

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:) Chapter 11
)
Bruno's Supermarkets, LLC,) Case No. 09-00634-BCG11
)
Debtors.)

**OBJECTION OF ALABAMA POWER COMPANY TO DEBTOR'S MOTION
PURSUANT TO 11 U.S.C. §§ 105 AND 366 FOR ORDER (I) APPROVING
DEBTOR'S ADEQUATE ASSURANCE OF POST-PETITION PAYMENTS TO
UTILITY COMPANIES AND DEEMING UTILITY COMPANIES ADEQUATELY
ASSURED, (II) PROHIBITING THE UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONNECTING SERVICES, AND (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE**

Alabama Power Company ("APCO"), by and through its undersigned counsel, objects to the Debtor's Motion Pursuant to 11 U.S.C. §§ 105 and 366 For Order (i) Approving Debtor's Adequate Assurance of Post-Petition Payments to Utility Companies and Deeming Utility Companies Adequately Assured, (ii) Prohibiting the Utility Companies from Altering, Refusing, or Disconnecting Services, and (iii) Establishing Procedures for Resolving Requests for Additional Assurance (the "Utility Motion") (*Docket No. 2*). In support of its objection, APCO states as follows:

INTRODUCTION

1. The Utility Motion disregards the significant changes made to 11 U.S.C. § 366 by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Notwithstanding the manifest intent of Congress to protect the interests of utilities in chapter 11 bankruptcy cases, and the new procedures imposed by BAPCPA with respect to those protections, the Debtor has made only a token effort to comply with the new legislation.

Therefore, based upon the various reasons recited in this objection, the Utility Motion should be denied.

BACKGROUND

2. On February 5, 2009 (the "Petition Date"), Bruno's Supermarkets, LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

3. APCO provides electric service to the Debtors under 82 accounts at locations throughout the State of Alabama. Attached hereto as **Exhibit "A"** is a summary of the Debtor's electric service accounts with APCO.

4. On the Petition Date, the Debtor filed the Utility Motion in which the Debtor requested the entry of a final order providing, among other things: (i) that the creation of a segregated account with a minimum balance amount equal to fifty percent of the charges for the Debtor's average monthly utility usage (the "Escrow Account"), constitutes adequate assurance of payment for purposes of Section 366 of the Bankruptcy Code; (ii) that utilities be enjoined from altering, refusing or discontinuing service to, or discriminating against the Debtor in connection with unpaid utility charges attributable to service provided prior to the Petition Date; (iii) that utilities requesting additional assurance of payment must provide various items of historical information relating to prior utility service provided to the Debtor; and (iv) that unless and until the Court enters an order compelling the Debtor to provide additional adequate assurance of payment, APCO and other requesting utilities are deemed to be adequately assured of payment.

SECTION 366

5. Section 366 of the Bankruptcy Code (“Section 366”) was enacted originally to balance a debtor’s need for utility services from a provider that holds a monopoly on such services, with the need of the utility to ensure for itself and its rate payers that it receives payment for these essential services. See In re Hanratty, 907 F.2d 1418, 1424 (3d Cir. 1990).

6. Despite the apparent protections afforded to utilities under Section 366, *ex parte* orders and other judicial decisions interpreting the statute steadily eroded those safeguards in a manner that Congress apparently did not intend. Therefore, when enacting BAPCPA, substantial modifications were made to the text of Section 366 (as amended, “New Section 366”), which became effective in bankruptcy cases commenced on or after October 17, 2005. Congress has clearly expressed in the new legislation that utilities are entitled to be treated in bankruptcy cases in a manner that is consistent with a plain reading of the phrase “adequate assurance of payment”. New Section 366 (i) grants to utilities significant substantive rights concerning the security to which they are entitled and (ii) prescribes a new procedure that eliminates the need for first day motions, interim orders and other practices that were common prior to BAPCPA.

