrow.

The senior unsecured notes are expected to be issued on October 4, 2010. Upon issuance of the notes by GenOn Escrow, the funds will be deposited into a segregated escrow account pending completion of the merger. Upon completion of the merger, GenOn Escrow will merge with and into RRI Energy (to be renamed GenOn Energy, Inc.) and RRI Energy will assume all of GenOn Escrow's obligations under the notes and the related indenture and the funds held in escrow will be released to GenOn.

GenOn Escrow will be required to redeem the notes at a redemption price equal to 100% of the issue price of each series of the notes, plus accrued and unpaid interest to, but excluding, the redemption date if:

the merger is not completed on or before December 31, 2010 or, subject to the deposit with the escrow agent of cash or government securities sufficient to fund the special mandatory redemption payment thereon, March 31, 2011 (the merger termination date),

the required refinancing transactions, as set forth in the merger agreement previously entered into by RRI Energy and Mirant, are not completed at or before the merger termination date,

the merger agreement is terminated before the merger termination date,

an event of default shall have occurred and be continuing under the indenture governing the senior unsecured notes, or

at any time, RRI Energy and Mirant, in their sole judgment, determine jointly that the refinancing transactions will not be completed on or before the merger termination date.

The senior unsecured notes will be issued under an indenture, to be dated as of the closing date of the notes offering, between GenOn Escrow and Wilmington Trust Company, as trustee. The indenture will include covenants restricting RRI Energy from incurring additional liens and from paying dividends or purchasing capital stock. In the event of a change of control of GenOn holders of the senior unsecured notes will have the right to require GenOn to purchase the outstanding senior unsecured notes at a price equal to 101% of the principal amount plus accrued and unpaid interest and additional interest (as defined in the indenture), if any. The senior unsecured notes will be subject to acceleration of GenOn's obligations thereunder upon the occurrence of certain events of default, including: (i) default in interest payment for 30 days, (ii) default in the payment of principal or premium, if any, (iii) failure after 90 days of specified notice to comply with any other agreements in the indenture, (iv) certain cross-acceleration events, (v) failure by GenOn or its significant subsidiaries to pay certain final and non-appealable judgments after 90 days and (vi) certain events of bankruptcy and insolvency. The senior unsecured notes will not be guaranteed by any of Mirant's subsidiaries or any of RRI Energy's subsidiaries.

**Other Relationships**

Some of the parties to the credit agreement and their respective affiliates perform various financial advisory and investment and commercial banking services for Mirant and RRI Energy in the ordinary course of business. Certain affiliates of the lenders under the credit agreement will act as initial purchasers of the senior unsecured notes, including J.P. Morgan Securities LLC, Credit Suisse (USA) Securities LLC, Deutsche Bank Securities Inc, Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, RBC Capital Markets Corporation and RBS Securities Inc.

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The foregoing description of the credit agreement and purchase agreement is not complete and is qualified in its entirety by reference to the full text of the agreements, which will be filed as exhibits in a subsequent report of Mirant under the Securities Exchange Act of 1934, as amended (the Exchange Act ).

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**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

(a) The information set forth in Item 1.01 is incorporated herein by reference.

**Item 3.03. Material Modification to Rights of Security Holders.**

As described in Item 1.01, the credit agreement contains a covenant that, following the closing of the merger, will restrict RRI Energy's ability to pay dividends or repurchase capital stock. Also as described in Item 1.01, following the merger, a covenant in the indenture for the senior notes will restrict RRI Energy's ability to pay dividends or repurchase capital stock.

**Item 7.01. Regulation FD Disclosure.**

On September 20, 2010, Mirant and RRI Energy jointly issued a press release announcing the financings described herein and announcing that both companies will hold their respective special meetings of stockholders on October 25, 2010 for the purpose of voting upon proposals relating to the merger. Stockholders who held shares of Mirant or RRI Energy common stock as of the close of business on September 13, 2010 will be entitled to vote at their respective special meeting. A copy of the press release is attached as Exhibit 99.1 hereto.

In accordance with general instruction B.2 of Form 8-K, the information contained in Item 7.01 in this Current Report on Form 8-K, including Exhibit 99.1, is to be considered furnished pursuant to Item 7.01 of Form 8-K and shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that Section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended, nor shall it be deemed incorporated by reference in any Mirant filing or report with the Securities and Exchange Commission (the SEC), whether made before or after the date hereof, except as shall be expressly set forth by specific reference in such a filing or report.

