

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

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

**OBJECTION OF CONSTELLATION NEWENERGY – GAS DIVISION, LLC  
TO SECOND 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 “Third Cure Objection”) to the *Second Amended Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* [Docket No. 965] (the “Second 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 and Amended Cure Notices**

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. 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”), which improperly listed CNEG’s contracts with the Debtors and the applicable cure amounts owing thereunder (which were all listed as \$0).

6. On August 31, 2020, CNEG timely filed an Objection to the Initial Cure Notice (Docket No. 643) (the “First Cure Objection”), in which it clearly set forth CNEG’s contracts with the Debtors and the applicable cure amounts owing thereunder.

7. On September 14, 2020, the Debtors filed an *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”), which again improperly listed CNEG’s contracts with the Debtors and the applicable cure amounts owing thereunder (which were all listed as \$0).

8. On September 16, 2020, CNEG timely filed an Objection to the Amended Cure

Notice (Docket No. 907) (the “Second Cure Objection”), in which it again clearly set forth CNEG’s contracts with the Debtors and the applicable cure amounts owing thereunder.

9. In addition, through email correspondence with Debtors’ counsel, counsel for CNEG has clearly set forth the contracts that CNEG has with the Debtors and the applicable cure amounts owing thereunder.

**Facts Regarding CNEG**

10. 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”).

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

12. The prepetition debt owed by the Debtors to CNEG under the Briggs & Stratton Agreement is \$24,984.64, and the post-petition debt owed by the Debtors to CNEG under the Briggs & Stratton Agreement is \$1,668.29.

13. The prepetition debt owed by the Debtors to CNEG under the Allmand Bros. Agreement is \$2,936.69, and the post-petition debt owed by the Debtors to CNEG under the Allmand Bros. Agreement is \$2,605.66 (the amounts set forth in this paragraph and in

paragraph 12 above collectively referred to herein as the “Cure Amounts”).

14. 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 Second Amended Cure Notice**

15. On September 21, 2020, the Debtors filed the Second Amended Cure Notice.

16. The Second Amended Cure Notice is confusing in that Exhibits A, B and C, thereto each list improperly described alleged contracts with CNEG and/or improper cure amounts therefor. Accordingly, it is unclear which of the Gas Agreements, if any, the Debtors are seeking to assume and which of the Gas Agreements, if any, the Debtors are seeking to reject. Further, Debtors’ counsel has failed to respond to CNEG’s counsel’s inquiries seeking to clarify the foregoing, requiring CNEG to incur the costs of drafting and filing this Third Cure Objection.

17. CNEG’s contracts with the Debtors and the applicable cure amounts owing thereunder were clearly set forth in both the First and Second Cure Objections and are set forth above.

**Discussion**

18. CNEG adopts and incorporates by reference as if fully set forth herein each of its arguments set forth in its First and Second Cure Objections (Doc. 643 and Doc. 907).

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 Cure Amounts set forth above, plus all additional 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 28, 2020

/s/ Norah J. Ryan  
Norah J. Ryan, Attorney at Law  
Mo. Bar No. 32123, E.D. Mo. No. 4240  
c/o Nebula Coworking  
3407 South Jefferson Ave.  
St. Louis, Missouri 63118  
Telephone: (314) 241-9994  
Facsimile: (314) 677-2089  
Email: [norah@norahryan.com](mailto:norah@norahryan.com)

and

Russell R. Johnson III  
John M. Craig  
Law Firm of Russell R. Johnson III, PLC  
2258 Wheatlands Drive  
Manakin-Sabot, Virginia 23103  
Telephone: (804) 749-8861  
Facsimile: (804) 749-8862  
E-mail: [russell@russelljohnsonlawfirm.com](mailto:russell@russelljohnsonlawfirm.com)  
[john@russelljohnsonlawfirm.com](mailto:john@russelljohnsonlawfirm.com)

