

The Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Seattle, WA  
Hearing Date: April 7, 2016  
Hearing Time: 9:30 am  
Response Due: At time of hearing

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

NORTHWEST TERRITORIAL MINT, LLC

Debtor.

No. 16-11767-CMA

EMERGENCY MOTION FOR ORDER  
APPROVING PROPOSED ADEQUATE  
ASSURANCE PURSUANT TO 11 U.S.C. §  
366

Northwest Territorial Mint, LLC, the debtor-in-possession in this Chapter 11 case (“NWTM and/or Debtor”), by and through Counsel, J. Todd Tracy, Steven J. Reilly, and The Tracy Law Group PLLC (“TTLG”), moves this Court for an order approving its proposed method of furnishing adequate assurance of payment of post-petition utility service pursuant to 11 U.S.C. § 366 (the “Motion”). This Motion is based upon the files and records herein and upon the accompanying declaration of Ross B. Hansen.

**I. BACKGROUND**

1. Debtor is one of the nation’s largest private full service mints, as well as a precious metals dealer and a minted products retailer. NWTM has online sales via its website

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**THE TRACY LAW GROUP<sup>PLLC</sup>**  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 as well as sales via physical retail stores, and has operations in Washington, Nevada, Texas,  
2  
3 Wisconsin, Hawaii, and Virginia.  
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5 2. The Debtor commenced this case on April 1, 2016 (the “Petition Date”), has  
6 retained control over its assets, and continues to operate its business pursuant to §§ 1107  
7 and 1108 of the Bankruptcy Code.  
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10 3. No trustee or examiner has been appointed in Debtor’s Chapter 11 case,  
11 and no committees have been appointed or designated.  
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14 4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157  
15 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core  
16 proceeding pursuant to 28 U.S.C. § 157 (b) (2).  
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19 5. The statutory predicate for the relief requested herein is 11 U.S.C. §366.  
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22 6. Debtor’s utility providers provide traditional utility service to the Debtor’s  
23 various operational and retail facilities, including electricity, water, waste removal,  
24 sewer, telephone, and internet services (“Utility Providers”). The termination of any of  
25 these services would be extremely detrimental to the Debtor’s ability to operate.  
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## 28 **II. PROPOSED ADEQUATE ASSURANCE PROVISIONS**

29 7. Debtor intends to pay all post-petition obligations owed to the Utility  
30 Providers in a timely manner.  
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33 8. Debtor proposes to provide a deposit equal to two weeks of utility service,  
34 calculated as a historical average for all utility vendors (an “Adequate Assurance  
35 Deposit”). As a condition of accepting an Adequate Assurance Deposit, the Utility  
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43 720 Olive Way, Suite 1000  
44 Seattle, WA 98101  
45 206-624-9894 phone / 206-624-8598 fax  
46 [www.thetracylawgroup.com](http://www.thetracylawgroup.com)  
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1 Providers shall be deemed to have stipulated that the Adequate Assurance Deposit  
2  
3 constitutes adequate assurance of future payment to such Utility Provider within the  
4  
5 meaning of 11 U.S.C. §366 and shall further be deemed to have waived any right to seek  
6  
7 additional adequate assurance during the course of this Chapter 11 case.  
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9

10 9. Debtor submits that the Adequate Assurance Deposits, together with the  
11  
12 payment of post-petition utility services in the ordinary course of business, constitute  
13  
14 sufficient adequate assurance to the Utility Providers.  
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17 10. Debtor seeks entry of an order that prohibits the Utility Providers from  
18  
19 discontinuing, altering, or refusing service on account of any unpaid pre-petition charges  
20  
21 or additional Adequate Assurance Deposit, other than as set forth in this motion.  
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24 11. Should a Utility Provider seek additional adequate assurance of payment,  
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26 the Debtor proposes that the Utility Provider must object to this motion and submit, in  
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28 writing, the location and description of utility services being provided, a summary of the  
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30 Debtor's payment history, a statement of existing security deposits, and the basis by  
31  
32 which the Utility Provider contends that the Adequate Assurance Deposit is not sufficient  
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34 adequate assurance of future payment.  
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37 12. Debtor has made a good faith effort to identify its Utility Providers and  
38  
39 calculate the historic average of the utility costs, as set forth in the table below.  
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41 However, it is possible that certain Utility Providers have not yet been identified by the  
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43 Debtor. To the extent that the Debtor identifies additional Utility Providers, the Debtor  
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45 will file amendments to the Utility Providers list and shall serve copies of this Motion  
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**THE TRACY LAW GROUP** P.L.L.C.  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

