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File No.: B.2007-00514

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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In re: )  
 ) Chapter 11  
 )  
NATHAN AND MIRIAM BARNERT )  
MEMORIAL HOSPITAL ASSOCIATION )  
D/B/A BARNERT HOSPITAL, )  
 )  
 ) Case No. 07-21631 (MS)  
Debtor-in-Possession. )  
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**OBJECTION OF PUBLIC SERVICE ELECTRIC & GAS COMPANY TO  
DEBTOR'S MOTION FOR AN ORDER (I) APPROVING DEBTOR'S  
ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION UTILITY  
SERVICES; AND (II) SCHEDULING FINAL HEARING TO DETERMINE  
ADEQUATE ASSURANCE**

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Public Service Electric and Gas Company ("PSE&G"), by counsel, for its  
Objection to the Debtor's Motion for an Order (I) Approving Debtor's Adequate  
Assurance of Payment for Postpetition Utility Services and Scheduling Hearing to  
Determine Adequate Assurance ("Utility Motion"), states the following:

**Procedural Facts**

1. On August 15, 2007 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Title 11, Chapter 11 of the United States Bankruptcy Code with this Court.
2. On August 15, 2007, the Debtor filed the Utility Motion.
3. The Court has scheduled a hearing for August 17, 2007 at 9:30 a.m. to consider entry of an Order Approving Debtor's Adequate Assurance of Payment for Postpetition Utility Services and Scheduling Final Hearing to Determine Adequate Assurance.

**The Proposed Procedures in the Utility Motion**

4. In the Utility Motion, the Debtor seeks the entry of an Order that provides, in paragraph number 2, that within five business days hereof, the Debtor shall pay a cash deposit equivalent to ten (10) days of utility service, based on the total payments over the previous three (3) months of prepetition obligations to the utility companies, divided by ninety-one (91) days and multiplied by ten (10), which shall constitute assurance of payment under section 366 of the Bankruptcy Code.

5. The Order further provides in paragraph number 3 that the Debtor shall pay on a timely basis all undisputed invoices with respect to postpetition utility services.

**Facts Concerning Debtor and Other Pleadings Filed in the Case**

6. The Debtor intends to pay all postpetition obligations owed to the Utility Companies.

7. Yet, despite the foregoing, the Debtor offers no reasonable assurances that its financial situation will improve postpetition, leaving substantial doubts about its

ability to pay its post-petition payables, including post-petition amounts that will be owed to PSE&G.

**Facts Concerning PSE&G**

8. PSE&G provided the Debtor with pre-petition utility service and continues to provide the Debtor with post-petition utility service.

9. Unlike the Debtor's other post-petition creditors, PSE&G's billing cycle is regulated by applicable state laws, tariffs and/or regulations. Specifically, under PSE&G's billing cycles, the Debtor receives approximately one month of utility service before the Utility issues a bill for such service. Once a bill is issued, the Debtor has approximately 30 days to pay the applicable bill. If the Debtor fails to timely pay the bill, a past due notice is issued on the account. If the Debtor fails to cure the arrearage by the applicable cure period set forth in the notice, its service is subject to disconnection. However, because the Debtor is a hospital, PSE&G would only discontinue non-essential utility services. Therefore, under PSE&G's state mandated billing cycles, PSE&G could provide the Debtor with over two months of unpaid service before PSE&G could begin to terminate some of the service to the Debtor for nonpayment of post-petition bills. Moreover, because PSE&G has a policy of only terminating non-essential services to a hospital facility such as offices and outdoor lighting, more than two months service can be used with PSE&G having little remedy if there is not a sufficient deposit.

10. Two months average bills on the debtor's accounts are \$178,450. PSE&G submits that it should be paid this amount as a deposit in order to have adequate assurance of payment. Attached hereto as **Exhibit "A"** is a spreadsheet setting forth the two month deposit demand for each of the Debtor's sixteen PSE&G accounts.

## Discussion

**I. THE COURT SHOULD ORDER DEBTOR TO PROVIDE PSE&G WITH ADEQUATE ASSURANCE OF PAYMENT AS REQUIRED BY SECTION 366(C) AS REQUESTED IN THIS OBJECTION.**

The purported adequate assurance proposed by the Debtor does not comply with the requirements set forth in 11 U.S.C. Section 366(c). Section 366(c) was amended to overturn decisions such as Virginia Electric And Power Company v. Caldor, Inc., 117 F.3d 646 (2d Cir. 1997), that held that an administrative expense, without more, could constitute adequate assurance of payment in certain cases. Section 366(c)(1)(A) specifically defines the forms that assurance of payment may take as:

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed upon between the utility and the debtor or the trustee.

A determination of adequate assurance is within the court's discretion, and is made on a case-by-case basis, subject to the new requirements of Section 366(c). See In re Utica Floor Maintenance, Inc., 25 B.R. 1010, 1016 (Bankr. N.D.N.Y. 1982); In re Cunha, 1 B.R. 330, 332-33 (Bankr. E.D. Va. 1979). Section 366 of the Bankruptcy Code was enacted to balance a debtor's need for utility services from a provider that holds a monopoly on such services, with the need of the utility to ensure for itself and its rate payers that it receives payment for providing these essential services. See In re Hanratty, 907 F.2d 1418, 1424 (3d Cir. 1990). The deposit or other security "should bear a reasonable relationship to

expected or anticipated utility consumption by a debtor.” In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986). In making such a determination, it is appropriate for the Court to consider “the length of time necessary for the utility to effect termination once one billing cycle is missed.” In re Begley, 760 F.2d 46, 49 (3d Cir. 1985). Based on the Debtor’s anticipated utility consumption, the minimum period of time the Debtor could receive service from the Utilities before termination of service for non-payment of bills is approximately two (2) months. Accordingly, the security deposits requested by the Utilities are reasonable. See In re Stagecoach, 1 B.R. 732, 735-36 (Bankr. M.D. Fla. 1979) (two month deposit is appropriate where the debtor could receive 60 days of service before termination of services because of the utilities’ billing cycle.); see also In the Matter of Robmac, Inc., 8 B.R. 1, 3-4 (Bankr. N.D. Ga. 1979).

