

Motion and Memorandum of Certain Utility Companies to (i) Vacate, and/or Reconsider and/or Modify Order Granting Debtors’ Emergency Motion for Entry of an Order Determining Adequate Assurance of Payment for Future Utility Services; and (ii) Seek Adequate Assurance of Future Payment (the “Utilities Objection”).

By the Debtors’ utilities motion (the “Utilities Motion”) established procedures (the “Procedures”) by which the Debtors would provide adequate assurance of future payment (“Adequate Assurance”) to utility companies. In the Utilities Motion, the Debtors proposed the creation of an escrow account which would hold 50% of the Debtors’ monthly utility expenses (approximately \$550,000) as Adequate Assurance. Under the interim order granting the Utility Motion (the “Interim Order”), any utility companies seeking additional Adequate Assurance must contact the Debtors to negotiate an alternative arrangement or, if no objections to the Utility Motion were received by the Debtors within 30 days of the entry of the Interim Order, the Procedures were to become final without a hearing.

On February 19th, Salt River Project (“SRP”), Florida Power Corporation d/b/a Progress Energy Florida (“Progress”), and Virginia Electric and Power Company d/b/a Dominion Virginia Power (“Dominion”) filed the Utilities Objection (it was thereafter joined by Piedmont Natural Gas (“PNG” and collectively, the “Utilities”). In the Utilities Objection, the Utilities assert that (a) the Court used an inappropriate standard when determining the amount of Adequate Assurance to be paid, (b) the Procedures for seeking additional Adequate Assurance, including providing the Debtors with a list of locations served, account numbers and outstanding balances, are onerous for the Utilities and (c) the Procedures wrongfully extend the Debtors’ time to provide Adequate Assurance beyond the 30 days provided by the Bankruptcy Code.

The Utilities also assert that the escrow account created by the Procedures is insufficient because it covers only 50% of the Debtors estimated monthly costs and would be depleted if only a few large utilities made demands on the account. Further, the Utilities assert that (x) the escrow account favors utility providers with early billing schedules, (y) the Utilities have no means by which to review the Debtors’ ability to pay their bills and (z) there are no procedures by which the Debtors are required to replenish the escrow account. Moreover, the Utilities allege that in the ordinary course of business, because the Debtors are not billed for their utility services until after approximately one month of service, it may be possible for the Debtors to obtain 2-3 months of service without charge before the Utilities would be able to suspend service.

Accordingly, the Utilities request Adequate Assurance in the following amounts:

<u>Utility</u>	<u>No. of Accounts</u>	<u>Prepetition Debt</u>	<u>Deposit Request</u>
SRP	49	\$211.56	\$10,850 (2 months)
Progress	559	n/a	\$121,945 (2 months)
Dominion	16	\$4,700.00	\$11,143 (2 months)
PNG	6	n/a	\$2,378 (2 months)

The Utilities maintain that their services are necessary to the Debtors’ business and, therefore, should be provided more significant Adequate Assurance. Lastly, the Utilities request that the

Court establish procedures by which the Debtors will provide additional Adequate Assurance if the Debtors wish to open new accounts with the Utilities.

The Utilities Objection was withdrawn on March 5, 2008.