7. Subsections (a) and (b) of New Section 366 are substantively identical to their statutory predecessors. However, subsection (c) of New Section 366 is a new provision that unambiguously prohibits many of the practices that were common to cases filed prior to October 17, 2005 and which are proposed by the Debtors in this case. “As with most issues arising under BAPCPA, the threshold inquiry is to determine precisely what was said, and left unchanged, as Congress amended the Code.” In re Astle, 338 B.R. 855, 857 (Bankr. D. Idaho 2006). Subsection (c) of New Section 366 provides as follows:

(c)(1)(A) For purposes of this subsection, the term ‘assurance of payment’ means –

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed on between the utility and the debtors or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtors or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider –

- (i) the absence of security before the date of the filing of the petition;
- (ii) the payment by the debtors of charges for utility service in a timely manner before the date of the filing of the petition; or
- (iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtors before the date of the filing of the petition without notice or order of the court.

SIGNIFICANCE OF NEW SECTION 366

8. New Section 366 prohibits a debtor from claiming that utilities are adequately assured of payment of postpetition charges simply by conceding that such charges are entitled to an administrative expense priority. Pursuant to 11 U.S.C. § 366(c)(1)(A), only the tangible

forms of security listed in the statute qualify as assurance of payment, unless a utility otherwise agrees. The protections granted to utilities by New Section 366 recognize the inherent risk that utilities must bear since they are statutorily compelled to provide uninterrupted postpetition service to debtors for a minimum period, even though their invoices are payable only after the utility service has been irreversibly consumed by the debtors. No creditors in this bankruptcy case, other than utilities, are required to incur such risks.

9. New Section 366 effectively, if not purposefully, overrules the decision of the United States Court of Appeals for the Second Circuit in Virginia Elec. & Power Co. v. Caldor, Inc., 177 F.3d 646 (2d Cir. 1997). Caldor held that adequate assurance of payment under BAPCPA Section 366 could consist of non-tangible safeguards that were otherwise available to a utility under other provisions of the Bankruptcy Code or through the ordinary administration of a bankruptcy case. 177 F.3d at 652. The definition of “assurance of payment” in paragraph (c)(1) of New Section 366 does not include the forms of assurance endorsed in Caldor.

10. Paragraph (c)(2) of New Section 366 establishes a new procedure by which debtors are to provide assurance of payment to utilities. Prior to BAPCPA, debtors were required to “furnish” adequate assurance of payment within 20 days of the petition date to avoid a disruption in service.¹ However, paragraph (c)(2) of New Section 366 requires that one of the allowed forms of assurance of payment “that is satisfactory to the utility” be “received” by the utility within 30 days of the petition date to ensure continuous service. This purposeful revision

¹ Although the Utility Motion references an obligation of the Debtor to furnish adequate assurance of payment pursuant to Section 366(b), Section 366(c) is the controlling subsection for this chapter 11 case. See 3 Collier on Bankruptcy 366.03[2] (Alan N. Resnick & Henry Sommer eds., 15th ed rev. 2006) (“It is unclear how the 30-day period [in section 366(c)(2)] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period in that subsection, rather than the 20-day period in section 366(b), should apply.”)

of Section 366 requires debtors to timely deliver assurance of payment to a utility without imposing any burdens or other measures upon utilities, including first day motions, interim orders, *ex parte* hearings and other court proceedings.

11. Following delivery of a payment assurance to a utility, if the amount of the delivered assurance is deemed unreasonable by the debtor, 11 U.S.C. § 366(c)(3) authorizes a court, after a motion and hearing, to modify the amount of assurance required by and delivered to the utility. Paragraph (c)(3) of New Section 366 does not authorize a bankruptcy court to either (i) determine the “form” of adequate assurance that a utility may require or (ii) establish the “amount” of assurance that is adequate prior to the utility “receiv[ing] from the debtors or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.” See 11 U.S.C. § 366(c)(3). Court modification of the amount of an assurance of payment may occur only after the security described in New Section 366 is received by a utility. See In re Lucre, Inc., 333 B.R. 151, 154 (Bankr. W.D. Mich. 2005); 11 U.S.C. § 366(c)(3)(A).