1 and the order (when and if entered) on such newly-identified Utility Providers. The  
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3 Debtor requests that the Order be binding on all Utility Providers, regardless of when  
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5 such Utility Providers were added to the Utility Provider list.  
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7

8 **Auburn, WA Facility**  
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| 10 <b>PROVIDER</b>                         | 11 <b>AVERAGE MONTHLY COST</b> | 12 <b>PROPOSED DEPOSIT</b> |
|--------------------------------------------|--------------------------------|----------------------------|
| 13 PSE                                     | 1,308.49                       | 654.25                     |
| 14 City of Auburn                          | 358.72                         | 129.36                     |
| 15 Stanley<br>16 Convergent<br>17 Security | 156.30                         | 78.15                      |
| 18 <b>TOTAL</b>                            | <b>1,823.51</b>                | <b>911.75</b>              |

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20 **Federal Way, WA Facility**  
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| 22 <b>PROVIDER</b>                         | 23 <b>AVERAGE MONTHLY COST</b> | 24 <b>PROPOSED DEPOSIT</b> |
|--------------------------------------------|--------------------------------|----------------------------|
| 25 Century Link                            | 5.95                           | 2.98                       |
| 26 Threshold<br>27 Communications          | 10,342.00                      | 5,171.00                   |
| 28 Stanley<br>29 Convergent<br>30 Security | 97.48                          | 48.74                      |
| 31 <b>TOTAL</b>                            | <b>10,445.43</b>               | <b>5,222.72</b>            |

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**THE TRACY LAW GROUP<sup>PLLC</sup>**  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

**Dayton, NV Facility**

| <b>PROVIDER</b>            | <b>AVERAGE MONTHLY COST</b> | <b>PROPOSED DEPOSIT</b> |
|----------------------------|-----------------------------|-------------------------|
| Southwest Gas Corporation  | 282.94                      | 141.47                  |
| 4407-NV Energy Electric    | 8,170.41                    | 4,085.21                |
| 7734-NV Energy Electric    | 5,505.70                    | 2,752.85                |
| Lyon County Utilities      | 230.00                      | 115.00                  |
| Lyon County Utilities      | 520.34                      | 260.17                  |
| Green House Data           | 5,665.26                    | 2,832.63                |
| AT&T Mobility              | 2,872.48                    | 1,436.24                |
| Century Link               | 174.51                      | 77.26                   |
| Century Link               | 3,046.47                    | 1,523.24                |
| Century Link               | 52.48                       | 26.24                   |
| Century Link               | 33.29                       | 16.65                   |
| Telepacific Communications | 2,053.55                    | 1,026.78                |
| Frontier Communications    | 6.67                        | 3.34                    |
| Skyfiber Internet          | 59.50                       | 29.75                   |
| <b>TOTAL</b>               | <b>28,673.60</b>            | <b>14,336.80</b>        |

**Honolulu, HI Facility**

| <b>PROVIDER</b>           | <b>AVERAGE MONTHLY COST</b> | <b>PROPOSED DEPOSIT</b> |
|---------------------------|-----------------------------|-------------------------|
| Hawaiian Electric Company | 226.49                      | 113.25                  |
| Oceanic Time Warner Cable | 103.51                      | 51.76                   |
| Hawaiian Telcom           | 160.00                      | 80.00                   |
| <b>TOTAL</b>              | <b>490.00</b>               | <b>245.01</b>           |

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 720 Olive Way, Suite 1000  
 Seattle, WA 98101  
 206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

