

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

**In re:**

**FURR'S SUPERMARKETS, INC.,**

**Case No.11-01-10779-SA  
Chapter 11**

**Debtor.**

**AGREED ORDER REGARDING ADEQUATE ASSURANCE OF PAYMENT OF  
POST PETITION UTILITY CHARGES OF PUBLIC SERVICE COMPANY OF NEW  
MEXICO**

This matter came before the Court on the stipulation of the debtor and debtor in possession Furr's Supermarkets, Inc. (the "Debtor") and Public Service Company of New Mexico (the "Utility") and the Court, being sufficiently advised in the premises, FINDS:

A. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code") in this Court. The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. The Utility provides gas and electric utility services to the Debtor pursuant to the account numbers and service addresses listed on Exhibits A (gas) and B (electric) hereto (each an "Account" and, collectively, the "Accounts").

C. On February 8, 2001, the Debtor filed a Motion For Order Under 11 U.S.C. §§ 105, 366, 503(b) and 507(a) Prohibiting Utilities from Altering, Refusing or Discontinuing Services on Account of Prepetition Invoices and Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Motion").

D. By its order, dated February 8, 2001 (the "Utility Order"), this Court granted the Motion.

E. Pursuant to the terms of the Utility Order, the Utility has requested that the Debtor provide additional adequate assurance of payment to it different than that set forth in the Utility Order.

F. The Debtor and the Utility have reached a resolution of the issues outstanding between them related to additional adequate assurance of payment and other issues, on the terms and subject to the conditions set forth below.

G. Notice and opportunity for hearing on this Agreed Order are adequate and proper, and no further notice or hearing is required under the particular circumstances.

NOW THEREFORE, in consideration of the foregoing, the Debtor and the Utility hereby agree and stipulate as follows:

1. This Agreed Order and not the Utility Order shall govern the terms of postpetition services from the Utility to the Debtor.

2. Except as otherwise provided herein, Utility shall provide gas and electric service to each Account in accordance with the rules, regulations, tariffs, statutes, laws, ordinances, and billing procedures applicable to Utility in the state in which the facility(s) corresponding to such Account is located.

3. Except as otherwise provided herein, the Utility will continue to provide utility services to the Debtor and will continue to invoice the Debtor for such services in the same manner as is customary for commercial gas and electric utility accounts.

4. Within seven days of the date this Agreed Order is entered, the Debtor shall pay to the Utility a security deposit in the amount of \$320,000.00 (the "Security Deposit"). The

Security Deposit shall be paid in cash by check or wire transfer. If paid by check, such check shall be delivered to: PNM Gas & Electric Services, Attention Cora Bajune, M/S 2560, Alvarado Square, Albuquerque, New Mexico 87158. If paid by wire transfer such transfer shall be made to an account designated in writing by Utility's counsel, James C. Jacobsen, to Debtor's counsel, Robert H. Jacobvitz or David T. Thuma.

5. The Security Deposit shall secure payment of any and all amounts that may become due for post-petition service to each of the Accounts prior to termination of service to all Accounts or transfer of all Accounts to a separate entity.

6. The Security Deposit shall bear interest at nine percent per annum and shall be returned to the Debtor, less any amounts due for unpaid Utility invoices for postpetition services, upon the earlier of (i) the termination of service to the Debtor at all Accounts or (ii) the transfer of all Accounts to a separate entity or (iii) one year after the confirmation of the Debtor's Chapter 11 Plan, provided none of the Accounts is chronically delinquent..

7. Any default in payment of any undisputed amount due on any Account that occurs prior to termination of service to the Account or transfer of the Account to a separate entity shall be satisfied from the Security Deposit, without waiver of the Utility's administrative claim for any unpaid amount that exceeds the amount of the Security Deposit.

8. All invoices for utility services rendered by the Utility to the Debtor shall be mailed and may be faxed to Deborah Kershaw, an employee of the Debtor (telephone number: (505) 944-2612; fax number (505) 944-2674; mailing address: 4411 The 25 Way, NE Suite 100, Albuquerque, NM 87109), or such other employee as the Debtor may designate in writing to the Utility. All questions, overnight check payments, and/or correspondence from the Debtor to the Utility shall be directed to Judy Montanes, an employee of the Utility (telephone number: (505)

241-2497; fax number: (505) 831-1819; mailing address: M/S 2204, Alvarado Square, Albuquerque, New Mexico 87158, or such other employee as the Utility may designate in writing to the Debtor.

9. The Debtor will pay all invoices by wire transfer or by check within ten (10) business days after the date of the invoice. In the case of payment by check, the check must be received by the Utility within the payment deadline.

10. If the Debtor fails to pay any invoice within the required time, the Utility may fax and mail to the Debtor's employee designated in paragraph 8 above a disconnect notice with respect to the defaulted Account. If the Debtor fails to pay the invoice within five calendar days after receiving the faxed disconnect notice, the Utility may disconnect service to the corresponding Account without further order of the Court.

