

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
NEWPAGE CORPORATION, et al.,)	Case No. 11-12804 (KG)
)	
Debtors.)	Jointly Administered
)	Objection Deadline: Sept. 27, 2011 at 4:00 p.m.
)	Hearing Date: Oct. 4, 2011 at 2:00 p.m.
)	Related Docket Nos. 13 & 75

**OBJECTION OF TEXAS GAS TRANSMISSION, LLC
TO THE DEBTORS' UTILITY MOTION**

Texas Gas Transmission, LLC ("Texas Gas") objects 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 (Docket No. 13) (the "Utility Motion") and respectfully states as follows:

SHORT BACKGROUND

1. Texas Gas provides transportation of natural gas to NewPage's factory in Wickliffe, Kentucky under two transportation agreements: a Firm Transportation ("FT") contract which reserves a fixed amount of pipeline space monthly, and a Firm No Notice Transportation ("NNS") contract, which reserves both a fixed amount of pipeline space monthly and provides a certain volume of additional on-demand gas. Texas Gas is an "open access" pipeline, and its contracts are regulated by the Federal Energy Regulatory Commission ("FERC"). The pricing for the transportation services for a particular pipeline route is the same for all similarly situated customers, and is approved by FERC in a published tariff.



2. Gas deliveries by pipeline are not precise. Accordingly, customers such as NewPage frequently deliver to the pipeline more or less gas than they take out in a given month (a “pipeline imbalance”). The contracts between Texas Gas and its customers, including NewPage, require a monthly reconciliation and truing up of the pipeline imbalances, with the party that is short (whether it is the customer or Texas Gas) paying the counterparty either in cash or in kind.

3. Under the NNS service, on-demand gas is borrowed from Texas Gas during the winter season and paid back during the following summer season. Texas Gas supplies this borrowed gas from gas it owns in storage complexes on Texas Gas’ pipeline system. When a customer borrows gas from Texas Gas under an NNS service agreement, a negative storage balance (a “storage balance”) is created. A Customer with both FT and NNS agreements is permitted to offset its pipeline imbalance against its storage balance.

4. Pre-petition, NewPage owed Texas Gas \$74,397.70 for gas transportation services and the value of NewPage’s gas imbalance and the gas NewPage borrowed from Texas Gas and has yet to return (the storage balance) was \$643,802.02. From the petition date (9/07) through September 22, 2011, the storage balance/gas imbalance has grown to the dollar equivalent of \$797,514.07.

5. The Utility Motion lists Texas Gas as a utility provider.

JURISDICTION AND VENUE

6. Texas Gas agrees that determination of utility deposits is normally a core proceeding. However, because Texas Gas’ customer deposit requirement and the remedies for non-payment apply to all customers and are subject to FERC oversight and the Natural Gas Policy Act, Texas Gas reserves its right to withdraw the reference pursuant to 28 U.S.C. 157(d)

which provides for mandatory withdrawal of the reference, upon timely motion of a party, if “resolution requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.”

OBJECTION

7. Texas Gas objects to the Utility Motion because:
 - a. The amount of security offered is insufficient;
 - b. The security is to be held by the Debtors not by the utilities;
 - c. It reverses the process required by Bankruptcy Code Section 366, which grants utilities the right to set their deposit requirements;
 - d. The security scheme proposed is violative of the tariffs under which Texas Gas provides gas transportation services not only to the Debtors but to all customers subject to the same tariff ;
 - e. It does not address the gas imbalance; and
 - f. To the extent it purports to serve as Texas Gas’ sole remedy, the Utility Motion could preclude Texas Gas’ rights and liens with respect to common law or statutory rights of setoff and recoupment (which is not subject to the automatic stay), and other rights, including without limitation, rights under sections 362, 365, 366 and 503(b)(9) of the Bankruptcy Code.