12. Textually and in theory, New Section 366(c) requires a debtor to timely communicate with its utility service providers (and not by the filing of a first-day motion) in an effort to reach an agreement within the first 30 days of a case concerning the assurance of payment that will be required. During this 30 day period, three scenarios could occur: (1) the debtor and a utility will agree on the adequacy of payment assurance to be received by the utility to ensure uninterrupted service; (2) the debtor will deem the service provided by a utility to be unnecessary and will request that the service be terminated; or (3) the debtor will deliver to the utility the requested assurance of payment and then move the bankruptcy court to modify the amount. Regardless of the scenario, a bankruptcy court’s involvement under New Section 366,

if any, should commence only after the debtor has delivered the assurance of payment required by the utility.

**THE UTILITY MOTION DOES NOT MEET THE REQUIREMENTS OF
NEW SECTION 366**

13. Many of the provisions of the Utility Motion conflict with both the letter and the intent of New Section 366.

14. First, the burden is on the Debtor to timely deliver a payment assurance that is satisfactory to the utility. 11 U.S.C. § 366(c)(2) (*emphasis added*). Granting the Utility Motion would improperly shift the burden to the Debtor's utilities by making an advance determination that the proposed assurance was satisfactory. See In re Viking Offshore (USA) Inc., No. 08-31219-H3-16 2008 WL 782449 at *3 (Bankr. S.D. Tex. March 20, 2008). "Section 366(c)(2) imposes no requirement that a utility come to court before altering, refusing or discontinuing service, though clearly Congress knew how to condition an action upon first seeking a hearing. . . Likewise, nothing in section 366 suggests that the court may set a time limit within which a utility must contest a debtor's proposal of adequate assurance or that the court may prohibit a utility from thereafter demanding further or alternate assurance." In re Pilgrim's Pride Corporation, No. 08-45664 (DML), 2009 Bankr. Lexis 2 at *5-6 (Bankr. N.D. Tex. Jan. 4, 2009).

15. Further, the Escrow Account is not one of the approved payment assurance forms identified in 11 U.S.C. § 366(c)(1)(A)(i-v). Subsection (c)(1)(A) of New Section 366 is unambiguous and expressly identifies five forms of tangible security that define what is an "assurance of payment". The specified forms of payment assurance defined in 11 U.S.C. §

366(c)(1)(A) (i-v) are not simply identified by way of example. See In re Astle, 338 B.R. at 860 n.13.

16. Subsection (c)(2) of New Section 366 authorizes service refusal, modification or termination if within 30 days of the petition date the utility “does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.” (*emphasis added*). Here, APCO will not have received anything. APCO will not possess, have access to, or control over the Escrow Account and any attempts by APCO to draw against the Escrow Account are subject to the procedures contrived by the Debtor.² Such is the antithesis of receipt.

17. APCO does not consent to the Escrow Account as being a satisfactory form of payment assurance. As a result, New Section 366 does not authorize the Court or the Debtor to determine which of the approved assurances of payment APCO must accept. Subsection (c)(2) of New Section 366 requires a chapter 11 debtor to deliver to its servicing utilities payment assurances deemed satisfactory by the receiving utility. Upon delivery of a payment assurance, any party is authorized under 11 U.S.C. § 366(c)(3) to file a motion requesting the entry of an order modifying the amount of the delivered payment assurance. However, the textual authorization for court modification of an amount of a payment assurance does not extend to the form of that assurance of payment. See 11 U.S.C. § 366(c)(3). A precise reading of New

² Paragraphs 18 and 19 appear to suggest that a utility is prohibited from terminating service based on a postpetition payment default of the Debtor until the resolution of a Payment Request (as defined in the Utility Motion). Such a suggestion greatly exceeds the scope of Section 366 given that “even where a debtor provides adequate assurance of payment, it is ‘well established’ that the utility may still terminate service upon the debtor’s failure to pay for post-petition services.” In re Jones, 369 B.R. 745, 749 (1st Cir. B.A.P. 2007); citing Robinson v. Michigan Consol. Gas Co., 918 F.2d 579, 588 (6th Cir. 1990).

Section 366 reflects that a utility is the only party with discretion to determine which of the specified forms of payment assurance is satisfactory.