11. If the Utility terminates service for a particular Account, the Debtor may reinstate service pursuant to the applicable rules and regulations. In connection with such reinstatement, Debtor shall restore to the Security Deposit any amount applied under paragraph 7 to satisfy the default on such Account.

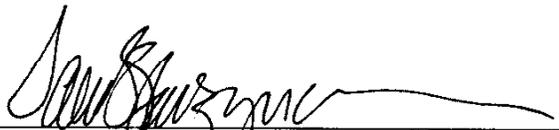
12. In the event that electric or gas service to four (4) or more Accounts is terminated for nonpayment of undisputed postpetition charges and has not been reinstated by the Debtor, the Utility may terminated service to all Accounts without further order of the Court. If such reinstatement requires payment of a deposit, the amount thereof shall be added to the Security Deposit.

13. Any undisputed charge for postpetition utility services provided by the Utility to the Debtor shall constitute an administrative expense in accordance with sections 503(b)(1)(A)

and 507(a)(1) of the Bankruptcy Code, as will the amount of any disputed charge for postpetition utility service as determined and allowed by the Court.

14. This Agreed Order is without prejudice to the Debtor seeking emergency or other relief from the Court to prevent the Utility from terminating service to any or all of the Accounts' provided that any such relief must be conditioned upon the Debtor providing reasonable adequate assurance to the Utility, and the Debtor shall bear the burden of proof at any hearing on the Debtor's request for such relief. This Agreed Order is also without prejudice to Utility seeking relief from the Court in order to provide Utility additional adequate assurance of payment for postpetition gas and electric service to Debtor, provided that Utility shall bear the burden of proof at any hearing on the Utility's request for such relief.

15. This Stipulation and Agreed Order contains the entire agreement between the parties with respect to the subject matter herein and may not be changed, amended, modified or altered except by written agreement signed by each party and approved by the Court or as otherwise ordered by the Court. No representations have been made or relied upon by the parties, except as set forth herein.

  
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THE HONORABLE JAMES S. STARZYNSKI  
UNITED STATES BANKRUPTCY JUDGE

Submitted and approved by:

KELEHER & McLEOD, P.A.

by 

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Attorneys for the Debtor-in-Possession

JAM0991

## Furrs Supermarket – Gas Accounts:

Address	Pre Bankruptcy	Post Bankruptcy
7800 Enchanted Hills NE, Rio Rancho, NM 87124	115287745-1164428	115393123-1164428
1500 Date St. T Or C, NM 87901	44209713-0476751	115389332-0476751
1500 Date St. T Or C, NM 87901	44209713-1171925	115389335-1171925
1920 Columbia SE # C, Albuquerque, NM 87106	53681413-0560945	115389357-0560945
201 San Pedro SE, Albuquerque, NM 87108	54298416-0567115	115389359-0567115
108 Juan Tabo Blvd NE, Albuquerque, NM 87123	55147714-0575608	115389367-0575608
2910 Juan Tabo Blvd NE, Albuquerque, NM 87112	56758814-0591719	115389369-0591719
5850 Eubank Blvd NE # B, Albuquerque, NM 87111	57388714-0598018	115389374-0598018
5815 Wyoming NE, Albuquerque, NM 87109	57822514-0602356	115389376-0602356
4016 Louisiana NE, Albuquerque, NM 87110	58320214-0607333	115389392-0607333

5501 Coors Rd NW, Albuquerque, NM 87120	02590514-0048051	115389458-0048051
111 Coors Rd NW # A, Albuquerque, NM 87121	62847012-0652598	115389462-0652598
4201 Central Ave # A, Albuquerque, NM 87105	62899614-0653124	115389465-0653124
1720 Bridge Blvd SW, Albuquerque, NM 87105	63316817-0657296	115389477-0657296
13201 Lomas Blvd NE, Albuquerque, NM 87112	66049202-0684619	115389480-0684619
1602 W Main St., Artesia, NM 88210	72301311-0747138	115389520-0747138
1032 N Mesa St., Carlsbad, NM 88220	73481214-0758937	115389523-0758937
1405 W Pierce St., Carlsbad NM 88220	73546812-0759593	115389524-0759593
401 S. Main St., Lovington, NM 88260	75120413-0775329	115389525-0775329
110 W McGaffey St., Roswell, NM 88203	75558613-0779711	115389526-0779711
101 N Union Ave., Roswell, NM 88201	76036913-0784494	115389528-0784494
1751 Llano St., Santa Fe, NM 87505	79686314-0820988	115389530-0820988
2110 St. Michaels St., Santa Fe, NM 87505	79698013-0821105	115389533-0821105
530 W Cordova Rd., Santa Fe, NM 87501	79989014-0824015	115389540-0824015

