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Hearing Date: February 21, 2008 at 10:00 a.m.
Objection Deadline: Monday, February 13, 2008

Attorneys for Creditor
Merced Irrigation District

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
QUEBECOR WORLD (USA) INC., et al., : Chapter 11

Debtor(s) : Case Nos. 08-10152 (JMP)
(Jointly Administered)
:
Honorable James M. Peck
:
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**OBJECTION OF MERCED IRRIGATION DISTRICT TO MOTION OF THE
DEBTORS FOR INTERIM ORDER DETERMINING ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY SERVICES AND TO THE ADEQUATE
ASSURANCE PROCEDURES PROVIDED BY THE INTERIM ORDER UNDER 11
U.S.C. §§ 105(a) AND 366 DETERMINING ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE UTILITY SERVICES**

Merced Irrigation District (“MID”), by and through its counsel, Downey Brand LLP, hereby objects (the “Objection”), pursuant to the applicable provisions of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) object to the *Motion Of The Debtors For Interim Order Determining Adequate Assurance Of Payment For Future Utility Services and to the Adequate Protection Procedures Provided By The Interim Order Under 11 U.S.C. §§ 105(a) And 366*

Determining Adequate Assurance Of Payment For Future Utility Services (“Utility Motion”). In further support of this Objection, MID respectfully represents as follows:

Procedural Background

1. On January 21, 2008 (the “Petition Date”), the 53 Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
2. On January 22, 2008, the above captioned debtors and debtors-in-possession (“Debtors”) filed the Motion for Approval of Adequate Assurance of Payment to Utility Services and Continuation of Service (“Utility Motion”). Exhibit B to the Utility Motion lists MID as a utility that must continue to provide goods and/or services to the Debtors in accordance with Section 366 of the Bankruptcy Code.
3. On January 23, 2008, the Court entered an Interim Order Determining Adequate Assurance of Payment for Future Utility Services (“Interim Utility Order”). A hearing on the final order will be held on February 21, 2008.
4. The Interim Utility Order approved the Debtors proposal in the Utility Motion to provide a deposit equal to two weeks of utility service, calculated at a historical average over the past twelve months (the “Adequate Assurance Deposit”).
5. The Interim Utility Order at ¶¶ 6- 11 established a set of procedures that utilities must follow to receive additional assurances of payment (the “Adequate Assurance Procedures”).
6. The Interim Utility Order at ¶¶ 12- 15 also set forth procedures for a utility to follow if the utility desires to challenge the Adequate Assurance Procedures.
7. MID is the electricity provider to Quebecor World (USA), Inc. (“Debtor”). Debtor’s plant located in Merced, California (“Merced Facility”) is described in Paragraph 38.b. of the Declaration of Jeremy Roberts filed on January 22, 2008 [Docket No. 26] (“Roberts Declaration”) as Debtor’s second largest facility in the United States and the largest printing facility on the West Coast. See the Declaration of Cindy Ardison, ¶3 (“Ardison Declaration”).
8. On February 11, 2008 MID filed its Motion Of Merced Irrigation District Pursuant To Section 366 Of The Bankruptcy Code To Establish Adequate Assurance Of

Payment (“MID’s Assurance Motion”) pursuant to which MID requested one of two alternative forms of assurance of payment under Bankruptcy Code §366 that are different than the assurance proffered by the Debtors in The Utilities Motion. MID incorporates MID’s Assurance Motion and the Declaration of Cindy Ardison herein.

Facts Supporting the Insufficiency of the Proposed Adequate Assurance Deposit

9. MID is a public entity that commenced providing retail electricity service in 1996 and its electricity distribution business is small by utility standards. For instance, the Merced Facility's power consumption constitutes about 15% of MID's total customer load. Because the Merced Facility consumes such a large portion of MID's power resources, it places MID in a precarious financial position were it to suffer a post-petition default by Quebecor in addition to its pre-petition default. *See* Ardison Declaration, ¶4.

10. Subject to a reservation of MID’s rights to supplement its post-petition deposit requests if additional accounts belonging to the Debtors are subsequently identified, MID’s estimated pre-petition losses are \$663,494.66 for pre-petition electric service; \$418,057.86 is owed for December 2007 service and \$245,436.80 is owed for January 1 through January 20, 2008 service. *See* Ardison Declaration, ¶3.

11. The charges for Merced Facility's power consumption vary by season, with the peak consumption being in the summer months. For calendar year 2007, MID's average monthly charge to the Debtors for power was \$503,049, with \$645,764 being the highest in October, 2007 and \$364,630 being the lowest in February, 2007. *See* Ardison Declaration, ¶5.

12. The Debtor and MID have a forward contract¹ (the “Agreement”), which is attached as Exhibit B, to the Ardison Declaration, and which provides for an \$8,333 per month discount from MID's Rate Schedule ED-2P. Rate Schedule ED-2P provides the rates that the Debtor would pay for electric service if MID were to terminate the Agreement. *See* Ardison Declaration, ¶6.

¹ As defined in Bankruptcy Code, 11 United States Code, § 101(25).

