

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

**MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,**

Debtor.

Chapter 11

Case No. 13-10670-LHK

**TRUSTEE’S SUPPLEMENTAL MOTION TO (I) PROHIBIT UTILITIES FROM
ALTERING, REFUSING OR DISCONTINUING SERVICES, (II) ESTABLISH
PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL
ADEQUATE ASSURANCE, AND (III) AUTHORIZE, NUNC PRO
TUNC, PAYMENTS MADE TO UTILITY COMPANIES
TO AVOID SHUT-OFF**

Robert J. Keach, Esq., the duly appointed trustee in the above-captioned chapter 11 case (the “Trustee”), by and through his undersigned counsel, hereby moves this Court for an order (the “Supplemental Motion”), pursuant to 11 U.S.C. § 366, (i) prohibiting the Utility Companies (as hereinafter defined) from altering, refusing or discontinuing service to the Debtor, (ii) establishing procedures for determining requests by the Utility Companies for adequate assurance, and (iii) authorizing payments made by the Debtor to certain of the Utility Companies in order to avoid the shut-off of utility service. In support of this Motion, the Trustee states as follows:

JURISDICTION, VENUE AND PREDICATES FOR RELIEF

1. The United States District Court for the District of Maine (the “District Court”) has original but not exclusive jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case and this Motion to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Motion is predicated upon § 366 of the Bankruptcy Code.

BACKGROUND

5. On August 7, 2013 (the "Petition Date"), the above-captioned debtor (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. On August 21, 2013, the United States Trustee appointed the Trustee.

7. On the Petition Date, the Debtor filed the *Debtor's Motion to (I) Prohibit Utilities From Altering, Refusing or Discontinuing Services, and (II) Establish Procedures for Determining Requests for Additional Adequate Assurance* [Docket No. 9] ("the Debtor's Utilities Motion") together with a list of utility companies with whom the Debtor has electric, telephone, internet, phone and radio frequency services accounts. On August 26, 2013, this Court entered an Order granting the Debtor's Utilities Motion [Docket No. 99] with respect to the utility companies as listed on Exhibit A to the Debtor's Utilities Motion.

8. Over the course of the Trustee's operation of the Debtor's affairs, it has become apparent that a number of utility companies of which the Debtor is a customer were not included on Exhibit A to the Debtor's Utilities Motion, and, as a consequence, were not provided with adequate assurance of payment (the "Utility Companies"). A list of the Utility Companies is set forth on **Exhibit 1** to this Supplemental Motion.

9. Section 366 governs the rights and obligations of the Utility Companies as providers of utility services to the Debtor. Pursuant to Section 366(c)(2), such Utility

Companies may alter, refuse, or discontinue service to a chapter 11 debtor if neither the trustee nor the debtor, within thirty (30) days after the date of the order for relief, furnishes adequate assurance of payment for utility service that is satisfactory to the utility. 11 U.S.C. § 366(c)(2). Pursuant to Section 366(c)(1)(A), the term “assurance of payment” means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee. 11 U.S.C. § 366(c)(1)(A). The period provided for in § 366 will expire thirty (30) days after the Petition Date, unless extended. Pursuant to § 366(c)(3)(B), in determining what constitutes adequate assurance, the Court may consider the Debtor’s pre-petition payment history, the presence or absence of a security deposit or the availability of a an administrative expense priority. 11 U.S.C. § 366(c)(3)(B)(i)-(iii).

10. Certain of the Utility Companies have already sent shut-off notices to the Debtor because of the Debtor’s failure to pay pre-petition amounts owed and the Debtor’s failure to provide such Utility Companies with adequate assurance. Specifically, Central Maine Power (“CMP”), Maine Water (the “Water Company”), and Eastern Maine Electric Cooperative (“EMEC”) have threatened to shut off utility service because the Debtor failed to provide these Utility Companies with adequate assurance or pay prepetition amounts owed. The utility service provided by these companies is essential to the safe and continued operation of the Debtor’s railroad.

11. In order to ensure that the Debtor could continue operating safely and seamlessly, the Debtor paid CMP a total of \$234.09, owed for the period from July 10, 2013 through August 10, 2013, and a total of \$230.40, owed for the period from August 6, 2013 through September 9, 2013 (collectively, the “CMP Payments”). Additionally, the Debtor paid Maine Water a total of \$95.47 (the “Water Payment”), owed for the period June 7 through

September 16, 2013. Finally, the Debtor paid EMEC a total of \$65.75 for the period from June 4, 2013 through August 8, 2013 (the “EMEC Payment”). Payment of these amounts, a portion of which was owed for a prepetition period, was necessary to ensure that essential utility services provided to the Debtor were not shut-off.

