

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
NEWPAGE CORPORATION, *et al.*, : Case No. 11-12804
Debtors. : Joint Administration Pending
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OBJECTION OF WISCONSIN PUBLIC SERVICE CORPORATION AND UPPER PENINSULA POWER COMPANY TO DEBTORS' 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

Wisconsin Public Service Corporation ("WPSC") and Upper Peninsula Power Company ("UPPCO" and collectively with WPSC, the "Utilities"), by their counsel, hereby object to the *Debtors' 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* (the "Motion"). In support of this objection, the Utilities state as follows:

Background

1. WPSC is a Wisconsin corporation which operates a gas and electric utility provider in Wisconsin and upper Michigan.
2. UPPCO is a Michigan corporation which operates as an electric utility provider in upper Michigan.



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3. The Utilities provide power services to certain of the above-referenced debtors (the “Debtors”) at various locations. The relevant providers, account numbers and services address/descriptions are attached hereto as Exhibit A.

Adequate Assurance of Payment

4. Section 366 of title 11 of the United States Code (the “Bankruptcy Code”) states that utilities may alter, refuse, or discontinue services to a debtor if, within 20 days after the petition date, the debtor does not furnish, in the form of a deposit or other security, adequate assurance of post-petition payments. Such assurance of payment can be provided in the form of a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or another form of security that is mutually agreed upon between the utility and the debtor. This adequate assurance of payment for utility service must be satisfactory to the utility.

5. Adequate assurance consistent with the requirements of the Bankruptcy Code is of paramount importance to the Utilities.

6. In the Motion, the Debtors propose providing the Utilities with adequate assurance of payment funding an escrow account for the benefit of all utilities with an amount totaling 50% of the Debtor’s average monthly utility bills (the “Proposed Adequate Assurance”). See Motion ¶ 18. The Proposed Adequate Assurance was approved on an interim basis pursuant to the Court’s *Interim 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* (the “Order”).

7. The Proposed Adequate Assurance is not satisfactory to the Utilities because it does not provide adequate assurance of post-petition payments.

Form of Adequate Assurance

8. The Proposed Adequate Assurance is problematic to the extent it provides for an escrow account, rather than a cash deposit to be held by the Utilities. An escrow account is not one of the forms of adequate assurance identified in Section 366.

9. Though Section 366(c)(3) of the Bankruptcy Code contemplates the bankruptcy court's authority to adjudicate the amount of the adequate assurance necessary to satisfy the demands of utility providers, it does not give the court authority to alter the form of such adequate assurance from the alternatives identified in Section 366.

Amount of Adequate Assurance

10. Additionally, due to the large and regular indebtedness incurred by the Debtors to the Utilities, and the uncertainty of the future of these proceedings, a 50% deposit for one month of future bills is insufficient to adequately protect the Utilities.

11. It is the Debtors' burden to provide justification for its Proposed Adequate Assurance (see In re Stagecoach Enterprises, Inc., 1 B.R. 732, 734 (Bankr. M.D. Fla. 1979)); however, the Debtors have not provided any such basis. Rather, the Debtors seemingly seek to acquire half of a month's work of utilities services on credit without providing any assurance that such services will be compensated. This proposal cannot meet the requirements of Section 366(c)(2).

12. A better measure of the proper amount of adequate protection merited under Section 366 is that provided by state law. Specifically, the Michigan Administrative Code provides that a deposit for commercial customers may be up to 25% of the customer's annual electric or gas bill (15% if the customer constitutes a small commercial customer). Mich. Admin. Code § 460.1607(3). The Wisconsin Administrative Code provides that a commercial account deposit may be up to the highest estimated gross bill for any two consecutive billing periods selected by

the utility. Wis. Admin. Code § 134.0615(8)(a). Utilities have calculated the maximum deposits allowed under state law and determined this figure to be approximately \$2,262,044.

Accordingly, the Debtors should be required to make a deposit with Utilities in such amount.

13. Additionally, the Utilities request that the Debtors be required to pay prepay estimated electrical costs on a weekly basis and make “true-up” payments on a monthly basis. This arrangement would adequately assure the Utilities of protection from the time at which payments may cease to the time at which the Utilities may seek further relief from the Court.

REQUEST FOR RELIEF

14. Accordingly, the Utilities request that, in exchange for uninterrupted utility services, the Debtors (i) provide them with the maximum adequate assurance deposit allowed under state law, (ii) be required to prepay estimated electrical costs on a weekly basis, and (iii) make “true-up” payments each month. The Utilities further request that any deposit from the Debtors related to utility services provided by Utilities be held directly by Utilities.

15. Pursuant to the terms of the Order, Utilities shall file an Additional Assurance Request contemporaneously herewith.

WHEREFORE, Utilities request that the Court enter an order:

1. Denying the final relief requested in the Motion as to Utilities;
2. Awarding Utilities the post-petition adequate assurance of payment pursuant to Section 366 of the Bankruptcy Code in an amount and form satisfactory to the Utilities and as set forth in greater detail above and in the Utilities’ Additional Assurance Request; and
3. Providing such other and further relief as the Court deems just and appropriate.

Dated: September 26, 2011.

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EXHIBIT A

Account Number	Service Address/Description
UPPCO	
0414361724-1	State Road M189, Iron River, MI
0414361724-2	State Road M189, Iron River, MI
04743617724-3	group billing
UPPCO	
0406241937-2	2402 W US Highway 2, Gulliver, MI
UPPCO	
0406359681-3	Old Ken-Mar, Gladstone, MI
0406359681-4	Railroad Cross, Escanaba, MI
0406359681-6	Emergency Power, Escanaba, MI
0406359681-7	7100 County Rd 426, Escanaba MI
0406359681-9	Mead Rd., Garage, Gladstone MI
0406359681-10	Switch Crew Cab, Escanaba MI
0406359681-11	Hydro Energy, Escanaba MI
0406359681-12	Parking Lot, Escanaba MI
0406359681-14	6843 Highway US2, Gladstone MI
0406359681-16	15911 Mead Rd., Lanse, MI
0406359681-17	Mead Paper Contractor Row, Escanaba
0406359681-18	Railyard Lights, Escanaba
0406359681-19	Elec Facility Agreement, Houghton
0406359681-20	Mead Paper, Escanaba
0406359681-21	Weather Station, Escanaba
0406359681-22	Cytec Building, Escanaba
0406359681-23	Mead Office, Escanaba
0406359681-24	Scale House, Escanaba
0406359681-25	group billing
0406359681-28	9000 Mead Lodge, Gladstone
0406359681-42	ESC Paper, Escanaba
WPS	
0414393275-1	1825 US Hwy 8, Monico, Stevens Point, WI
0414393275-3	1825A US Hwy 8, Monico, Stevens Point, WI
0414393275-4	56 S Brown St., Rhinelander, WI
0414393275-5	group billing
WPS	
0414387115-1	901 Arlington Pl, Stevens Point WI
0414387115-2	Wisconsin St., Stevens Point, WI
0414387115-4	901 Arlington Pl, Stevens Point, WI
0414387115-5	group billing
0414387115-6	707 Arlington Pl, Stevens Point, WI
0414387115-7	Wisconsin St. Shed & Lites, Stevens Point WI

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National Starch LLC
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