

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
COUNTRYSIDE INVESTMENT
COMPANY, a partnership

Case No. 88-554-C

Debtor.

ORDER - SECURITY DEPOSIT WITH MIDWEST GAS COMPANY

On April 8, 1988, hearing was held on Debtor-in-Possession's motion to modify deposit with Midwest Gas Company. Michael P. Mallaney appeared on behalf of the debtor-in-possession. Mickey Sieren, Customer Consultant, Midwest Gas Company, appeared without counsel on behalf of the Midwest Gas Company.

This is a contested matter to determine the effect of 11 U.S.C. §366 and the demand of Midwest Gas Company that debtor-in-possession deposit \$12,238.00 for continued gas service. Having reviewed the record the court makes the following findings and conclusions.

FINDINGS OF FACT

1. Debtor is an investment company in the nature of a partnership. A portion of the debtor-in-possession's estate consists of the Ramada Hotel located at 6215 Fleur Drive and 1920 Leland Avenue, Des Moines, Iowa.

2. Gas service to said property is provided by Midwest Gas Company. The Ramada Hotel has not paid the account balance until it has received a disconnect notice 12 times in the last 12 months and there is an outstanding bill of approximately \$22, 000.00.

3. The Ramada is an operating hotel employing approximately 110 employees. Debtor's petition reveals that Debtor's estimated assets as of March 14, 1988, totaled \$5,500,000.00, and its estimated total liabilities were \$3,850, 000.00.

4. Debtor-in-possession is unable to post the demanded deposit of \$12,238.00 and would be forced to terminate the operations of the motel if gas was not provided.

5. The average monthly gas bill for Ramada at both addresses for January through December 1987 was approximately \$3,950.00.

6. The average monthly gas bill for Ramada at both addresses from April through July 1987 was \$2,581.38.

CONCLUSIONS

The debtor has a history of making payments only upon a notice of disconnect and has a pre-petition debt with Midwest Gas of approximately \$22,000.00. However, the debtor is now making its monthly payments.

There is no dispute that the debtor-in-possession must provide a security deposit to provide adequate assurance of payment pursuant to 11 U.S.C. §366.

"The amount of security deposit should bear a reasonable relationship to expected or anticipated utility consumption by a debtor." In re Coastal Dry Dock & Repair Corp., 15 C.B.C.2d 320, 326 (Bkrtcy. E.D. N.Y. 1986). In the next few months debtor-in-possession will have an average monthly gas bill of approximately \$2,600.00.

The debtor-in-possession is experiencing a cash flow problem but has substantial unencumbered assets.

The court concludes that Midwest's interest in obtaining post-petition payments may be protected by requiring a security deposit of \$6,000.00, to be paid in monthly installments, and giving Midwest the remedy of disconnecting the service, upon notice, in the event debtor-in-possession fails to pay its post-petition bills as they become due.

IT IS ACCORDINGLY ORDERED, as follows:

(1) The debtor-in-possession shall continue to pay promptly the current bills as they come due;

(2) The debtor-in-possession shall establish a security deposit with Midwest Gas Company as adequate assurance of future payments, in the amount of \$6,000.00;

(3) The security deposit shall be made in installments of \$1,000.00 per month commencing May 1, 1988, and on or before the first day of each month thereafter until paid in full; and

(4) In the event the above payments are not paid as ordered, any motion by Midwest Gas to enforce this order and terminate the service may be heard by this court upon five (5) days notice.

RUSSELL J. HILL
U.S. BANKRUPTCY COURT