18. Although the use of the Escrow Account as a payment assurance is, in and of itself, contrary to New Section 366, in addition, the proposed funding amount of the Escrow Account is not “adequate”. The Debtor made no effort in the Utility Motion to justify its conclusion that funding the Escrow Account in the amount of the Debtor’s two week utility service charge average is adequate and have made no attempts to discuss with APCO, as contemplated by New Section 366, what amount of assurance APCO deems adequate. Instead, the Debtor merely avers that it intends to pay postpetition utility charges and that it maintains sufficient funding to enable it to make those payments. This is nothing more than a re-packaging of the pre-BAPCPA argument that an administrative expense priority is adequate assurance of payment. An administrative expense priority is not an assurance of payment, 11 U.S.C. § 366(c)(1)(B), and may not even be considered by the Court, 11 U.S.C. § 366(c)(3)(B)(iii), in determining whether an assurance of payment is adequate. The Debtor’s prediction that it can pay postpetition utility service is immaterial.

19. The amount to be maintained in the Escrow Account also wholly ignores the manner in which APCO invoices the Debtor for its electric service. APCO service meters are read on a monthly basis. On the date that a meter is read, APCO has already delivered approximately thirty days of electric service for which no payment has been received (*Day 30*). As a general rule, approximately two to three days after a meter is read, APCO issues an invoice (*Day 33*). Payment of the invoice is due upon receipt (*Day 35*), but is not delinquent until ten (10) days after receipt (*Day 45*). Once an invoice is delinquent, APCO is required by Rule 10 of the Alabama Public Service Commission to send a written notice of termination to the customer.

APCO cannot terminate service until the expiration of five (5) days after delivery of the termination notice to a United States Post Office (*at the earliest, Day 51*). Additional time invariably passes before service is actually terminated by APCO. Therefore, APCO customarily provides businesses such as the Debtor with more than fifty-one (51) days of utility service at a particular location before it can terminate electric service. This very substantial risk has resulted in formal recognition by the Alabama Public Service Commission in General Rule 8 that a deposit equal to two (2) months average electric service is reasonable and appropriate “for the purpose of guaranteeing final payment for service, when, in the judgment of the utility, such deposit is necessary.” Rule 8 General Rules of the Alabama Public Service Commission.

20. Under virtually any canon of statutory construction, it is inconceivable that a deposit based upon 15 days average service is “adequate assurance of payment” for 51 or more days of service. The Escrow Account should not be endorsed by this Court as being consistent with the requirements of New Section 366.

THE DEBTOR CONTRACTUALLY AGREED TO THE ADEQUATE ASSURANCE FOR APCO

21. APCO and the Debtor are parties to a Master Contract for Electric Service dated September 28, 2000, which is supplemented by multiple Premise Exhibits (collectively, the “APCO Contract”). By an amendment dated June 11, 2003 (the “Amendment”), the parties amended the APCO Contract to include a provision requiring the Debtor to file a motion to assume the APCO Contract and cure any unpaid prepetition electric service contract within 48 hours of the Debtor filing a bankruptcy petition. A copy of the APCO Contract amendment is attached hereto as **Exhibit “B”**. Pursuant to the Amendment, the Debtor’s assumption of the APCO Contract and payment of the cure amount would serve as a payment assurance that is

satisfactory to APCO. While the Utility motion is, in and of itself, contrary to New Section 366, the relief requested therein with respect to APCO is inconsistent with the Debtor's agreements in the Amendment.

RELIEF REQUESTED

22. Based upon the foregoing, APCO requests that the Court enter an order:

(i) denying the Utility Motion;

(ii) (a) requiring the Debtor to deliver to APCO a cash deposit in the amount of \$1,928,000.00, which amount is equal to the average charges for approximately two months of electric service based on the Debtor's account history for the twelve months preceding the Petition Date; or (b) requiring the Debtor to timely file a motion to assume the APCO Contract and satisfy any cure obligations related thereto; and

(iii) granting to APCO such other, further and additional relief as the Court deems proper.

