

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) **Chapter 11**
)
URBAN BRANDS, INC., et al.,)
) **Case No. 10-13005 (KJC)**
)
Debtors.) **Objections: 10/6/10**
) **Hearing Date: 10/13/10**

**OBJECTION OF FLORIDA POWER & LIGHT COMPANY, ATLANTIC CITY
ELECTRIC, PEPCO AND ENTERGY TO DEBTORS' UTILITY MOTION**

Florida Power & Light Company (“FPL”), Entergy¹, Atlantic City Electric (“ACE”) and Potomac Electric Power Company (“Pepco”) (together, the “Objecting Utilities”), through their undersigned counsel, hereby object to the Debtors’ Motion For the Entry of Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Services (“Motion”) (Docket No. 11), request that the Court deny the Motion for the reasons below and order Debtors to pay to each of the Objecting Utilities cash assurances equal to two months of service, the amounts deemed satisfactory by each of the Objecting Utilities under Section 366(c)(2), or face the prospect of an interruption of service after the 30th day after the petition. The amounts of such demands are set forth in the attached Exhibits A, B and C containing the lists of accounts for each Objecting Utility. In further support, Objecting Utilities state as follows:

1. Certain utilities have already filed their objection to Debtors’ Motion set forth in the Objection of Certain Utility Companies To The Debtors’ Motion For Entry Of Interim and Final Orders Determining Adequate Assurance Of Payment For Future Utility Services (Docket No. 119). That objection deals comprehensively with many of the issues raised by Debtors’ Motion.

¹ For purposes of this Objection, Entergy means the following companies: Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.

The Objecting Utilities here adopt and incorporate herein the arguments made in that filing except to the extent that the objection states that Debtors may seek under Section 366(c)(3) to modify the assurances deemed satisfactory by a utility prior to the Debtors having delivered those assurances to the utility during the first 30 days under Section 366(c)(2) of the Bankruptcy Code. By its terms, Section 366 requires such receipt of the satisfactory assurances demanded by a utility before any modification is ordered by the Court.

2. The Objecting Utilities also make the following additional arguments. The Debtors' proposed utility escrow account is fundamentally at odds with a plain reading of Section 366. An escrow account not held by the Objecting Utilities does not meet the requirements of the federal statute or the regulatory requirements of each Objecting Utility's tariff and state law.

3. Debtors did not properly serve their Motion upon the Objecting Utilities. Debtors Affidavit of Service dated September 27, 2010 (Docket No. 93) demonstrates that Debtors failed to meet the requirements under Bankruptcy Rule 9014 and 7004 for service of contested matters upon the Objecting Utilities. Mailing papers to addresses with post offices boxes and to addresses that do not identify the name of the person at the utility required to accept service (See Affidavit of Service, Exhibit C, pp. 11, 13, and 15)² fails to comply with the above Bankruptcy Rules and Federal Rule of Civil Procedure 4. The Motion should be denied on that basis alone.

4. Debtors' proposed "Procedures" are contrary the provisions contained in applicable state law under the tariffs and regulations adopted by the public service commissions in each state and run afoul of the express requirements of 28 U.S.C. 959(b) that all debtors in possession comply with the laws of the jurisdictions in which they operate. Section 366 of the Code permits the Bankruptcy Court to modify only the amount of the assurance that a utility demands. It does

² It appears that the Debtors' papers were not addressed to FPL. Papers were sent to "Florida Power", a different utility in the State of Florida.

not give license to the Debtors to displace or modify the regulatory requirements under which public utilities operate. That is in no way changed by the provisions of Section 105 of the Bankruptcy Code. The applicable regulatory requirements are specifically set forth in the Objecting Utilities' tariffs that are publicly available for review by every customer. The Objecting Utilities request that the Court take judicial notice of these tariffs and regulations. The website addresses containing the detailed provisions of those tariffs and regulations for the Objecting Utilities are set forth below:

http://www.fpl.com/rates/pdf/2010%2007-13%20Section_6.pdf

http://www.pepco.com/_res/documents/dc_terms.pdf

http://www.atlanticcityelectric.com/_res/documents/NJTariffSectionII.pdf

<http://www.energy.com> (the hyperlink for each of the Entergy operating companies is set forth on this website).

5. The Motion also seeks to enjoin the Objecting Utilities in a manner contrary to Bankruptcy Rule 7001. No adversary proceeding was filed in this matter, and the relief is improper in attempting to enjoin the Objecting Utilities from exercising their rights under the adequate assurance provisions of the statute.

CONCLUSION

Debtors' request for procedural and final relief under Section 366 has traveled a path that this Court should reverse. The Objecting Utilities request that the Court a) enforce as written Section 366 of the Bankruptcy Code, b) deny the Debtors' Motion, c) direct that the Debtors pay the Objecting Utilities the assurances demanded or be subject to disconnection on the thirty-first day after the Petition Date, and d) for such other and further relief as the Court deems just and proper.

Dated: October 6, 2010
McLean, Virginia

Respectfully submitted,

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Company and Entergy

CERTIFICATE OF SERVICE

I, William Douglas White, hereby certify that a copy of the foregoing has been filed and served via the Court's CM/ECF electronic filing system and also served upon the following by U.S. Mail, properly addressed and postage prepaid, and via facsimile or email, as indicated below, on the 6th day of October, 2010.

/s/ William Douglas White

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