

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

In Re:)	
)	
MISSISSIPPI PHOSPHATES CORPORATION, et al.)	Case No. 14-51667-KMS
)	Chapter 11
)	
Debtor)	(Joint Administration Requested)
)	

MISSISSIPPI POWER COMPANY’S OBJECTION TO DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES TO, OR DISCRIMINATING AGAINST, THE DEBTORS ON ACCOUNT OF PRE-PETITION AMOUNTS DUE; (B) DETERMINING THAT THE UTILITIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT;(C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ASSURANCE; AND (D) PERMITTING UTILITY COMPANIES TO OPT OUT OF THE PROCEDURES ESTABLISHED HEREIN

COMES NOW Mississippi Power Company (“MS Power”), by and through undersigned counsel of record, Balch & Bingham LLP, and files this its Objection to the Motion of the Debtors, Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks Subsidiary, Inc. (collectively as “Debtors”), for Interim and Final Orders: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Pre-Petition Amounts Due; (B) Determining that the Utilities are Adequately Assured of Future Payment; (C) Establishing Procedures for Determining Requests for Additional Assurance; and (D) Permitting Utility Companies to Opt Out of the Procedures Established Herein (the “Motion”), showing unto this Honorable Court as follows:

INTRODUCTION

MS Power is the provider of electric power to Debtors at their facility in Pascagoula, MS. The Pre-Petition debt of Debtors for electric services provided by MS Power through the date of

the Petition is approximately \$1,000,000.00. Additionally, at the time of Petition, MS Power did not have any deposit, bond or any other form security in place as is contemplated by Paragraph 12 of the Motion. Therefore, under the terms of the Motion and procedures set forth therein, MS Power would be left without any adequate assurance as is required by 11 U.S.C. § 366, unless it meets Debtors' self-created deadlines and procedures.

ARGUMENT

I. MS Power Does Not Have Adequate Assurance Under the Motion

The Motion makes an assumption that is simply not applicable to MS Power. The Motion assumes in Paragraph 12 that all Utility Companies, including MS Power, have pre-petition deposits or bonds that can be held as security for post-petition services. However, MS Power does not have any such pre-petition deposit or bond from Debtors. Therefore, should MS Power accept a post-petition payment from Debtors and/or fail to meet one of the Motion's self-imposed 15-day deadlines, it is essentially waiving any adequate assurances of payment for future services. Stated differently, the one-size-fits-all approach that is proposed in the Motion does not apply to MS Power because MS Power does not have any pre-petition bond or deposit as is contemplated in the Motion.

II. The Motion Attempts to Alter MS Power's Rights to Adequate Assurance under 11 U.S.C. § 366

To the extent that the Motion attempts to alter MS Power's rights to adequate assurance under § 366, it should be denied. Under § 366(c)(2), MS Power is entitled to adequate assurance of payment for future service from Debtors within thirty (30) days of the Petition. To a degree, the Motion attempts to shift its burden to provide adequate assurances on to the Utility Companies. The Motion requests that this Honorable Court establish two deadlines that expire fifteen (15) days from the filing of the Petition. Based on these deadlines, if Utility Companies

do not object to Debtors' self-created procedures for establishing adequate assurance or request an adequate assurance deposit within these fifteen (15) days, then some Utility Companies who do not possess pre-petition deposits or bonds (such as MS Power) are left without any adequate assurances of payment for future services. Further, if MS Power accepts payment for pre-petition services it is deemed as a waiver of its rights to request an adequate assurance deposit.

Under § 366(c)(2), it is Debtors' obligation to provide adequate assurance of payment for future services within thirty (30) days of the Petition. Therefore, to the extent the Motion attempts to impose deadlines and other mechanisms to shift this burden onto the Utility Companies, potentially subjecting some of these Utility Companies to a waiver of their rights (and Debtors' obligation) to adequate assurance, the Motion should be denied.

CONCLUSION

As to MS Power, the Motion incorrectly assumes that MS Power has a pre-petition deposit or bond from Debtors. Thus, Debtors' one-size-fits-all approach to providing all Utility Companies adequate assurance does not work as to the services provided by MS Power. Additionally, to the extent the Motion attempts to establish mechanisms and deadlines whereby some Utility Companies, including MS Power, may be deemed to waive its right (and Debtors' obligations) to adequate assurance, the Motion should be denied as it attempts to undercut Debtors' obligations to provide adequate assurances of payment for future services as is provided in § 366.

WHEREFORE, PREMISES CONSIDERED, Mississippi Power Company respectfully requests that this Honorable Court sustain its objections to the Motion filed on behalf of the Debtors.

Respectfully submitted, this 28th day of October, 2014.

MISSISSIPPI POWER COMPANY

BY: BALCH & BINGHAM LLP

BY: /s/ Paul J. Delcambre, Jr.
PAUL J. DELCAMBRE, Jr.

Paul J. Delcambre, Jr. (MSB # 6034)
Matthew W. McDade (MSB # 103207)
BALCH & BINGHAM LLP
1310 Twenty-Fifth Avenue (39501)
Post Office Box 130
Gulfport, Mississippi 39502
Telephone: (228) 864-9900
Facsimile: (228) 864-8221
pdelcambre@balch.com
mmcdade@balch.com

CERTIFICATE

I, Paul J. Delcambre, Jr., Attorney for Mississippi Power Company, do hereby certify that on this day the foregoing paper was filed electronically with the Clerk of the Court using the Court's ECF system, which served a true and correct copy of such paper electronically on all parties enlisted to receive service electronically as of the date hereof, including the following:

Stephen W. Rosenblatt,
Christopher R. Maddux,
Paul S. Murphy
J. Mitchell Carrington
Thomas M. Hewitt, Attorneys for Mississippi Phosphates Corporation, et al.
Steve.Rosenblatt@butlersnow.com
Chris.Maddux@butlersnow.com
Paul.Murphy@butlersnow.com
Mitch.Carrington@butlersnow.com
Thomas.Hewitt@butlersnow.com

David N. Usry
Assistant United States Attorney
David.Usry@usdoj.gov

U.S. Trustee via the Court's ECF system at
USTPRegion05.JA.ECF@usdoj.gov

Christopher J. Steiskal, Sr.
Office of the United States Trustee
Christopher.J.Steiskal@usdoj.gov

This, the 28th day of October, 2014.

/s/ Paul J. Delcambre, Jr.
PAUL J. DELCAMBRE, JR.