Dated: February 5, 2009

/s/ Eric T. Ray

Eric T. Ray
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
Telephone: (205) 251-8100
Facsimile: (205) 226-8799

Attorney for Alabama Power Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been filed and delivered via filing on the Court's CM/ECF system and upon the following by U.S. mail, properly addressed and postage prepaid, on the 5th day of February, 2009:

Robert B. Rubin, Esq.
Derek F. Meek, Esq.
Marc P. Solomon, Esq.
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203

Jayna Partain Lamar, Esq.
MAYNARD COOPER & GALE, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, AL 35203

Office of the Bankruptcy Administrator
Robert S. Vance Federal Building
1800 5th Avenue North
Birmingham, AL 35203

/s/ Eric T. Ray

Of Counsel

Exhibit “A”

Account Number	Account Name	Address	New Deposit
00792-69015	Bruno's Inc	3780 Riverchase Vlg *Unit 400 Birmingham, AL 35244	\$46,891.24
03171-79025	Bruno's Inc	4750 Eastern Valley Rd McCalla, AL 35111	\$34,131.80
03544-25013	Bruno's Inc	4200 McFarland Blvd E *Unit Sign2 Tuscaloosa, AL 35405	\$153.50
03695-19031	Bruno's Inc	2007 280 BYP Phenix City, AL 36867	\$1,775.44
05738-78010	Bruno's Inc	1530 E Glenn Ave Auburn, AL 36830	\$41,593.32
06422-99018	Bruno's Inc	1615 Quintard Ave Anniston, AL 36201	\$5,309.92
08472-62015	Bruno's Inc	1175 Huffman Rd Birmingham, AL 35215	\$1,426.34
08490-26008	Bruno's Inc	1533 Montclair Rd, Front-Sign Birmingham, AL 35210	\$85.90
08732-70010	Bruno's Inc	510 Inverness Cors Birmingham, AL 35242	\$42,742.74
11423-94019	Bruno's Inc	5510 McFarland Blvd Northport, AL 35476	\$46,068.90
11439-11041	Bruno's Inc	1005 Crossroad Plaza Dr Moody, AL 35004	\$33,903.24
12503-09017	Bruno's Inc	2519 W Meighan Blvd Gadsden, AL 35904	\$36,249.42
12922-60015	Bruno's Inc	2310 Center Point Rd Birmingham, AL 35215	\$3,559.08
13123-10018	Bruno's Inc	613 Martin St N Pell City, AL 35125	\$47,370.28
15793-59006	Bruno's Inc	828 Quintard Dr, Sign Oxford, AL 36203	\$86.44
16012-62025	Bruno's Inc	9096 Parkway E Birmingham, AL 35206	\$26,004.00
16264-81017	Bruno's Inc	308 University Blvd S Mobile, AL 36609	\$51,067.78
16703-09011	Bruno's Inc	2519 W Meighan Blvd, Sign Gadsden, AL 35904	\$413.50
17396-59012	Bruno's Inc	2250 Highway 150 Bessemer, AL 35023	\$42,456.00
17515-81040	Bruno's Inc	1113 College Ave Jackson, AL 36545	\$3,811.00
24404-30019	Bruno's Inc	521 US Highway 80 E Demopolis, AL 36732	\$40,635.86
24484-77023	Bruno's Inc	3170 Dauphin St Mobile, AL 36606	\$30,989.26
24572-77013	Bruno's Inc	1309 Decatur Hwy Gardendale, AL 35071	\$2,406.02
25202-77018	Bruno's Inc	1309 Decatur Hwy Gardendale, AL 35071	\$42,686.80
25504-82027	Bruno's Inc	308 University Blvd S, Sign Mobile, AL 36609	\$283.04
25714-82027	Bruno's Inc	308 University Blvd S, Sign 1 Mobile, AL 36609	\$341.52
28452-60015	Bruno's Inc	1687 Center Point Pky Birmingham, AL 35215	\$1,963.82
28872-60015	Bruno's Inc	1675 Center Point Pky Birmingham, AL 35215	\$47,037.92
30602-80027	Bruno's Inc	3313 Lorna Rd Birmingham, AL 35216	\$14,695.60
30983-95015	Bruno's Inc	641 Bear Creek Rd Tuscaloosa, AL 35405	\$37,703.22
31110-34026	Bruno's Inc	4750 Eastern Valley Rd, Sign McCalla, AL 35111	\$57.50
33052-19017	Bruno's Inc	2804 Crestwood Blvd Birmingham, AL 35210	\$5,087.58
33472-19017	Bruno's Inc	2804 Crestwood Blvd, HSE Birmingham, AL 35210	\$2,163.50
33953-02014	Bruno's Inc	1510 S Quintard Ave Anniston, AL 36201	\$402.72
34793-64016	Bruno's Inc	6200 Atlanta Hwy Montgomery, AL 36117	\$3,689.70