As set forth above, PSE&G’s deposit request is based on: (1) its billing exposure created by state law tariffs and/or regulations; and the amount that the New Jersey Board of Public Utilities, which is a neutral third-party, permits PSE&G to request. Although PSE&G recognizes that this Court is not bound by the regulations/tariffs of the applicable state governmental entities that establish the deposit amounts that PSE&G can request from its customers, it is extremely relevant information of a determination made by an independent entity on the appropriate amount of security that should be paid to the utility.

In contrast, the Debtor does not provide an objective basis for its 10 day estimated amount deposit offer. The Debtor relies upon its purported ability to

pay for future utility service in the ordinary course of business to justify its 10 day estimated amount deposit offer. Section 366(c)(3)(B)(iii) specifically provides that in making a determination under Section 366, a court may not consider the availability of an administrative expense priority. Therefore, this Court should award PSE&G the deposits it has requested herein.

**II. THE COURT SHOULD ALLOW PSE&G TO TERMINATE UTILITY SERVICES IF ADEQUATE ASSURANCE OF PAYMENT OR POST-PETITION UTILITY CHARGES ARE NOT PAID.**

The Utility Motion seeks entry of an Order that would require a utility to seek further order of the court before terminating utility services for non-payment. Once the issue of adequate assurance of payment has been addressed, the terms and conditions of utility service should be governed by the Tariffs of the utility. Debtor cites no support for this injunctive relief and the request should be denied.

WHEREFORE, PSE&G respectfully request that this Court enter an order:

- (I) Deny the Utility Motion as to PSE&G;
- (II) Award PSE&G a post-petition adequate assurance of payment in the amount of \$178,450; and award such other and further relief as the Court deems just and appropriate.

**WHEREFORE**, PSE&G respectfully request this Court to: (1) Deny the Utility Motion and grant PSE&G the adequate assurance of payment it seeks herein; (2) grant PSE&G a two month security deposit as adequate assurance of payment.

Dated: August 16, 2007

/s/Suzanne M. Klar  
SUZANNE M. KLAR (SK 4388)  
Attorney for Creditor  
Public Service Electric and Gas Company

**EXHIBIT "A"**

Barnet Memorial Hospital CS#07-21631													
Filed in New Jersey Filed 08/15/2007 Filed Chapter 11													
ACCOUNT #	ADDRESS	Rate	ESTIMATED BALANCE	ESTIMATED DPST REQ AMT	Third Party Supplier	REMARKS							
31-001-971-43	680 Broadway, Paterson, 07514	TSGNF	\$ 14,012.38	\$ 7,040.00	Yes	Late 5 times last 6 months							
31-394-085-52	680 Broadway, Paterson, 07514	GDF	\$ 58.43	\$ 100.00	No	Late 12 times last 12 months							
31-424-962-46	680 Broadway, Paterson, 07514, F11	LPLP	\$ 539,293.10	\$ 157,010.00	No	Late 6 times last 7 months							
31-427-041-59	680 Broadway, Paterson, 07514, GRD HSE	MD	\$ 425.06	\$ 140.00	No	Late 12 times last 12 months							
31-427-071-66	680 Broadway, Paterson, 07514	PSAL	\$ 5,994.47	\$ 1,610.00	No	Late 12 times last 12 months							
31-427-363-01	646 Broadway, Paterson, 07514	MD	\$ 1,106.40	\$ 295.00	No	Late 12 times last 12 months							
31-427-365-30	646 Broadway, Paterson, 07514	ED	\$ 569.38	\$ 150.00	No	Late 12 times last 12 months							
31-427-371-62	660 Broadway, Paterson, 07514	GSGH MD	\$ 5,186.01	\$ 1,785.00	No	Late 12 times last 12 months							
31-477-015-57	18-19 River Rd LTG, Fair Lawn, 07410	PSAL	\$ 1,696.81	\$ 260.00	No	Late 12 times last 12 months							
31-477-091-91	18-19 River Rd, Fair Lawn, 07410	MD	\$ 495,991.52	\$ 3,920.00	No	Late 12 times last 12 months							
31-477-311-97	18-19 River Rd, Fair Lawn, 07410	MPGS	\$ 5,958.15	\$ 1,065.00	No	Late 11 times last 12 months							
31-518-467-69	1 E 35TH St, Paterson, 07514	RSGH RS	\$ -	\$ 720.00	No	Late 10 times last 12 months							
31-528-194-71	214 E 32ND St, Paterson, 07504	GSGH MD	\$ 7,382.65	\$ 2,210.00	No	Late 12 times last 12 months							
31-533-261-42	175 Market St, RM403, Paterson, 07505	MD	\$ 6,984.33	\$ 1,845.00	No	Late 12 times last 12 months							
31-628-201-54	148 Donor Ave, Apt A, Elmwood Park, 07407	RSG RS	\$ 279.92	\$ 150.00	No	Late 7 times last 8 months							
31-777-024-11	161B Boulevard, Elmwood Park, 07407	RSG RS	\$ 353.89	\$ 150.00	No	Late 11 times last 12 months							
<b>TOTAL</b>			\$ 1,085,242.50	\$ 178,450.00	-								