**Item 9.01.**

(d) Exhibits

99.1 Press Release issued September 20, 2010.

**Cautionary Language Regarding Forward-Looking Statements**

Some of the statements included herein involve forward-looking information. Mirant cautions that these statements involve known and unknown risks and that there can be no assurance that such results will occur. There are various important factors that could cause actual results to differ materially from those indicated in the forward-looking statements, such as, but not limited to, legislative and regulatory initiatives regarding deregulation, regulation or restructuring of the industry of generating, transmitting and distributing electricity (the electricity industry); changes in state, federal and other regulations affecting the electricity industry (including rate and other regulations); changes in, or changes in the application of, environmental and other laws and regulations to which Mirant and its subsidiaries and affiliates are or could become subject; the failure of Mirant's plants to perform as expected, including outages for unscheduled maintenance or repair; environmental regulations that restrict Mirant's ability or render it uneconomic to operate its business, including regulations related to the emission of CO<sub>2</sub> and other greenhouse gases; increased regulation that limits Mirant's access to adequate water supplies and landfill options needed to support power generation or that increases the costs of cooling water and handling, transporting and disposing off-site of ash and other byproducts; changes in market conditions, including developments in the supply, demand, volume and pricing of electricity and other commodities in the energy markets, including efforts to reduce demand for electricity and to encourage the development of renewable sources of electricity, and the extent and timing of the entry of additional competition in our markets; continued poor economic and financial market conditions, including impacts on financial institutions and other current and potential counterparties and negative impacts on liquidity in the power and fuel markets in which Mirant and its subsidiaries hedge and transact; increased credit standards, margin requirements, market volatility or other market conditions that could increase Mirant's obligations to post collateral beyond amounts that are expected, including additional collateral costs associated with over-the-counter

hedging activities as a result of new or proposed rules and regulations governing derivative financial instruments; Mirant's inability to access effectively the over-the-counter and exchange-based commodity markets or changes in commodity market conditions and liquidity, including as a result of new or proposed rules and regulations governing derivative financial instruments, which may affect Mirant's ability to engage in asset management, proprietary trading and fuel oil management activities as expected, or result in material gains or losses from open positions; deterioration in the financial condition of Mirant's counterparties and the failure of such parties to pay amounts owed to Mirant or to perform obligations or services due to Mirant beyond collateral posted; hazards customary to the power generation industry and the possibility that Mirant may not have adequate insurance to cover losses resulting from such hazards or the inability of Mirant's insurers to provide agreed upon coverage; the expected timing and likelihood of completion of the proposed merger with RRI Energy, including the timing, receipt and terms and conditions of required stockholder, governmental and regulatory approvals that may reduce anticipated benefits or cause the parties to abandon the merger; the ability of the parties to arrange debt financing in an amount sufficient to fund the refinancing contemplated in, and on terms consistent with, the Merger Agreement; the diversion of management's time and attention from our ongoing business during the time Mirant is seeking to complete the merger; the ability to maintain relationships with employees, customers and suppliers; the ability to integrate successfully the businesses and realize cost savings and any other synergies; and the risk that credit ratings of the combined company or its subsidiaries may be different from what the companies expect; price mitigation strategies employed by ISOs or RTOs that reduce Mirant's revenue and may result in a failure to compensate Mirant's generating units adequately for all of their costs; changes in the rules used to calculate capacity, energy and ancillary services payments; legal and political challenges to the rules used to calculate capacity, energy and ancillary services payments; volatility in Mirant's gross margin as a result of Mirant's accounting for derivative financial instruments used in its asset management, proprietary trading and fuel oil management activities and volatility in its cash flow from operations resulting from working capital requirements, including collateral, to support its asset management, proprietary trading and fuel oil management activities; Mirant's ability to enter into intermediate and long-term contracts to sell power or to hedge our future expected generation of power, and to obtain adequate supply and delivery of fuel for its generating facilities, at Mirant's required specifications and on terms and prices acceptable to it; the failure to utilize new or advancements in power generation technologies; the inability of Mirant's operating subsidiaries to generate sufficient cash flow to support its operations; the potential limitation or loss of Mirant's net operating losses notwithstanding a continuation of its stockholder rights plan; Mirant's ability to borrow additional funds and access capital markets; strikes, union activity or labor unrest; Mirant's ability to obtain or develop capable leaders and its ability to retain or replace the services of key employees; weather and other natural phenomena, including hurricanes and earthquakes; the cost and availability of emissions allowances; curtailment of operations and reduced prices for electricity resulting from transmission constraints; Mirant's ability to execute its business plan in California, including entering into new tolling arrangements in respect of its existing generating facilities; Mirant's ability to execute its development plan in respect of its Marsh Landing generating facility, including obtaining the permits necessary for construction and operation of the generating facility, securing the necessary project financing for construction of the generating facility, and completing the construction of the generating facility by May 2013; Mirant's relative lack of geographic diversification of revenue sources resulting in concentrated exposure to the Mirant Mid-Atlantic market; the ability of lenders under Mirant North America's revolving credit facility to perform their obligations; war, terrorist activities, cyberterrorism and inadequate cybersecurity, or the occurrence of a catastrophic loss; the failure to provide a safe working environment for Mirant's employees and visitors thereby increasing Mirant's exposure to additional liability, loss of productive time, other costs, and a damaged reputation; Mirant's consolidated indebtedness and the possibility that Mirant or its subsidiaries may incur additional indebtedness in the future; restrictions on the ability of Mirant's subsidiaries to pay dividends, make distributions or otherwise transfer funds to Mirant, including restrictions on Mirant North America contained in its financing agreements and restrictions on Mirant Mid-Atlantic contained in its leveraged lease documents, which may affect Mirant's ability to access the cash flows of those subsidiaries to make debt service and other payments; the failure to comply with, or monitor provisions of Mirant's loan agreements and debt may lead to a breach and, if not remedied, result in an event of default thereunder, which would limit access to needed capital and damage Mirant's reputation and relationships with financial institutions; and the disposition of the pending litigation described in Mirant's Form 10-Q for the quarter ended June 30, 2010, filed with the SEC.