*Counsel For Constellation NewEnergy – Gas  
Division, LLC*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 28<sup>th</sup>, 2020, a true and correct copy of the above and foregoing *Objection of Constellation NewEnergy – Gas Division, LLC to Second 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:

Briggs & Stratton Corporation  
Attn: Kathryn M. Buono, Esq.  
12301 West Wirth Street  
Wauwatosa, Wisconsin 53222  
*Debtors*

Ronit J. Berkovich, Esq.  
Debra A. Hoehne, Esq.  
Martha E. Martir, Esq.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10053  
Email: [ronit.berkovich@weil.com](mailto:ronit.berkovich@weil.com)  
[deborah.hoehne@weil.com](mailto:deborah.hoehne@weil.com)  
[martha.martir@weil.com](mailto:martha.martir@weil.com)

*Debtors' Counsel*

Robert E. Eggmann, Esq.  
Christopher J. Lawhorn, Esq.  
Thomas H. Riske, Esq.  
Carmody MacDonald P.C.  
120 S. Central Ave., Suite 1800  
St. Louis, Missouri 63015  
Email: [ree@carmodymacdonald.com](mailto:ree@carmodymacdonald.com)  
[cjl@carmodymacdonald.com](mailto:cjl@carmodymacdonald.com)  
[thr@carmodymacdonald.com](mailto:thr@carmodymacdonald.com)

*Debtors' Counsel*

Chad Husnick, P.C., Esq.  
Gregory F. Pesce, Esq.  
Kirkland & Ellis LLP  
300 N. LaSalle  
Chicago, Illinois 60654  
Email: [chad.husnick@kirkland.com](mailto:chad.husnick@kirkland.com)  
[gregory.pesce@kirkland.com](mailto:gregory.pesce@kirkland.com)  
*Counsel for Stalking Horse Bidder*

Robert J. Stark, Esq.  
Oksana P. Lashko, Esq.  
Andrew Carty, Esq.  
Brown Rudnick LLP  
Seven Times Square  
New York, New York 10036  
Email: [rstark@brownrudnick.com](mailto:rstark@brownrudnick.com)  
[olashko@brownrudnick.com](mailto:olashko@brownrudnick.com)  
[acarty@brownrudnick.com](mailto:acarty@brownrudnick.com)  
*Counsel for the Creditors' Committee*

Peter P. Knight, Esq.  
Jonathan C. Gordon, Esq.  
Latham & Watkins LLP  
330 North Wabash Ave, Ste 2800  
Chicago, Illinois 60611  
Email: [peter.knight@lw.com](mailto:peter.knight@lw.com)  
[jonathan.gordon@lw.com](mailto:jonathan.gordon@lw.com)  
*Counsel for the ABL Agent and DIP Agent*

Seth H. Lieberman, Esq.  
David W. Smith, Esq.  
Pryor Cashman LLP  
7 Times Square  
New York, New York 10036  
Email: [slieberman@pryorcashman.com](mailto:slieberman@pryorcashman.com)  
[dsmith@pryorcashman.com](mailto:dsmith@pryorcashman.com)  
*Counsel for Wilmington Trust, N.A., as successor  
indenture trustee under the Senior Notes*

Sirena T. Wilson, Esq.  
Office of the United States Trustee  
for the Eastern District of Missouri  
111 South 10<sup>th</sup> Street, Ste 6.353  
St. Louis, Missouri 63102  
Email: [sirena.wilson@usdoj.gov](mailto:sirena.wilson@usdoj.gov)

Jeffrey B. Jensen  
United States Attorney's Office for the  
Eastern District of Missouri  
111 S. 10<sup>th</sup> Street, 20<sup>th</sup> Floor  
Thomas Eagleton US Courthouse  
St. Louis, Missouri 63102

United States Attorney's Office for the  
Eastern District of Missouri  
555 Independence St.  
Rush H. Limbaugh Sr. US Courthouse  
Cape Girardeau, Missouri 63703

/s/ Norah J. Ryan  
Norah J. Ryan