

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

In re:	)	
	)	Case No. 03-30465
	)	
USGen New England, Inc.,	)	Chapter 11
	)	Hon. Paul Mannes
Debtor.	)	
	)	

**MOTION FOR EXPEDITED DISCOVERY**

Pursuant to Federal Rules of Bankruptcy Procedure 7026, 7030, 7033 and 7034, respondents Bear Swamp Generating Trust No. 1 LLC, Bear Swamp Generating Trust No. 2 LLC (each an “Owner Lessor” and, collectively, the “Owner Lessors”), Bear Swamp I LLC and Bear Swamp II LLC (each an “Owner Participant,” collectively, the “Owner Participants” and, collectively with the Owner Lessors, the “Bear Swamp Entities”) hereby move (the "Motion") this Court for an Order expediting the proceedings in this matter by (i) shortening the time for USGen New England, Inc. (the "Debtor") and certain other parties identified on the exhibits attached hereto (collectively with the Debtor, the “Discovery Parties”) to respond to the Request of Bear Swamp Generating Trust No. 1 LLC, Bear Swamp Generating Trust No. 2 LLC, Bear Swamp I LLC and Bear Swamp II LLC for the Production of Documents, and (ii) permitting the Bear Swamp Entities to take the depositions of the

persons referenced in the list of proposed deponents attached hereto as Exhibit B.

The grounds for this Motion are as follows:

1. It is essential that the relief sought in this action be granted quickly.

As set out more fully in the objection (the "Objection") to the Motion of Debtor for Order Pursuant to 11 U.S.C. §§ 105 and 365(a) Authorizing the Debtor to Reject Certain Executory Contracts Between the Debtor and Bear Swamp Generating Trust No. 1 LLC and the Debtor and Bear Swamp Generating Trust No. 2 LLC (Docket No. 229) (the "Rejection Motion"), the Debtor has improperly sought to reject, under 11 U.S.C. § 365, six agreements (the "Contracts") – two facility lease agreements, two facility site sublease agreements, and two participation agreements – related to the Bear Swamp pumped storage hydroelectric facility, one of the Debtor's most significant assets.<sup>1</sup>

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<sup>1</sup> The Bear Swamp facility is located on 1,300 acres on the Deerfield River in Massachusetts (the "Facility Site"). It was acquired by USGen NE in a complex sale-leaseback transaction in 1998 that was part of the Debtor's acquisition of the non-nuclear electric generation business of New England Electric System. For these transactions, the Owner Lessors were formed with the Owner Participants as their sole members. USGen NE then transferred undivided interests in the facility to the Owner Lessors (75% to Bear Swamp Generating Trust No. 1 LLC, and 25% to Bear Swamp Generating Trust No. 2 LLC) as tenants in common. At the same time, (a) the Owner Lessors leased the facility to USGen NE under the two facility lease agreements, (b) USGen NE leased the Facility Site to the Owner Lessors under two site leases, and (c) the Owner Lessors subleased the Facility Site to USGen NE under two site subleases.

2. USGen NE, which proposes that the rejection be effective on September 30, 2003, argues that it is incurring continuing losses in connection with the operation of the Bear Swamp facility and that rejection of the Contracts is a critical aspect of its restructuring. However, nothing in the Rejection Motion, or anywhere else in the record before the Court, even hints at what the Debtor's restructuring plan is or how the proposed rejection allegedly would further any such plan. Indeed, as the Debtor expressly stated two days ago at its section 341 meeting, no restructuring plan has been developed.

3. The Rejection Motion, which was filed late in the day on August 29, 2003, is set to be heard on September 24, 2003.

4. On its face, the Rejection Motion lacks any supporting evidentiary basis; therefore, the Bear Swamp Entities need discovery concerning several substantial issues raised by the Rejection Motion. The Bear Swamp Entities also believe that the necessary discovery in connection with the Rejection Motion and the Objection will be elaborate and complicated. See proposed discovery of the Bear Swamp Entities attached hereto as Exhibit A (Request for Production of Documents of the Bear Swamp Entities) and Exhibit B (List of proposed deponents).

5. Under the applicable rules of bankruptcy procedure, the Discovery Parties would have thirty days to respond to discovery issued by the Bear Swamp Entities. See, e.g., Fed. R. Bankr. P. 7026, 7033 and 7034. The hearing on the

Rejection Motion, however, has been unilaterally set by the Debtor for September 24, 2003 - a mere 17 business days after the filing of the Motion. The normal thirty day deadline for discovery will mean that the Discovery Parties may not have to respond to the Bear Swamp Entities' discovery until after the hearing on the Rejection Motion. Accordingly, unless the Bear Swamp Entities are permitted expedited discovery to challenge the Rejection Motion, the Discovery Parties will not have to respond before the hearing on the Motion to Reject and thus the Bear Swamp Entities will suffer irreparable injury.

6. The Bear Swamp Entities have concurrently filed a Motion for 120-Day Adjournment of the Hearing with Respect to the Debtor's Motion for Order Pursuant to 11 U.S.C. §§ 105 and 365(a) Authorizing the Debtor to Reject Certain Executory Contracts Between the Debtor and Bear Swamp Generating Trust No. 1 LLC and the Debtor and Bear Swamp Generating Trust No. 2 LLC (the "Adjournment Motion"). Should the relief requested in the Adjournment Motion be granted by this Court in full and the Rejection Motion is adjourned until a time in January, 2004, the Bear Swamp Entities acknowledge that the relief sought in this Motion will no longer be necessary.

7. However, the Bear Swamp Entities also believe that discovery cannot reasonably be completed by September 24, 2003 or by the end of October even if expedited. Therefore, should the Adjournment Motion not be granted in full

or the time for the hearing on the Rejection Motion merely adjourned for only a short period of time, the Bear Swamp Entities assert that such a hearing would be a violation of due process rights.

8. Counsel for the Bear Swamp Entities has contacted counsel for the Debtor in an attempt to work out a consensual discovery schedule. As of the date of this Motion, however, the parties have not completed an agreement but are continuing discussions.

Therefore, the Bear Swamp Entities request that this Court (i) expedite these proceedings, (ii) grant them expedited discovery, (iii) require the Discovery Parties to respond by September 15, 2003 to the Document Requests and (iv) require the Discovery Parties to produce all noted deponents by September 22, 2003.

Dated: Bethesda, Maryland  
September 5, 2003

Respectfully Submitted,

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