

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  
POSTPETITION UTILITY CHARGES OF SOUTHWEST PUBLIC SERVICE  
COMPANY**

This matter came before the Court on the stipulation of the debtor and debtor in possession Furr's Supermarkets, Inc. (the "Debtor") and Southwest Public Service Company (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 electric utility services to the Debtor pursuant to the account numbers and service addresses listed on Exhibit A 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 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 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 was customary prior to the Petition Date.

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 \$60,000 (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: Dennis Schipper, 990 Bannock Street, Denver, Colorado 80204.

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) eighteen months from the date of deposit (provided none of the Accounts is chronically delinquent) or (ii) the termination of service to the Debtor at all Accounts or the transfer

~~of all accounts to a separate entity.~~

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 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 Dennis Schipper, an employee of the Utility (telephone number: (303)571-3288; fax number: (303) 571-2620; mailing address: 990 Bannock Street, Denver CO 80204), 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 10 calendar days after receipt thereof. Payment shall be deemed made if a check is placed in the United States mail, first class postage prepaid, within the 10 day period.

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 7 calendar days after receiving the faxed or mailed 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 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 service to 5 or more Accounts is terminated for

nonpayment of undisputed postpetition charges and has not been reinstated by the Debtor, the Utility may terminate 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 Debtors shall constitute an administrative expense in accordance with sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code.

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 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:

SOUTHWEST PUBLIC SERVICE COMPANY

By: Approved 4/27/01

JACOBVITZ, THUMA & WALKER P.C.

By: [Signature]

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I hereby certify that a true and correct copy of this document was transmitted, faxed, delivered or mailed to the listed counsel and parties on:

MAY 01 2001

Mary B. Anderson