Mirant undertakes no obligation to update publicly or revise any forward-looking statements to reflect events or circumstances that may arise. The foregoing review of factors that could cause Mirant's actual results to differ materially from those contemplated in the forward-looking statements included in this Current Report on Form 8-K should be considered in connection with information regarding risks and uncertainties that may affect Mirant's future results included in Mirant's filings with the SEC at [www.sec.gov](http://www.sec.gov).

#### **Additional Information and Where To Find It**

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. In connection with the proposed merger between RRI Energy and Mirant, RRI Energy filed with the SEC a registration statement on Form S-4 that includes a joint proxy statement of RRI Energy and Mirant that also constitutes a prospectus of RRI Energy. RRI Energy and Mirant urge investors and shareholders to read the registration statement, and any other relevant documents filed with the SEC, including the joint proxy statement/prospectus that is a part of the registration statement, because they contain or will contain important information. You may obtain copies of all documents filed with the SEC regarding this transaction, free of charge, at the SEC's website ([www.sec.gov](http://www.sec.gov)). You may also obtain these documents, free of charge, from RRI Energy's website ([www.rrienergy.com](http://www.rrienergy.com)) under the tab "Investor Relations" and then under the heading "Company Filings." You may also obtain these documents, free of charge, from Mirant's website ([www.mirant.com](http://www.mirant.com)) under the tab "Investor Relations" and then under the heading "SEC Filings."

#### **Participants in The Merger Solicitation**

RRI Energy, Mirant, and their respective directors, executive officers and certain other members of management and employees may be soliciting proxies from RRI Energy and Mirant shareholders in favor of the merger and related matters. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of RRI Energy and Mirant shareholders in connection with the proposed merger is contained in the joint proxy statement/prospectus. You can find information about RRI Energy's executive officers and directors in its definitive proxy statement filed with the SEC on April 1, 2010. You can find information about Mirant's executive officers and directors in its definitive proxy statement filed with the SEC on March 26, 2010 and supplemented on April 28, 2010. Additional information about RRI Energy's executive officers and directors and Mirant's executive officers and directors can be found in the above-referenced registration statement on Form S-4. You can obtain free copies of these documents from RRI Energy and Mirant as described above.



**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 20, 2010

Mirant Corporation

/s/ ANGELA M. NAGY  
**Angela M. Nagy**  
**Vice President and Controller**  
**(Principal Accounting Officer)**