BANKRUPTCY LAW360

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Entergy Wins More Time For Debt Repayment Plan

Wednesday, April 19, 2006 --- A federal bankruptcy judge has given Entergy New Orleans Inc. a little more breathing space this week, granting the power company additional time to propose a reorganization plan despite across-the-board opposition from its unsecured creditors.

ENOI will now have until Aug. 21 to submit a Chapter 11 plan of reorganization and until Oct. 18 to gain the support of its unsecured creditors, who opposed the extension request and sought the right to propose their own reorganization plan.

In late September 2005, Entergy's New Orleans branch was forced to seek Chapter 11 bankruptcy protection after Hurricane Katrina ravaged the city and nearly wiped out the company's customer base.

The company is still struggling to regain its footing in the destroyed city, estimating in court filings that restoring the company's electric and gas facilities will cost between $325 and $475 million.

In asking the bankruptcy court for additional time to file its reorganization plan, ENOI said that despite "immense challenges," including employee evacuation and a temporarily uninhabitable home office, the company has made "substantial progress" in its bankruptcy proceedings.

But ENOI said it still cannot estimate the exact amount of its physical and economic losses, which preclude the company from developing its plan. The amount depends on several "unresolved contingencies," argued the company, including the number of customers who will eventually return to New Orleans, as well as recoveries gained from various government assistance initiatives and insurance proceeds.

The company's unsecured creditors, however, opposed that reasoning, saying none of the identified contingencies justified a further extension of exclusivity and that ENOI was dragging its feet in the bankruptcy proceedings.

The creditors also said the company's parent, Entergy Corp., stated in a March report to the U.S. Securities and Exchange Commission that "there has not been any impairment in the parent's investment in ENOI as a result of Hurricane Katrina" and that "recovery is probable."

Moreover, the unsecured creditors argued that the contingencies cited by Entergy in its request for extension did not affect the "willingness and ability" of the company to pay out more than $12 million in pre-petition debts within weeks after the filing of the bankruptcy case.

ENOI also received court approval to pay $26 million to certain critical vendors, only $16 million of which has been paid out.

The court has been sympathetic to ENOI's dilemma, but at the same time does not want the company to sit on its hands, said Patrick Vance at Jones Walker, the firm representing the company.

"Our pitch to the court was that we need better information about the recoveries ENOI may receive from the Community Development Block grants in order to file the best possible reorganization plan," he said. "But it's an unpredictable process given that Congress and the Louisiana Recovery Authority have to appropriate and allocate the money first."

According to Vance, this political component has added another layer to an already complicated situation, and that the company will most likely not know exactly how much money it will receive in federal grants until at least August or September.

"The hurricane was a huge disaster for many people, and the first priorities of the LRA and Congress is going to be housing before infrastructure is addressed," he said.

This week's ruling marks the second extension ENOI has received of its deadline to file a reorganization plan. In January, the court approved a motion by the struggling company to extend the deadline for its restructuring proposal until April 21 to submit a plan, and until June 20 to lobby creditors for support.

The company had argued for the extension on the grounds that the hurricane created unforeseeable obstacles and logistical difficulties.

Also in January, ENOI asked the bankruptcy court to retroactively approve $12.9 million in payments made towards power purchasing agreements with customers in an attempt to maintain access to electric generating capacity.

The company said that the contracts were instrumental in allowing it to meet the needs of its customers while operating under Chapter 11 bankruptcy protection.

ENOI hopes to apply the $12.9 million to keep affiliates from canceling the contracts, which obligate the company to provide electricity at below-market rates.

The contracts also give the electricity provider access to energy that is not produced using natural gas, meaning that ENOI would be insulated from fluctuations in the volatile natural gas market.

In December, the federal government rejected an Entergy plea for $350 million in federal aid to help the company rebuild the company's New Orleans facilities.

Alan Hubbard, President Bush's top economic advisor and chairman of the White House's Gulf Coast Recovery and Rebuilding Council, said in a letter that the administration "believes that transferring federal tax dollars to the bondholders and shareholders of a private firm is inappropriate."

Hubbard suggested that ENOI either ask its parent company to cover its costs or ask bondholders to write down the company's debts.

Entergy Executive Vice President Curt Hebert warned the Bush administration that without the loan, ENOI is unlikely to be able to continue operations.

Hurricane Katrina is widely regarded as the most expensive catastrophe in U.S. history, and Entergy is not the only company that has suffered.

Last November, a study by Experian that examined the effects of Katrina on 635,000 businesses found that the hurricane's impact on cash flow and outstanding debt had significant implications on the local economy and suppliers depending on that revenue, with commercial properties in the Gulf States listing as much as $40 billion in payables outstanding.

According to the study, professional and business services firms were the hardest hit by the disaster and owed the most ($8.8 billion). Other industry groups significantly affected were retail trade ($8 billion), wholesale trade ($5.9 billion) and construction businesses ($5.7 billion), according to the study.

Predictably, small businesses—which make up more than 97% of the businesses in the region—were also affected more than any other business segment, owing 72% of the outstanding balances.

However, the study noted that it could be more than a year and half before the true financial impact of the disaster on businesses can be calculated, because creditors often extend grace periods on repayments and because bankruptcy filing only occurs once the scope of forgiveness or payment lengthening has been exhausted.

"Bankruptcies will spike, but not for some time," stated the report, "Historically, bankruptcies peak much later than one might imagine after any natural disaster or economic shock—sometimes as long as two years following the event."

Entergy New Orleans is represented in the proceedings by Jones, Walker. The Official Committee of Unsecured Creditors is represented by Liskow & Lewis.

The case is In Re Entergy New Orleans Inc., case no. 05-17697, in the U.S.

Bankruptcy Court for the Eastern District of Louisiana.

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