ARGUMENT

8. The objections filed by objecting utility companies have supplied the court with ample argument as to the legal deficiencies of the Utility Motion under Bankruptcy Code section 366, and the financial deficiency of the Utility Motion given the rate at which NewPage consumes power in its energy intensive business, the overlay of the pre- and post-petition liens and NewPage’s current and projected cash availability. *See* Docket Nos. 203, 207 & 217. Texas Gas hereby incorporates those arguments by reference and reserves its rights with respect to the effect of Texas Gas’ FERC-regulated transmission agreements.

9. Under Texas Gas' FERC NGA Gas Tariff, NewPage has the option of:
 - a. Providing the guaranty of a third party satisfactory to Texas Gas;
 - b. Cash Prepayment of up to three (3) months of applicable pipeline charges;
 - c. Posting a letter of credit; or
 - d. Providing other security acceptable to Texas Gas;plus
 - e. Posting security equal to the its largest monthly imbalance owed to Texas Gas over the most recent 12 month period for imbalance gas under Rate Schedule FT; plus an amount equal to 50% of imbalance or loaned gas based on NewPage's average total withdrawal volumes during the previous 36 month period for gas delivered under Rate Schedule NNS (i.e., the "no notice service" or on demand deliveries).

10. Texas Gas also reserves its right to exercise applicable nonbankruptcy remedies (e.g., recoupment, which is not subject to the automatic stay pursuant to 11 U.S.C. § 362) or applicable bankruptcy remedies (e.g., move to compel assumption/rejection of its contracts with NewPage, pursuant to 11 U.S.C. § 365, seek administrative priority for payment of goods delivered prepetition, pursuant to 11 U.S.C. § 503(b)(9), or request modification of the amount of an assurance of payment, pursuant to 11 U.S.C. § 366) if, when and to the extent necessary.

11. In order to avoid the need to bring witnesses and have lengthy testimony regarding Texas Gas' FERC-approved tariffs, Texas Gas requests this Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of such tariffs. Pursuant to the foregoing request and because the applicable tariffs are voluminous, Texas Gas hereby provides the following internet links to its tariffs:

- a. Texas Gas' Website –

<https://www.gasquest.txgt.com/Posting/DisplayPostingDocumentPage.aspx?PostingMenuItemID=37>

- b. FERC's e-tariff website –

<http://etariff.ferc.gov/TariffBrowser.aspx?tid=1682>

12. Counsel for Texas Gas has had initial discussions with counsel for NewPage in which Texas Gas conveyed its position regarding adequate protection. Debtors' counsel promptly responded to the initial request and has committed to addressing Texas Gas' concerns with NewPage. It is unlikely that such matters will be resolved prior to the Utility Motion objection deadline.

PRAYER FOR RELIEF

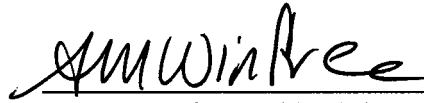
WHEREFORE, Texas Gas respectfully requests that this Court enter an order:

1. Denying the Utility Motion as to Texas Gas;
2. Granting Texas Gas' post-petition adequate assurance of payment pursuant to Section 366 in an amount and form satisfactory to Texas Gas;
3. Preserving Texas Gas' rights to seek relief with respect to the gas imbalance;
4. Preserving all of Texas Gas' other statutory and common law rights; and
5. Providing such other and further relief as the Court deems just and appropriate.

Dated: September 27, 2011
Wilmington, Delaware

Respectfully submitted,

ASHBY & GEDDES, P.A.



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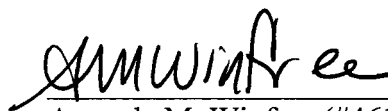
- and -

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CERTIFICATE OF SERVICE

I, Amanda M. Winfree, hereby certify that on September 27, 2011, I caused one copy of the foregoing document to be served upon the parties detailed on the attached service list via first class U.S. mail, postage pre-paid unless otherwise indicated.

A handwritten signature in black ink, appearing to read "AM Winfree", written over a horizontal line.

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