RELIEF REQUESTED

12. By this Motion, the Trustee seeks an order from this court (i) prohibiting the Utility Companies from altering, refusing or discontinuing service to the Debtor, (ii) limiting the amount of adequate assurance to a deposit which does not exceed a normal monthly bill, as set forth on **Exhibit 1**; (iii) setting the time by which this deposit must be made as **December 31, 2013**; (iv) providing that if a Utility Company timely requests additional adequate assurance that the Debtor believes is unreasonable, the Trustee will file a motion for determination of adequate assurance of payment and serve such motion for hearing at the Court’s discretion (a “Determination Hearing”); (v) providing that, in the event a Determination Hearing is scheduled, the Utility Company requesting adequate assurance shall be deemed to have adequate assurance of payment until an order of the Court is entered finally resolving the issues presented at the Determination Hearing; and (vi) authorizing, nunc pro tunc, the CMP Payments, the Water Payment, and the EMEC Payment.

BASIS FOR RELIEF

13. The services listed on **Exhibit 1** to this Supplemental Motion are essential to the Debtor’s ongoing business operations, including the provision of water to the Debtor’s operational sites at distinct points in the State of Maine, and the provision of electricity to crossing signals across the State of Maine.

14. Courts are not required to give the utility companies the equivalent of a guaranty of payment; rather, they must determine that the utility is not subject to an unreasonable risk of

non-payment for post-petition services. In re George C. Frye Co., 7 B.R. 856, 858 (Bankr. D. Me. 1980) (debtor is required to demonstrate only that “utility is not subject to an unreasonable risk of future loss”).

15. The Trustee represents that the Debtor has paid all undisputed utility bills for post-petition services when due through the present.

16. The Trustee proposes that its adequate assurance method be without prejudice to the rights of any of the Utility Companies to request additional assurance, and that any burden of proof shall remain unaffected by approval of the method proposed herein.

17. The Trustee’s proposed method of providing adequate assurance of payment for post-petition utility services is consistent with the intent of § 366, is not prejudicial to the rights of any of the Utility Companies, and is in the best interests of the Debtor’s estate.

18. Further, as discussed above, payment of the CMP Payments, the Water Payment, and the EMEC Payment was required to ensure that the Debtor could continue operating safely. Given that a de minimis portion of both the CMP Payments and the Water Payment constituted payment of a pre-petition debt, and that the Debtor’s operations would be severely compromised without making the CMP Payments, the Water Payment, and the EMEC Payment, the Trustee submits that authorization of such payments, on a nunc pro tunc basis, is appropriate.

NOTICE

19. Notice of this Motion was served on the following parties on the date and in the manner set forth in the certificate of service: (a) the U.S. Trustee; (b) Debtor’s counsel; (c) the non-insider holders of the twenty (20) largest unsecured claims against the Debtor or, if applicable, the lawyers representing such holders; (d) all parties who have, as of the date of the Motion, entered an appearance and requested service of papers in the case; and (e) all Utility

Companies identified on **Exhibit 1**. The Trustee respectfully requests that the Court find such notice to constitute fair, adequate, and sufficient notice of all matters set forth in this Motion.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order, pursuant to 11 U.S.C. § 366, approving this Motion and granting such other and further relief as this Court deems just and equitable.

Dated: November 26, 2013

ROBERT J. KEACH, Trustee for the
Estate of MONTREAL MAINE &
ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Sam Anderson
Michael A. Fagone, Esq.
D. Sam Anderson, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle St., PO Box 9729
Portland, Maine 04104-5029
(207) 774-1200

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

**MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,**

Debtor.

Chapter 11

Case No. 13-10670-LHK

NOTICE OF HEARING

The Trustee for Montreal, Maine & Atlantic Railway Ltd., by and through his attorneys, has filed the *Trustee's Supplemental Motion to (I) Prohibit Utilities from Altering, Refusing or Discontinuing Services, (II) Establish Procedures for Determining Requests for Additional Adequate Assurance, and (III) Authorize, Nunc Pro Tunc, Payments Made to Utility Companies to Avoid Shut-Off* (the "Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to approve the Motion, then on or before **December 11, 2013** you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, your response should be served upon the Court and Trustee's counsel at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

and

D. Sam Anderson, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle Street
P.O. Box 9729
Portland, Maine 04104

If you do have to mail your response to the Court for filing, you must mail it early enough so that the Court will receive **on or before December 11, 2013**.