710 Paseo Sel Pueblo Sur, Taos, NM 87571	81728513-0841409	115389543-0841409
100 Caldwell Ave, Belen, NM 87002	67927714-0703403	115389482-0703403
104 Caldwell Ave, Belen NM 87002	67927915-0703404	115389483-0703404
820 E 21 <sup>st</sup> Clovis, NM 88101	69453813-0718663	115389515-0718663
893 Riverside Dr., Espanola, NM 87532	88590514-0910027	115389589-0910027
3701 Constitution Ave NE, Albuquerque, NM 87110	67429001-0698417	115389428-0698417
3701 Constitution Ave NE, Albuquerque, NM 87110	59656514-0620695	115389431-0620695
1220 N Hudson, Silver City, NM 88061	48502913-0519683	115389338-0519683
826 Rio Grande NW, Albuquerque, NM 87104	60389717-0628027	115389433-0628027
830 Rio Grande NW, Albuquerque, NM 87104	60389917-0628029	115389436-0628029
4701 4 <sup>th</sup> St NW, Albuquerque, NM 87107	60660715-0630737	115389445-0630737
3301 Southern Blvd SE, Rio Rancho, NM 87124	61846012-0642588	115389452-0642588
2513 N Main St., Roswell, NM 88201	76808413-0792209	115389529-0792209
4001 E Main St., Farmington, NM 87402	85721113-0881333	115389582-0881333
701 SE Main St., Los Lunas NM 87031	67979314-0703919	115389514-0703919
105 W Tucumcari Blvd, Tucumcari, NM 88401	71833717-0742462	115389517-0742462
1700 E 20 <sup>th</sup> St., Farmington, NM 87401	85745212-1157440	115393735-1157440

## Furrs Supermarket – Electric Accounts:

Address	Pre Bankruptcy	Post Bankruptcy
102 Caldwell, Belen NM 87002	52669101-0553702	115392860-0553702
5901 Wyoming NE # N, Albuquerque, NM 87109	232803-0100772	115392863-0100772
820 Rio Grande NW # A, Albuquerque, NM 87104	24128807-0313329	115391879-0313329
820 Rio Grande NW, Albuquerque, NM 87104	25622605-0326183	115389429-0326183
1920 Columbia SE # B, Albuquerque, NM 87106	16445002-0247042	115389352-0247042
201 San Pedro SE, Albuquerque, NM 87108	18703402-0267870	115389358-0267870
108 Juan Tabo NE, Albuquerque, NM 87123	12880302-0215107	115389363-0215107
2910 Juan Tabo NE, Albuquerque, NM 87112	14271703-0227423	115389368-0227423
5850 Eubank NE # D, Albuquerque, NM 87111	5310903-0147901	115389373-0147901
4016 Louisiana NE, Albuquerque, NM 87110	4629503-0141259	115389389-0141259
2280 Wyoming NE # B, Albuquerque, NM 87112	14522102-0229803	115389395-0229803
3701 Constitution NE, Albuquerque, NM 87110	15683800-1172821	115389420-1172821
4701 4 <sup>th</sup> NW, Albuquerque, NM 87107	24139204-0313429	115389443-0313429
3301 Southern Blvd Rio Rancho, NM 87124	92263601-0943328	115389449-0943328
3301 Coors NW, Albuquerque, NM 87120	27534104-0342766	115389455-0342766
111 Coors NW, Albuquerque, NM 87121	28768002-0354403	115389460-0354403
4201 Central NW # D, Albuquerque, NM 87105	24144702-0313481	115389463-0313481
1720 Bridge SW, Albuquerque, NM 87105	22149103-0297584	115389470-0297584
13201 Lomas NE, Albuquerque, NM 87112	15543504-0239319	115389479-0239319
701 Main St. Los Lunas, NM 87031	50862203-0539919	115389513-0539919
2020 Pacheco, Santa Fe, NM 87505	40884104-0450715	115389532-0450715
530 W Cordova Rd., Santa Fe, NM 87501	38503503-0430245	115389536-0430245
7800 Enchanted Hills NE, Rio Rancho, NM 87124	115312830-1164428	115389596-1164428
10700 Coors NW # 2, Albuquerque, NM 87048	89983703-0923519	115389599-0923519
8100 Ventura NE, Albuquerque, NM 87123	22149103-1182651	115389600-1182651

206 Mills Ave., Las Vegas NM 87701	34916803-0401886	115391849-0401886
820 Rio Grande NW # B, Albuquerque, NM 87104	27966106-0346843	115391852-0346843
Llano & St. Michaels, Santa Fe, NM 87505	38020004-0426266	115391856-0426266
414 E Pine, Deming, NM 88030	33408502-0390204	115391861-0390204