

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: :
 : Chapter 11
NEWPAGE CORPORATION, *et al.*, :
 :
 :
Debtors¹. : Case No.: 11-12804 (KG)
 : (Jointly Administered)
 :
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DEFENDANT KENTUCKY UTILITIES COMPANY'S OBJECTION TO THE ENTRY OF FINAL RELIEF ON DEBTOR'S MOTION PURSUANT TO SECTIONS 105(a) AND 366 OF THE BANKRUPTCY CODE FOR ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) APPROVING THE DEBTORS' PROPOSED FORM OF ADEQUATE ASSURANCE, (III) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS THERETO BY UTILITY PROVIDERS, AND (IV) SCHEDULING A FINAL HEARING THEREON

**TO THE HONORABLE KEVIN GROSS,
UNITED STATES BANKRUPTCY JUDGE:**

Utility Provider, Kentucky Utilities Company ("KU"), by counsel, hereby respectfully objects to the Debtors' Motion Pursuant to Sections 503(a) and 366 of the Bankruptcy Code for Order (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Approving the Debtors' Proposed Form of Adequate Assurance, (III) Establishing Procedures for Resolving Objections Thereto By Utility Providers, and (IV) Scheduling a Final Hearing Thereon (the "Utilities Motion"). In support of this Objection, KU respectfully states as follows:

¹ The term "Debtors" shall have the definition given that term in the Utilities Motion. Additionally, all other terms not defined herein shall have the meaning set forth in the Utilities Motion.



BACKGROUND

1. The Debtors filed for protection under Chapter 11 of the Bankruptcy Code on September 7, 2011 (the "Petition Date").

2. The Debtors filed a variety of first day motions on the Petition Date. Among the first day motions was Debtors' Utilities Motion.

3. The Debtors state in their Utilities Motion that they spend an aggregate of approximately \$25.5 million for various utility services on a monthly basis. On Schedule 1 attached to the Utilities Motion, the Debtors list 91 utility companies from which they receive service on an ongoing basis (the "Utility Providers").

4. The Debtors propose to deposit within 20 days of the Petition Date \$5 Million as adequate assurance to the Utility Providers for ongoing utility service (the "Adequate Assurance Deposit"). That sum purports to represent the Debtors' calculation of 50% of their estimated average monthly cost of cumulative Utility Services provided by the Utility Providers who do not otherwise hold security deposits, letters of credit or other security.

5. Utility Providers who hold security deposits, letters of credit or other security (referenced in the Utilities Motion as the "Secured Utilities") are deemed by the Debtors to be adequately assured of the Debtors' continued performance by virtue of the security deposits, letters of credits or other security which they hold.

ARGUMENT IN SUPPORT OF OBJECTION

6. The Debtors' Utilities Motion does not provide sufficient information for KU to evaluate whether \$5 Million constitutes sufficient adequate protection. Given the Debtors' estimated average monthly usage of utility services in the approximate amount of \$25.5 Million,

\$5 Million would not appear to be sufficient, at least without more information than has been disclosed in the Utilities Motion.

7. The Debtors' Utilities Motion does not disclose how many of the Utility Providers have security deposits, letters of credit, or other "security," or what that other "security" might be.

8. The Utilities Motion fails to disclose the number of Secured Utilities versus the number of unsecured utilities.

9. The Utilities Motion does not disclose the average monthly utility service usage provided by the Utility Providers who do not have security deposits, letters of credit or other security.

10. The Debtors' Utilities Motion does not disclose the extent of the security deposits, the letters of credit or the other security interests. Nor does it disclose the monthly average cost of utility services provided by each of the Secured Utilities. Thus, it is not possible to compare the security against the actual monthly usage for each such Secured Utility holding a deposit, letter of credit or other security. And, hence, it is not possible to determine from the Utilities Motion how much security would remain in the event of a draw. For example, the average monthly electric service expenditure by the Debtors on their accounts with KU is approximately \$1.75 Million. While KU has a \$2 Million letter of credit, one draw in the amount of the monthly average (\$1.75 Million) on the letter of credit would severely reduce the available funds, leaving the remaining funds a small fraction of the monthly average, and forcing KU to then share in the Adequate Assurance Deposit with the other 90 Utility Providers. It would take very little time to exhaust KU's letter of credit. Once exhausted, if the Debtors were to get behind again and KU were to have to look to the Adequate Assurance Deposit Account, a mere

one month's utility charges (again, being on average \$1.75 Million) would constitute nearly 35% of the entire \$5 Million Adequate Assurance Deposit. One can only anticipate that the same may be true, as well, for some of the other Utility Providers. For instance, Allete Water Services, Inc. ("Minnesota Power") is listed on the 20 Largest Unsecured Creditors List as being owed \$1,838,835 in pre-petition debt. A utility debt obligation in that amount likewise raises the question of whether a draw by Minnesota Power on its security, assuming it is one of the Secured Utilities, would also result in a substantial draw-down on its available security to a negligible amount, leaving it to share in the \$5 Million pot, as well.

11. Significantly, Section 366(4) would permit the Secured Utilities to draw on their utility deposit accounts to recover pre-petition amounts owed. However, the Utilities Motion does not disclose the amounts of the deposits held by the various Secured Utilities and the pre-petition obligations owed to each such Secured Utility. Consequently, for this reason as well it is not possible to evaluate the adequateness of the proposed \$5 Million Adequate Assurance Deposit. The same is true with regard to letters of credit held by Secured Utilities, which can be drawn on at any time post-petition.

12. Finally, the Utilities Motion does not disclose the termination dates of any of the letters of credit or other security interests involved herein. In KU's case, its letter of credit will terminate by its own terms on April 13, 2012, while the Bankruptcy case is still progressing. Unless KU is able to obtain additional adequate assurance from the Debtors, KU will be left sharing in the \$5 Million Adequate Assurance Deposit at that time. Other Utility Providers holding letters of credit are likely to be in the same position. Thus, the pool of Secured Utilities may shrink, while the pool of unsecured Utility Providers deepens. Notably, the Secured Utilities are likely the largest monthly utility suppliers to the Debtors.

CONCLUSION

For the foregoing reasons, KU respectfully objects to the Debtors' request that final relief be granted on its Utilities Motion. Without additional information, as set forth herein, it is simply not possible to evaluate whether \$5 Million is sufficient adequate protection for the 91 Utility Providers which have been identified.

Dated: September 22, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I am not less than 18 years of age and that I have caused to be served the foregoing Motion to Dismiss Plaintiff's Complaint on this 22nd day of September, 2011, upon the parties listed below by U.S. First Class Mail, postage pre-paid, or via this Court's ECF filing/notification system:

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