

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:))
BRIGGS & STRATTON CORPORATION, <i>et al.</i> ,)) Chapter 11
Debtors.)) Case No. 20-43597-399
)) (Jointly Administered)
))

**OBJECTION OF CONSTELLATION NEWENERGY – GAS DIVISION, LLC
TO AMENDED NOTICE OF CURE COSTS AND PROPOSED ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH SALE**

Constellation NewEnergy – Gas Division, LLC (“CNEG”), by counsel, hereby objects (the “Objection”) to the *Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* [Docket No. 879] (the “Amended Cure Notice”), and sets forth the following:

Facts

Procedural Facts

1. On July 20, 2020 (the “Petition Date”), the debtors in these bankruptcy proceedings (the “Debtors”) each commenced their cases under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) that are now pending with this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.
2. The Debtors’ chapter 11 bankruptcy cases are being jointly administered.

The Sale Motion and Initial Cure Notice

3. On July 20, 2020, the Debtors filed a motion [Docket No. 53] (the “Sale



Motion”) seeking entry of (i) an order establishing, *inter alia*, certain Bidding Procedures and procedures for the assumption and assignment of contracts (the “Assumption and Assignment Procedures”) in connection with the sale or sales of substantially all of the Debtors’ assets (the “Sale”), and (ii) an order authorizing the Sale, authorizing the assumption and assignment of proposed assumed contracts, in connection therewith and granting related relief.

4. On August 19, 2020, the Bankruptcy Court entered an Order [Docket No. 505] (the “Bidding Procedures Order”), which established key dates and times relating to the Debtors’ auction and proposed Sale and approved the Assumption and Assignment Procedures.

5. In accordance with the Assumption and Assignment Procedures, on August 19, 2020, the Debtors filed a *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* [Docket No. 513] (the “Initial Cure Notice”).

6. Exhibit A to the Initial Cure Notice, at page 86 of 94, lists CNEG as the counterparty to the following contracts with Debtor Briggs & Stratton Corporation, each with a proposed contract cure amount of \$0:

- A. Rider (Document_10255)
- B. Pricing (Document_11688)
- C. Pricing Agreement (Document_04458)
- D. Pricing Agreement (Document_04457)

Facts Regarding CNEG

7. Prior to the Petition Date, CNEG provided natural gas and related services to the Debtors pursuant to the following contracts (collectively, the “Gas Agreements”):

A. Natural Gas Supply Agreement with Allmand Bros., Inc. dated April 22, 2020 and a related Transaction Confirmation dated May 15, 2020 (collectively, the “Allmand Bros. Agreement”); and

B. Master Natural Gas Agreement with Briggs & Stratton Corporation dated August 27, 2009, and a related Amendment dated April 3, 2013 and a Managed Portfolio Services Rider dated April 1, 2019 (collectively, the “Briggs & Stratton Agreement”).

8. CNEG has continued to provide the Debtors with natural gas and related services pursuant to the Gas Agreements since the Petition Date.

9. The prepetition debt owed by the Debtors to CNEG under the Briggs & Stratton Agreement is \$24,984.64, and the prepetition debt owed by the Debtors to CNEG under the Allmand Bros. Agreement is \$2,936.69 (the amounts set forth in this paragraph collectively referred to hereinafter as the “Prepetition Cure Amounts”).

10. In addition, the Debtors will continue to incur charges under the Gas Agreements through the effective date of the Debtors’ assumption and/or assignment thereof.

Facts Regarding Amended Cure Notice

11. On August 31, 2020, the Debtors filed their *Notice of Cancellation of Auction and Designation of the Stalking Horse Bid as the Successful Bid* [Docket No. 679], which designates Bucephalus Buyer, LLC (the “Purchaser”), an affiliate of KPS Capital Partners, as the Successful Bidder for the purchase of substantially all of the Debtors’ assets and equity interests.

12. On September 14, 2020, the Debtors filed the Amended Cure Notice.

13. Exhibit A to the Amended Cure Notice improperly lists the Allmand Bros.

Agreement with a \$0 cure amount.

14. Exhibit B to the Amended Cure Notice fails to properly list the Briggs & Stratton Agreement. The Amended Cure Notice fails to identify the Master Natural Gas Agreement with Briggs & Stratton Corporation dated August 27, 2020 and omits the Managed Portfolio Services Rider dated April 1, 2019. The Amended Cure Notice also improperly lists a \$0 cure amount for the Briggs & Stratton Agreement.

15. The Prepetition Cure Amounts remain due and owing to CNEG under the Gas Agreements.

Discussion

A. The Debtors Must Satisfy all Prepetition Claims and Post-Petition Obligations in Order to Assume the Gas Agreements With CNEG.

16. Section 365(b)(1)(A) and (B) of the Bankruptcy Code provide, in pertinent part, as follows:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default. . .

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default;

17. Accordingly, if the Debtors want to assume and assign the Gas Agreements, the Debtors must first pay CNEG the applicable Prepetition Cure Amounts owing under the Gas Agreement(s), plus any unpaid post-petition charges incurred thereunder through the effective date of assumption, as a condition to such assumption/assignment.

B. The Debtors and/or Purchaser Should Be Required To Make Final Decisions With Respect to the Gas Agreements Prior to Sale Closing.

18. Further, the Debtors and/or Purchaser should be required to make final decisions regarding assumption and/or rejection of the Gas Agreements prior to the Sale closing date so that CNEG is not required to continue providing natural gas and related services post-closing under a Gas Agreement if the Debtors ultimately elect to reject one or both of the Gas Agreements.

WHEREFORE, the Court should enter an Order:

A. Requiring, as a condition to the Debtors' assumption and/or assignment of the Gas Agreements, or any of them, that the Debtors properly identify the Gas Agreements and pay to CNEG the applicable Prepetition Cure Amounts set forth above, plus all post-petition charges incurred thereunder through the effective date of assumption;

B. Requiring the Debtors and/or the Purchaser to make final assumption and/or rejection decisions regarding each of the Gas Agreements prior to the Sale closing date; and

C. Granting such other and further relief as is equitable and just.

Dated: September 16, 2020

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 16, 2020, a true and correct copy of the above and foregoing *Objection of Constellation NewEnergy – Gas Division, LLC to Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* was served via electronic filing through the CM/ECF system of the U.S. Bankruptcy Court, Eastern District of Missouri upon all parties to this matter requesting service by electronic filing and by U.S. First Class Mail, postage prepaid, upon the following persons not receiving notice via the CM/ECF system:

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