



IT IS ORDERED as set forth below:

Date: July 27, 2011

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
WILFREDO P. PESANTE	:	11-11599-WHD
AUNDREA W. PESANTE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTORS.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Enforce the Automatic Stay, filed by Wilfredo and Aundrea Pesante (hereinafter the "Debtors") against EMC-Coweta-Fayette (hereinafter the "Respondent"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2); 1334.

The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on May 10, 2011. According to the Motion, the Debtors owed the Respondent \$180 for prepetition electric service. On June 13, 2011, the Respondent notified the Debtors by letter

that the Respondent had closed their prepetition account. The Respondent also notified the Debtors that it would require a deposit of \$568 to provide postpetition electric service to the Debtors. The letter stated that the deposit would be due within thirty days of the letter to avoid disconnection of service and that the deposit was based on an estimate of the cost of two-months' service.

The Debtors assert that the Respondent's request for a postpetition deposit is a violation of the automatic stay, as it is a clear attempt to require the Debtors to pay their prepetition debt. Accordingly, the Debtors order the Respondent to charge the Debtors for only postpetition service utilized.

The Court cannot find that the Respondent has violated the automatic stay. The Respondent is permitted to require a postpetition deposit and is also permitted to terminate the Debtors' service without permission from this Court in the event the Debtors do not provide the Respondent with "adequate assurance of payment" within twenty days of the filing of their petition. Specifically, section 366 of the Bankruptcy Code provides, in part:

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

(c)(1)(A) For purposes of this subsection, 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.

Since it has been more than twenty days since the filing of the Debtors' petition, the Respondent is free to terminate the Debtors' electric service unless they provide a deposit or other means of adequate assurance of payment to the Respondent. Upon the request of the Debtors, the Court is authorized to determine the reasonableness of the requested deposit and to modify the amount if necessary. Should the Debtors file such a request, however, they must serve the request on the Respondent in accordance with the requirements of Rule 9014 and Rule 7004 of the Federal Rules of Bankruptcy Procedure, which require service of the motion on an officer of the Respondent or an agent entitled to receive service of process on behalf of the Respondent. The Court will not schedule a hearing on any request filed by the Debtors unless the Debtors file a certificate of service indicating the request was served properly.

For the reasons stated above, the Debtors' Motion to Enforce the Automatic Stay is **DENIED** without prejudice to the filing of a request for determination of adequate assurance of payment. The Clerk shall serve a copy of this Order on the Debtors and the Respondent.

END OF DOCUMENT

