

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: July 28 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 06-31501
)	
Tilton Corporation,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

EX PARTE ORDER RE UTILITY SERVICE

This case is before the court on the chapter 7 Trustee’s Emergency Motion to Compel Continued Electric Service and For Authority to Expend Funds (“Motion”) [Doc. #38]. This chapter 7 case was commenced as an involuntary proceeding. The uncontested order for relief was entered on July 14, 2006. William Swope has been appointed as the interim chapter 7 Trustee. The motion was filed on July 28, 2006, apparently in response to threats by American Electric Power (“AEP”) to shut off the Debtor’s electricity imminently as shown by the exhibits to the Motion. The Motion requests two types of authority. First, the Motion requests an injunction preventing AEP from shutting off Debtor’s electricity at four locations: 330 S. Pine Street, Lima Ohio 45804-1351(AEP Acct. No. 074-264-903-0-1); 330 S. Pine St. Rear, Lima, Ohio 45804-1351 (AEP Account No. 078-954-903-0-3); 330 1/2 S. Pine St., Lima, Ohio 45804-1351 (AEP Acct. No. 071-164-903-0-6) and 337 S. Jackson St., Lima. OH 45804-1331 (AEP Acct. No. 077-364-903-0-6)). Second, the Motion requests authority to pay certain existing bills, which are attached to the Motion, as well as bills for service rendered on a post-petition basis.

As to the request for injunctive relief, the court finds that such relief is both unnecessary and

procedurally inappropriate. The requested relief is procedurally inappropriate because injunctions beyond the already existing automatic stay and other automatic statutory prohibitions must be obtained through an adversary proceeding, and would require further a request for a temporary restraining order therein upon commencement. Fed. R. Bankr. P. 7001; Fed. R. Bankr. P. 7065. However, a separate order granting the Trustee an injunction against AEP's impending shutoff of electricity is unnecessary because **AEP is expressly prohibited by the Bankruptcy Code, without the need for any separate court order or injunction, from discontinuing service to the Debtor for 20 days after the order for relief. 11 U.S.C. § 366(a) and (b). That 20 days is currently in effect, and does not expire until August 3, 2006. If AEP shuts off Debtor's electricity because a bill for service rendered before the order for relief is not paid when due, it will therefore violate the Bankruptcy Code and be subject to and liable for whatever consequences may arise therefrom.**

Moreover, under § 366(b) the 20 day prohibition is extended upon provision by the Trustee within that time of adequate assurance of payment for utility service rendered after the date of the order for relief. The Trustee's request in the Motion for court authority to pay all bills for electric service rendered after the July 14, 2006, order for relief is treated as proposed adequate assurance of payment under § 366(b). The court finds that all bills for post-petition service are entitled to priority as administrative expenses for preservation of the estate, and that the Trustee is hereby authorized and directed to pay all such bills for post-petition electric service when issued in the ordinary course of AEP's business and service. No further motion or court order is necessary for such payment by the Trustee. The court deems such administrative expense priority and court authorization for timely payment in the ordinary course of AEP's business to be adequate assurance of payment within the meaning of § 366(b).¹ If any party in interest, including AEP, believes modification of adequate assurance of payment as provided herein is necessary, it may request it as permitted by § 366(b). **Unless and until that happens, the statutory prohibition on termination of electric service under § 366(a) remains in effect beyond August 3, 2006.**

As to payment of the bills attached to the Motion, which total \$4001.87, the court will reserve decision. The four bills state only that payment must be made on or before July 24, 2006, or service will be discontinued. The court cannot tell what time periods for service they actually pertain to, and assumes they

¹As this is a chapter 7 case and not a chapter 11 case, the court does not believe that new § 366(c) or any part of it applies here. See 11 U.S.C. § 366(c)(2). Specifically, the definition of "assurance of payment" in § 366(c)(1) does not apply, and case law interpreting § 366(b) and what constitutes adequate assurance of payment prior to the amendment of the Bankruptcy Code is still relevant in chapter 7 cases in this court's view.

must be for pre-petition service predating July 14, 2006. They may pertain to service during the gap period between the filing of the involuntary petition and the entry of the order for relief. They may pertain to service rendered even before the involuntary petition was filed and during the state court receivership. They may pertain to service rendered before the receivership. Unless the facts as to these bills are known, the court cannot find any basis upon which to treat AEP to a higher priority of payment than other unsecured creditors. It may well be entitled to such payment, but that is not now known from the record before the court. Moreover, such a request need not be entertained on an emergency ex parte basis.

For good cause shown,

IT IS ORDERED that the Motion [Doc. #38] is **GRANTED** insofar as the Trustee is hereby authorized and directed as adequate assurance of payment under 11 U.S.C. § 366(b) to pay all bills for electric service rendered by AEP at the four addresses and under the four account numbers identified herein on and after July 14, 2006, without the need for further motion to or order of this court; and

IT IS FURTHER ORDERED that the Motion [Doc. #38] is **DENIED** as moot insofar as it requests issuance of an injunction; and

IT IS FINALLY ordered that the Motion [Doc. #38] is continued for hearing, insofar as the request to pay the four bills attached thereto, before the undersigned on **August 9, 2006, at 9:30 a.m.**, in Courtroom No. 2, Room 103, United States Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio.