

(Bankr.N.D.Ohio 1983). As the Court in Marion noted, the utility must be protected from an unreasonable risk of nonpayment. Id. However, "adequate assurance" must be assessed in view of the Code's broad goal of rehabilitation of Chapter 11 debtors. Factors cited as relevant in considering "adequate assurance" include the pre-petition security required by the utility, the debtor's payment history and the debtor's present and future ability to pay its current expenses. In re Santa Clara Circuits West Inc., 27 B.R. 680, at 685 (Bankr.D.Utah 1982).

NSP's deposit requirement of \$10,600 was arrived at by combining the bills from the two highest consecutive months of usage within the last 12 months. Under relevant Wisconsin utility rules, this is the maximum deposit permitted. Sec. PSC 113.131(5), Wis.Adm.Code. NSP cites this rule as authority in favor of its claim. The fact that this rule provides a deposit limit of two months necessarily means that the Public Service Commission envisioned instances where a smaller deposit would be sufficient. At any rate, this Court's decision need not be controlled by the PSC rule.

The evidence in this case demonstrates that following a one month usage period, a customer of NSP has approximately 30 days to pay before the account is considered past due and a disconnect notice issued. The average monthly bill for Debtor with NSP is \$3,400. This is for both electric and gas service. Paula Otte, NSP Supervisor of Credit and Collections, testified that in the last year Debtor has consistently been two months behind in

payments and, as a result, received 11 disconnect notices. Disconnection never occurred, however.

Based on the facts of this case and a consideration of appropriate factors, the Court concludes that a \$5,000 deposit provides adequate assurance of payment. The fact that Debtor has routinely been dilatory in making payments justifies some cash deposit. The \$5,000 amount will be sufficient for the present and near future because the monthly bills will be less than this by a considerable amount. In fact, the highest monthly bill in the last year was only slightly in excess of \$5,000. In addition to ordering this \$5,000 as adequate assurance, the Court will allow NSP to move for court approval of disconnection or other appropriate action in the event that it must utilize a portion of the \$5,000 because Debtor has failed to make timely payments. Such motion may be filed in an expedited fashion with a five-day notice required before hearing on the matter. Finally, NSP may move for a modification of the \$5,000 deposit limit at the beginning of a month for which estimated usage suggests that the bill for that month will exceed \$5,000.

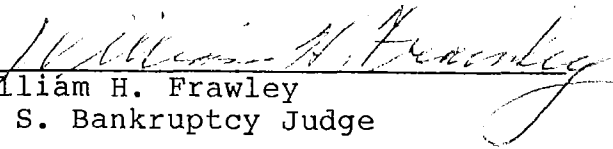
ORDER

IT IS ORDERED THAT Debtor provide NSP with a \$5,000 deposit by July 22, 1985.

IT IS FURTHER ORDERED THAT NSP may move this Court for modification of the deposit or for other appropriate relief in accordance with the conditions set forth in this opinion.

Dated: July 9, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Melvyn Hoffman
Attorney Joseph Mirr