35122-65014	Bruno's Inc	122 Parkway Dr Leeds, AL 35094	\$4,254.96
36474-29019	Bruno's Inc	4440 University Blvd E Tuscaloosa, AL 35404	37,584.66
37217-30019	Bruno's Inc	1533 Montclair Rd, Sign* Rear Birmingham, AL 35210	\$126.40
39183-13017	Bruno's Inc	3125 Rainbow Dr Rainbow City, AL 35906	\$311.54
39538-22004	Bruno's Inc	3543 AL Highway 14 Millbrook, AL 36054	\$33,213.94
41482-77010	Bruno's Inc	335 Summit Blvd Birmingham, AL 35243	\$57,515.38
41671-25004	Bruno's Inc	9096 Parkway E Birmingham, AL 35206	\$17,602.82
42662-59012	Bruno's Inc	2891 Allison Bonnett MMRL Dr Bessemer, AL 35203	\$42,081.52
42842-68019	Bruno's Inc	309 Main St Trussville, AL 35173	\$36,000.02
43114-80014	Bruno's Inc	4055 Cottage Hill Rd *Unit B Mobile, AL 36609	\$30,731.62
43222-35016	Bruno's Inc	1940 Veterans Memorial Dr Birmingham, AL 35214	\$38,306.00
43302-69017	Bruno's Inc	3060 Pelham Plz Pelham, AL 35124	\$35,889.82
43489-88012	Bruno's Inc	1005 Crossroad Plaza Dr *HSE Moody, AL 35004	\$282.38
44402-19012	Bruno's Inc	1533 Montclair Rd Birmingham, AL 35210	\$39,693.20
44853-13017	Bruno's Inc	3225 Rainbow Dr *Unit 200 Rainbow City, AL 35906	\$42,136.16
45522-25013	Bruno's Inc	216 Green Springs Hwy Birmingham, AL 35209	\$39,495.52
45564-70032	Bruno's Inc	112 Saraland Loop Saraland, AL 36571	\$34,932.58
46389-27003	Bruno's Inc	2501 Government Blvd, Dock Mobile, AL 36606	\$666.64
47803-87013	Bruno's Inc	4896 US Highway 231 Wetumpka, AL 36092	\$30,905.18
49254-36017	Bruno's Inc	0 Midway Plz Dora, AL 35062	\$27,140.34
49593-13014	Bruno's Inc	1572 S Quintard Ave Anniston, AL 36201	\$413.52
49803-13017	Bruno's Inc	1500 S Quintard Ave Anniston, AL 36201	\$141.00
50094-36010	Bruno's Inc	2221 Highway 78 Dora, AL 35062	\$154.04
60113-01014	Bruno's Inc	828 Quintard Dr Oxford, AL 36203	\$29,078.20
64283-02010	Bruno's Inc	509 Southbrooke Vlg Alabaster, AL 35007	\$36,170.96
65284-86013	Bruno's Inc	1530 E Glenn Ave *HSE Auburn, AL 36830	\$196.18
66493-11013	Bruno's Inc	280 3rd St N Gadsden, AL 35901	\$7,060.02
68003-14010	Bruno's Inc	3100 E Meighan Blvd Gadsden, AL 35903	\$32,666.56
68512-06003	Bruno's Inc	885 Dennison Ave SW Birmingham, AL 35211	\$5,798.36
68644-76019	Bruno's Inc	2501 Government Blvd Mobile, AL 36606	\$33,912.76
69064-76011	Bruno's Inc	2501 Government Blvd Mobile, AL 36606	\$633.44
70563-14014	Bruno's Inc	803 Battle St E Talladega, AL 35160	\$4,256.20
71573-55011	Bruno's Inc	1635 Perry Hill Rd Montgomery, AL 36106	\$38,143.96
71603-83010	Bruno's Inc	2020 E South Blvd Montgomery, AL 36116	\$43,234.76
72855-15029	Bruno's Inc	7361 Theodore Dawes Rd Theodore, AL 36582	\$37,325.38
73012-34012	Bruno's Inc	126 Wildwood Pky Birmingham, AL 35209	\$49,783.06
74885-08020	Bruno's Inc	4350 Old Shell Rd Mobile, AL 36608	\$42,009.80

