

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

In re:)	
)	
)	
USGen New England, Inc.,)	Case No. 03-30465 (PM)
)	
Debtor.)	Chapter 11
)	

**DEBTOR’S MOTION TO SELL PROPERTY LOCATED IN
BUCKLAND, MASSACHUSETTS AND PROVIDENCE, RHODE
ISLAND FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

USGen New England, Inc., debtor and debtor in possession (the “Debtor”), by and through its undersigned attorneys, files this Motion to Sell Property Located in Buckland, Massachusetts and Providence, Rhode Island Free and Clear of Liens, Claims and Encumbrances (the “Motion”), and states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief sought in this Motion is § 363(b) and (f) of title 11 of the United States Code (the “Bankruptcy Code”), as complemented by Rule 6004 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

The Chapter 11 Case

2. On July 8, 2003 (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its properties as a debtor in possession. No trustee or examiner has been appointed in the Debtor's chapter 11 case. On July 17, 2003, the Office of the United States Trustee appointed an official committee of unsecured creditors in the Debtor's chapter 11 case.

The Debtor and Its Business Operations

The Debtor's Formation and Business

3. The Debtor was incorporated on August 1, 1997 for the purpose of acquiring and operating the non-nuclear generating business of New England Electric System. The Debtor is an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc.

4. The Debtor is in the business of owning and operating electric generating facilities in New England (the "Facilities") and buying and selling electricity and other energy-related products at wholesale. All of these Facilities are located and all of the Debtor's significant sales take place in New England.

The Debtor's Generating Facilities

5. The Debtor owns three Facilities (Brayton Point Station, Salem Harbor Station and Manchester Street Station) that use coal, oil or natural gas for fuel. The Debtor also owns two hydroelectric systems, one of which spans the Connecticut River (Connecticut River System) and one of

which spans the Deerfield River (Deerfield River System), and leases the Bear Swamp pumped-storage facility.

Debtor's Property Located in Buckland, Massachusetts

6. The Debtor is the owner of a parcel of real property, consisting of 0.596 acres, located at 71 Conway Street, Buckland, Massachusetts (the "Buckland Parcel").

7. On June 6, 2003, the Debtor entered into a purchase and sale agreement for the sale of the Buckland Parcel to the Town of Buckland for \$225,000.00.¹ A copy of such agreement is annexed hereto as Exhibit "A".

8. Included in the sale of the Buckland Parcel are the buildings, structures and improvements thereon, and the fixtures belonging to the Debtor and used in connection with the Buckland Parcel.

Debtor's Property Located in Providence, Rhode Island

9. The Debtor is the owner of an unimproved parcel of real property, consisting of 13,042 square feet, located at 77 Pilsudski Street, Providence, Rhode Island (the "Providence Parcel"). The Providence Parcel is located approximately three miles from the Debtor's Manchester Street Station. The Providence Parcel was acquired by the Debtor pursuant to order dated December 15, 1990 of the Rhode Island Energy Facility Siting Board as an alternate well site for the Manchester Street Station in the event that the primary well site was inadequate to meet plant process water needs.²

¹ The Debtor currently leases the premises to the Town of Buckland.

² The Debtor has never developed the Providence Parcel and has a sufficient supply of water.

This condition was released on February 6, 2003, thereby enabling the Debtor to dispose of the Providence Parcel free and clear of any liens, claims or encumbrances.

10. The Debtor intends to enter into a purchase and sale agreement for the sale of the Providence Parcel to William E. Hogan for \$7,500. A copy of such agreement is annexed hereto as Exhibit "B".

RELIEF REQUESTED

11. By this Motion, the Debtor seeks entry of an order, pursuant to § 363 of the Bankruptcy Code, authorizing and approving the sale of the Buckland Parcel and the Providence Parcel to the respective buyers set forth above, free and clear of any liens, claims and encumbrances.

APPLICABLE AUTHORITY/ BASIS FOR RELIEF REQUESTED

12. Section 363(b) of the Bankruptcy Code provides that a debtor in possession "may use, sell, or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. § 363(b). Section 363(f) of the Bankruptcy Code provides that a debtor in possession may sell property under section 363(b) free and clear of any interest in such property of an entity other than the estate upon certain conditions. *See* 11 U.S.C. § 363(f).

13. It is well-settled in this Circuit that a debtor in possession may sell assets out of the ordinary course of business pursuant to § 363(b) of the Bankruptcy Code if there is a sound business justification for doing so. *See In re Lionel Corp.*, 722 F.2d 1063, 1070 (2nd Cir. 1983); *In re Naron & Wagner, Chartered*, 89 B.R. 85, 89 (Bankr. D. Md. 1988) (adopting standard set forth in *Lionel Corp.*); *See also McDow v. Official Committee of Equity Security Holders of Criimi Mae*,

Inc., 247 B.R. 146, 149 (D. Md. 1999) (“court may authorize the use of estate property other than in the ordinary course of business when some business justification for doing so exists”).

14. Neither the Buckland Parcel nor the Providence Parcel is necessary for the Debtor’s business or an integral component of the Debtor’s reorganization strategy. So long as the Debtor continues to own the parcels, the Debtor incurs obligations for property taxes, insurance and maintenance costs. In addition, as the landowner, the Debtor is subject to potential lawsuits for any future injuries or damages sustained on the parcels. By disposing of the parcels, the Debtor will eliminate these post-petition expenses as well as its exposure to claims for premises liability. Moreover, disposition of the parcels will provide additional cash to the estate for the funding of the Debtor’s continued operations. Accordingly, in the exercise of its sound business judgment, the Debtor believes that the sale of both the Buckland Parcel and the Providence Parcel at this time is in the best interests of the Debtor, its estate and its creditors.

15. The Debtor has conducted an investigation of the Buckland Parcel and the Providence Parcel and has evaluated its options regarding their sale. As a result thereof, the Debtor believes that the respective offers for the Buckland Parcel and the Providence Parcel set forth herein represent the best offers for the parcels.

16. The Debtor does not believe that there are any liens or other encumbrances against either the Buckland Parcel or the Providence Parcel.

17. Pursuant to Local Rule 9013-2, no memorandum of law accompanies this Motion.

WHEREFORE, the Debtor respectfully requests entry of an order (a) authorizing the Debtor to sell the Buckland Parcel and the Providence Parcel pursuant to the respective agreements set forth herein, and (b) granting the Debtor such other and further relief as this Court may deem just and proper.

BLANK ROME LLP

/s/ John Lucian

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Counsel for the Debtor and Debtor in Possession

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2003, a copy of the foregoing Motion to Sell Property Located in Buckland, Massachusetts and Providence, Rhode Island Free and Clear of Liens, Claims and Encumbrances was sent by electronic and/or facsimile transmission, and was mailed first class, postage prepaid to the parties identified on the Service List filed in this case, including counsel for the Official Committee of Unsecured Creditors and the Office of the United States Trustee. The Motion was also mailed first class, postage prepaid to the respective counterparties to the Buckland Parcel and Providence Parcel sale agreements. The undersigned further certifies in accordance with ¶ 5 of this Court's Administrative Order No. 02-03 that service was completed contemporaneously with the filing of the motion.

/s/ John Lucian