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**Tomball, TX Facility**

| <b>PROVIDER</b>             | <b>AVERAGE MONTHLY COST</b> | <b>PROPOSED DEPOSIT</b> |
|-----------------------------|-----------------------------|-------------------------|
| City of Tomball             | 1,575.70                    | 787.85                  |
| Hudson Energy Services, LLC | 3,511.27                    | 1,755.64                |
| AT&T                        | 698.38                      | 349.19                  |
| Protection One              | 202.87                      | 101.44                  |
| <b>TOTAL</b>                | <b>5,988.22</b>             | <b>2,994.12</b>         |

**Alexandria, VA Facility**

| <b>PROVIDER</b>         | <b>AVERAGE MONTHLY COST</b> | <b>PROPOSED DEPOSIT</b> |
|-------------------------|-----------------------------|-------------------------|
| Dominion Virginia Power | 889.36                      | 444.68                  |
| Cox Communications      | 540.00                      | 270.00                  |
| Sprint                  | 65.38                       | 32.69                   |
| Verizon                 | 236.94                      | 118.47                  |
| <b>TOTAL</b>            | <b>1,731.68</b>             | <b>865.84</b>           |

**Green Bay, WI Facility**

| <b>PROVIDER</b>          | <b>AVERAGE MONTHLY COST</b> | <b>PROPOSED DEPOSIT</b> |
|--------------------------|-----------------------------|-------------------------|
| Wisconsin Public Service | 635.93                      | 317.97                  |
| Wisconsin Public Service | 217.88                      | 108.94                  |
| AT&T                     | 299.59                      | 149.80                  |
| Lemens Watercare, Inc.   | 19.50                       | 9.75                    |
| <b>TOTAL</b>             | <b>1,172.90</b>             | <b>586.46</b>           |

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**THE TRACY LAW GROUP<sup>PLLC</sup>**  
720 Olive Way, Suite 1000  
Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)

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### III. ARGUMENT

Section 366 of the Bankruptcy Code pertains to the rights and obligations of debtors seeking to retain utility service after the filing of a bankruptcy petition and provides that:

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

...

(c)  
(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 debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

11 U.S.C. § 366.

The purpose of § 366 is “to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid.” Begley v. Philadelphia Elec. Co. (In re Begley), 760 F.2d 46, 49 (3d Cir. 1985). Congress sought to strike a balance, in enacting § 366, between the general right of a creditor to refuse to do business with a debtor post-petition, and the debtor's need for utility service. In re Best Prods. Co., 203 B.R. 51, 53 (Bankr. E.D. Va. 1996). The section in essence recognizes the monopoly powers of most utilities and requires that they provide initial service to a debtor after a bankruptcy case has been commenced.

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206-624-9894 phone / 206-624-8598 fax  
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1 Subsection 366(c) was added as part of BAPCPA, and authorizes the Court to set  
2  
3 the amount of the assurance of payment deposit. In re Astle, 338 B.R. 855, 859 (Bankr.  
4  
5 D. Idaho 2006). Here, the Debtor will provide a deposit equal to two weeks average  
6  
7 payment for each Utility Provider, which is sufficient adequate assurance of payment  
8  
9 under the circumstances.  
10

11  
12 WHEREFORE, Debtor respectfully requests that the Court enter an Order (1)  
13  
14 determining that his Utility Providers have been provided with adequate assurance of  
15  
16 payment within the meaning of 11 U.S.C. § 366, (2) prohibiting the Utility Providers  
17  
18 from altering, refusing, or discontinuing services on account of pre-petition amounts  
19  
20 outstanding, and (3) determining that the Debtor is not required to provide any further  
21  
22 adequate protection assurances, beyond what is provided by this Motion.  
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25  
26 DATED this 5<sup>th</sup> day of April, 2016.  
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28  
29 Respectfully submitted:

30  
31 THE TRACY LAW GROUP PLLC  
32  
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34  
35 By /s/ Steven J. Reilly  
36 J. Todd Tracy, WSBA #17342  
37 Steven J. Reilly, WSBA #44306  
38 Attorneys for Debtor  
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**THE TRACY LAW GROUP**<sup>PLLC</sup>  
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Seattle, WA 98101  
206-624-9894 phone / 206-624-8598 fax  
[www.thetracylawgroup.com](http://www.thetracylawgroup.com)