13. MID bills on a monthly basis. Typically, MID sends the invoice for the prior calendar month's electricity service on or about the 15th of the following month. The Debtor has typically paid within 20 to 30 days after the invoice's date. However, if the Debtor were to default at the time it ordinarily paid an invoice, such an arrangement exposes MID to the risk of 65 to 75 days of unpaid power, resulting in a \$1,250,000 loss for MID. For example, ordinarily the invoice for March 2008 service would be sent on about April 15, 2008 and would ordinarily be paid between May 5 and 10, 2008. If the Debtor were to default on May 10, 2008 in this example MID would have provided 71 days of electricity. At the Merced Facility's average monthly power consumption cost this would amount to \$1,174,240. The two week deposit proposed as assurance of payment by the Debtors would only be about \$232,176 thereby leaving MID without adequate assurance of payment for \$942,064. *See* Ardison Declaration, ¶7.

14. Such a failure to make a payment would place MID in a difficult financial position. *See* Ardison Declaration, ¶4.

15. A drop in cash flow does not exhaust the potential harm of a default by the Debtor. As an electrical utility, MID must commit to procure power many months in advance for its customers. If the Debtor ceased operating with little or no advance notice, MID could find itself committed to take 15% too much power, resulting in a significant over-commitment in cost and resources, which would further financially harm MID.

The Debtor's Proposed Adequate Assurance Procedures Should Not Be Approved

16. Section 366(b) of the Bankruptcy Code establishes procedures whereby a debtor is to provide a utility with adequate assurance of payment in the form of a deposit or other security within the first 20 days of the bankruptcy proceeding. If the debtor fails to provide the utility with adequate assurance of payment that the utility believes is satisfactory within the first 30 days of the bankruptcy proceeding, Section 366(c)(2) expressly provides that the utility is entitled to alter, refuse or discontinue service to the debtor.

17. Despite the foregoing, the Debtors have sought in the Utility Motion procedures that would extend the 20 and 30-day periods of Sections 366(b) and (c).

18. Under the Interim Utility Order at ¶ 5, a utility desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must make a request for adequate assurance of payment in compliance with the procedures set forth in the Interim Utility Order at ¶ 5. The Debtors then have the greater of 14 days from the receipt of an adequate assurance request from the Utilities, or 30 days from the Petition Date, to attempt to resolve the Utilities' adequate assurance request (collectively, the "Resolution Period"). Interim Utility Order at ¶ 8. Hence, the Debtors are seeking to obtain an extension of the 20 and 30-day periods of Section 366 if a utility does not make a request for adequate assurance in accordance with the burdensome requirements of the Interim Utility Order at ¶ 8.

19. In addition, the Interim Utility Order further provides that if the Debtors determine that the request for additional assurance is not reasonable and the Debtors and the Utility cannot reach agreement regarding the amount and type of adequate assurance to be provided, then the Debtors, during or immediately after the Resolution Period, will request a determination hearing. *See* Interim Utility Order at ¶ 10. This is contrary to Section 366(c)(2), which provides that the utility, not the debtor, is the entity that is to decide whether the proposed adequate assurance of payment is satisfactory.

20. These procedures are contrary to the letter and the spirit of Section 366. Pursuant to Section 366, the Debtors either need to provide the Utilities with acceptable adequate assurance of payment within 30 days of the Petition Date or schedule a hearing on or before the 30th day for the Court to make a determination of adequate assurance of payment (MID's Adequate Assurance Motion already does this).

21. In addition to seeking to avoid the time limitations established by Section 366, the Debtors also seek procedures designed to make the adequate assurance of payment process more time consuming and burdensome. For example, even though Section 366 now defines assurance of payment, it contains no provisions requiring utilities to make demands for adequate assurance

within certain time periods nor does it establish requirements for the content of any such request. Despite the foregoing, the procedures set forth in the Interim Utility Order require the Utilities to make a written adequate assurance request to the Debtors which includes (a) sets forth the location for which utility services are provided, (b) includes a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and (c) sets forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment. Interim Utility Order at ¶ 7. Disclosures regarding security deposits or other security held by MID, which MID would be required to provide to the Debtors as part of an adequate assurance request under the Interim Utility Order, are expressly excluded from consideration by Section 366(c)(3)(B), which provides:

(B) In making a determination under this paragraph whether an assurance of payment is adequate, ***the court may not consider*** (i) the absence of security before the date of the filing of the petition; (ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or (iii) the availability of an administrative expense priority.

(emphasis added).

22. Additionally, the Interim Utility Order requires a utility to comply with certain burdensome requirements to “opt-out” of the adequate assurance procedures set forth in that Order. As stated above, Interim Utility Order ¶12 requires that a utility desiring to opt-out of the Adequate Assurance Procedures must file a Procedures Objection with the Court and serve such Procedures Objection so that it is received by the Debtors and their counsel within 20 days of entry of the Interim Utility Order. Such burdensome procedures are not contained in Section 366 and should therefore be vacated as to MID.

23. Because these procedures are unduly burdensome and time consuming and deprive MID of its statutory rights under Section 366, MID should be exempted from the Adequate Assurance Procedures.

WHEREFORE, MID respectfully requests an entry of an order:

1. Denying the Utility Motion and vacating the Interim Utility Order;
2. Awarding such other and further relief as the Court deems just and appropriate.

Dated: Sacramento, California.
February 12, 2008

Respectfully submitted,
DOWNEY BRAND LLP

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CERTIFICATE OF SERVICE

I, R. Dale Ginter, hereby certify that on this 12th day of February, 2008, I caused a true and correct copy of the OBJECTION OF MERCED IRRIGATION DISTRICT TO MOTION OF THE DEBTORS FOR INTERIM ORDER DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND TO THE ADEQUATE ASSURANCE PROCEDURES PROVIDED BY THE INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) AND 366 DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES to be served upon the parties listed below via email pursuant to Court Order.

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