You may attend the hearing with respect to the Motion scheduled to be held at the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, Bangor, Maine on **December 19, 2013 at 10:00 a.m.**

If you do not have a copy of the Motion, you may request one from the Trustee's attorneys by submitting a written request to: Sam Anderson, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, Maine 04104-5029, sanderson@bernsteinshur.com.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the requested relief.

Dated: November 26, 2013

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.
By his attorneys:

/s/ Sam Anderson
Michael A. Fagone, Esq.
D. Sam Anderson, Esq.
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**ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING
OR DISCONTINUING SERVICES, (II) ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE
ASSURANCE, AND (III) AUTHORIZING, NUNC PRO TUNC,
PAYMENTS MADE TO UTILITY COMPANIES
TO AVOID SHUT-OFF**

Upon consideration of the motion (the "Motion") of Montreal, Maine & Atlantic Railway Ltd. ("MMA" or "Debtor") for an Order (i) prohibiting the Utility Companies¹ listed on Exhibit 1 to the Motion from altering, refusing or discontinuing services, (ii) establishing procedures for determining requests for additional adequate assurance, and (iii) authorizing, nunc pro tunc, payments made to certain Utility Companies to avoid shut-off; and due and appropriate notice of this Motion having been given, and it appearing that no other notice need be given; and objections having been filed, if any, being overruled or withdrawn; and after due deliberation, and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted as to each of the Utility Companies; and it is further

ORDERED, that the Trustee shall pay the deposit amounts shown on Exhibit 1 to the Motion; and it is further

¹ Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, that the Trustee shall pay the deposit amounts shown on Exhibit 1 to the Motion by December 31, 2013; and it is further

ORDERED, that Trustee shall pay on a timely basis in accordance with the Debtor's pre-petition practices all undisputed invoices in respect of post-petition utility services rendered by the Utility Companies to the Debtor; and it is further

ORDERED, that absent further order of the Court, each utility company is forbidden to alter, refuse, or discontinue service to, or discriminate against the Debtor, or require the payment of a deposit or other security in connection with the Debtor's bankruptcy filing, except as set forth in the Motion and the Exhibit 1 attached thereto, or any pre-petition invoice for utility services, including, but not limited to, the furnishing of heat, cable, internet, electricity, water, sewer, telephone or any other utility of like kind, furnished to the Debtor; and it is further

ORDERED, that the Trustee's proposed treatment of the Utility Companies as set forth in this Order is adequate assurance of payment for post-petition utility services; and it is further

ORDERED, that if a Utility Company timely requests additional adequate assurance by written notice to the Trustee's counsel, Bernstein, Shur, Sawyer & Nelson, P.A. ("Bernstein Shur") (c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME 04102, mfagone@bernsteinshur.com), that the Trustee believes is unreasonable, the Trustee, by and through Bernstein Shur, may file a motion for determination of adequate assurance of payment and serve such motion for hearing (a "Determination Hearing"); and it is further

ORDERED, that in the event a Determination Hearing is scheduled, the Utility Company requesting adequate assurance shall be deemed to have adequate assurance of payment until an order of the Court is entered finally resolving the issues presented at the Determination Hearing; and it is further

ORDERED, that the Debtor and/or the Trustee are hereby authorized, nunc pro tunc, to make the Water Payment, the CMP Payments and the EMEC Payment.

Dated:

Honorable Louis H. Kornreich
United States Bankruptcy Judge

EXHIBIT 1

Provider	Service	Proposed Deposit
Maine Water	Water	<u>\$160.00</u>
Town of Brownville	Water and Sewer	<u>\$360.00</u>
CMP	Electricity	<u>\$35.00</u>
Eastern Maine Electric Cooperative	Electricity	<u>\$50.00</u>
Glacial Energy	Electricity	<u>\$50.00</u>
Houlton Water Company	Electric, Water and Sewer	<u>\$150.00</u>
Jackman Utility	Sewer	<u>\$42.00</u>
Liberty Power	Electricity	<u>\$20.00</u>
Maine Public Service	Electricity	<u>\$20.00</u>
Town of Millinocket	Water/Electricity	<u>\$75.00</u>
Milo Water District	Water	<u>\$660.00</u>
Vermont Electric Cooperative	Electricity	<u>\$100.00</u>

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ORDERED, that the Debtor and/or the Trustee are hereby authorized, nunc pro tunc, to make the Water Payment, the CMP Payments and the EMEC Payment.

Dated:

Honorable Louis H. Kornreich
United States Bankruptcy Judge

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Dated: November 26, 2013

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
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By his attorneys:

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Michael A. Fagone, Esq.
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