75264-83024	Bruno's Inc	2370 Hillcrest Rd Mobile, AL 36695	\$41,014.90
76124-26013	Bruno's Inc	714 Highway 78 E Jasper, AL 35501	\$49,724.42
76323-88014	Bruno's Inc	1860 E Main St Prattville, AL 36066	\$40,464.90
78974-75023	Bruno's Inc	2962 Dauphin Island Pky Mobile, AL 36605	\$30,314.20
82494-65010	Bruno's Inc	1450 Highway 21 BYP, Food World Monroeville, AL 36460	\$33,518.82
88382-75011	Bruno's Inc	1561 Montgomery Hwy Birmingham, AL 35216	\$43,892.04
92143-56018	Bruno's Inc	2747 Bell Rd Montgomery, AL 36117	\$40,042.14
97025-09027	Bruno's Inc	7820 Moffet Rd Mobile, AL 36618	\$1,357.62
99514-25012	Bruno's Inc	4200 McFarland Blvd E Tuscaloosa, AL 35405	\$32,535.16
99524-33018	Bruno's Inc	2001 McFarland Blvd E Tuscaloosa, AL 35405	\$47,593.38
Totals			\$1,927,965.70

Exhibit “B”

AMENDMENT
TO THE
MASTER CONTRACT FOR ELECTRIC SERVICE

THIS AMENDMENT is made as of the 11th day of June, 2003, to the Master Contract for Electric Service dated as of the 28th day of September, 2000 (hereinafter called the "Master Contract"), by and between Alabama Power Company (hereinafter called "Company") and Bruno's Supermarkets, Inc. (hereinafter called "Customer").

NOW THEREFORE, the Company and Customer agree to the addition of the following provisions to the Master Contract:

12. In the event that Customer files bankruptcy, Customer will assume the Master Contract and the Premise Exhibits thereto, and as part of the assumption will cure any outstanding indebtedness due under the Master Contract and Premise Exhibits, that arose prior to the filing of the bankruptcy petition, upon the Bankruptcy Court's approval of the assumption. Customer shall also continue to pay the invoices for electrical service in the ordinary course of business as they come due under the Master Contract. In return, upon the Bankruptcy Court's approval of the assumption and the Customer's cure of any outstanding indebtedness due under the Master Contract and Premise Exhibits that arose prior to the filing of the bankruptcy petition, Company shall waive both the pending cash security deposit in the amount of \$2,400,000.00 demanded in a March 24, 2003 letter addressed to Mr. Steve Taylor and Ms. Bernadine Pate of Bruno's Supermarkets, Inc., and also its right to request an additional deposit from Customer in the amount of \$2,400,000.00 as adequate assurance of future payment under Section 366 of the Bankruptcy Code. The parties further agree that Customer shall seek approval of the assumption of the Master Contract by submitting a motion for an order approving the assumption of the Master Contract to the Bankruptcy Court, along with the other first day motions, to be filed within forty-eight hours after the date the bankruptcy petition is filed, with the order approving the assumption to be entered by the Bankruptcy Court within twenty days after the date the bankruptcy petition is filed.

13. Except as modified above, all other provisions of the Master Contract dated the 28th day of September, 2000, and the Premises Exhibits thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective authorized officers as of the date first shown above.

Bruno's Supermarkets, Inc.

By: Cathy M. Antle

Its: SR VP Finance

Alabama Power Company

By: [Signature]

Its: VICE PRESIDENT