IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
ATA AIRLINES, INC.,	)	CASE NO.: 08-03675-BHL-11
	)	
Debtor.	)	
_____	)	

CITIZENS GAS AND COKE UTILITY'S OBJECTION TO PROCEDURES RELATING ADEQUATE ASSURANCE OF UTILITY PAYMENTS

Citizens Gas and Coke Utility ("Citizens Gas"), by and through counsel, hereby states as follows:

Factual Background

1. On April 2, 2008, the Debtor filed its voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").

2. Citizens Gas provides utility service to the Debtor at real property leased by the Debtor at the Indianapolis International Airport and is a creditor and party-in-interest in this case.

3. On April 3, 2008, the Debtor filed a *Motion for Interim and Final Orders Providing Adequate Assurance* ("Adequate Assurance Motion") seeking to impose certain procedures on utilities that, according to the Debtor, address the Debtor's rights and the utilities' obligations under Section 366 of the Bankruptcy Code.

4. On April 4, 2008, the Court entered an *Interim Order Regarding Motion for Interim and Final Order Providing Adequate Assurance of Utility Payments* ("Interim Order") granting the Debtor's request for relief on an interim basis. Pursuant to the Interim Order, utilities have a right to opt out of the adequate assurance procedures provided in the Interim Order.

5. Citizens Gas holds no pre-petition deposits with respect to the Debtor's account.

6. Because Citizens Gas provides natural gas, the billings by Citizens Gas on account of the Debtor's use of services vary considerably over time. The average monthly billing for the twelve months that preceded the Debtors' Chapter 11 filing was $4,136.00, however, during peak season, the monthly billings by the Debtor exceed $10,000.00.

7. In the Adequate Assurance Motion, the Debtor proposed placing a deposit of $3,575.20 in order to satisfy the Debtor's obligations under Section 366 of the Bankruptcy Code.

8. The amount proposed by the Debtor is inadequate and does not fulfill the Debtor's obligations under Section 366 of the Bankruptcy Code, and accordingly, Citizens Gas hereby exercises its right to opt out of the procedures proposed by the Debtor and provides notice of the insufficiency of the adequate assurance proposed by the Debtor.

Objection and Request for Adequate Assurance

7. Pursuant to Section 366(b) of the Bankruptcy Code, utility companies are afforded certain protections in the context of a bankruptcy case and Section 366(b) expressly requires that a debtor furnish its utilities with a "deposit or other security" upon the filing of a bankruptcy petition. 11 U.S.C. § 366.

8. Subsection (c)(2) of Section 366 makes clear that a debtor is required to provide adequate assurance of payment in a form and amount satisfactory to the utility, specifically providing that "a utility may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility." *See* 11 U.S.C. § 366(c)(2).

9. The utility procedures proposed by the Debtor do not comport with Section 366 of the Bankruptcy Court and do no more than impose a layer of information production responsibilities and obligations on utilities and allow the Debtor to allegedly comply with the obligations of Section 366 by placing a very small deposit.

10. Unlike a typical service provider, as a utility, Citizens Gas may not unilaterally decide to terminate services merely because of a customer's bankruptcy. Accordingly, and in recognition of the risks of such involuntary service, the Bankruptcy Code conditions the obligation to provide pospetition service upon the provision of a deposit or other security that is acceptable to the utility.

11. Citizens Gas, as a utility provider whose exposure continues to grow, has not been provided with adequate assurance under the framework proposed by the Debtors. Unless Citizens Gas is provided with adequate assurance in the form of a cash security deposit that fairly accounts for the risk if nonpayment, Citizens Gas will be subject to an unreasonable risk of nonpayment for postpetition services.

12. The deposit proposed by the Debtor ignores the exposure of Citizens Gas and the regulations that constrict Citizens Gas' ability to act in the event of a default by a utility[1].

13. Here, the Debtor's average monthly billings total $4,136.00. The Debtor's proposed deposit of $3,575.20 would not even protect Citizens Gas for one month.

14. Citizens Gas requests that the Debtor remit a deposit in the amount of $8,300.00 in satisfaction of the adequate assurance requirements of Section 366 of the Bankruptcy Code. The deposit requested by Citizens Gas comports with the requirements of the IURC and fairly accounts for the risk that Citizens Gas incurs in providing services to the Debtor.

[1] Like all utilities in Indiana, Citizens Gas is governed by the Indiana Utility Regulatory Commission ("IURC"). Under applicable IURC Regulations , it can take up to three months for Citizens Gas to disconnect service for nonpayment.

WHEREFORE, Citizens Gas respectfully requests that this Court enter an order compelling and requiring the Debtor to pay Citizens Gas a deposit of $8,300.00 in accordance with the Debtor's obligations under Section 366 of the Bankruptcy Code, and grant all other just and proper relief.

Respectfully submitted,

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The undersigned hereby certifies that a copy of the foregoing has been served on the following by electronic mail and/or U.S. mail, first class postage prepaid, on the 21st day of April, 2008:

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