

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

AVENTINE RENEWABLE ENERGY  
HOLDINGS, INC., a Delaware Corporation, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

Case No. 09-11214 (KG)

(Jointly Administered)

Hearing Date: May 20, 2010 at 3:00 p.m. (ET)

Obj. Deadline: May 13, 2010 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(a),  
AND 366 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO  
(A) CLOSE THE ADEQUATE ASSURANCE ACCOUNT ESTABLISHED BY THE  
UTILITIES ORDER AND (B) TRANSFER ALL FUNDS IN THE ADEQUATE  
ASSURANCE ACCOUNT AS THE DEBTORS DEEM APPROPRIATE**

The above-captioned reorganized debtors (collectively, the "Debtors")<sup>2</sup> hereby move this Court (the "Motion") for entry of an order pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing the Debtors to (a) close the Adequate Assurance Account (as defined below) established by the *Final Order (i) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (ii) Deeming Utilities Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Requests for Additional Adequate Assurance* (the "Utilities Order") [Docket No. 126] and (b) transfer all funds in the Adequate Assurance Account as the Debtors deem appropriate. In support of this Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, LLC (0195), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy – Aurora West, LLC (9285), Aventine Renewable Energy – Mt Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

<sup>2</sup> As used herein, the term Debtors shall refer to the pre-Effective Date Debtors for periods prior to the Effective Date and the Reorganized Debtors for periods after the Effective Date.

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein are Bankruptcy Code sections 105(a) and 366.

### **Background**

2. On April 7, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors' cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b).

4. On April 23, 2009, the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors (the "Committee"). No request has been made for the appointment of a trustee or examiner.

5. On January 13, 2010, the Debtors filed their *First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code Dated as of January 13, 2010* [Docket No. 678] (as amended and modified, the "Plan") and related disclosure Statement (as amended and modified, the "Disclosure Statement"). Also on January 13, 2010, the Court entered an order [Docket No. 684] (the "Disclosure Statement Order") approving the adequacy of the Disclosure Statement and authorizing the Debtors' proposed procedures with respect to (i) the solicitation of votes to accept or reject the Plan (the "Solicitation Procedures"), (ii) filing objections to the confirmation of the Plan, and (iii) the noticing by the Debtors of cure amounts for executory contracts and unexpired leases to be potentially assumed pursuant to the Plan and the manner of submitting objections in connection therewith (the "Cure Procedures").

Thereafter, the Debtors commenced the solicitation of the Plan pursuant to the Solicitation

Procedures and noticed their potential assumption of executory contracts and unexpired leases pursuant to the Cure Procedures.

6. On February 24, 2010, the Court held a hearing to consider confirmation of the Plan. Having found that the Plan satisfied the requirements of section 1129 of the Bankruptcy Code, the Court entered an order confirming the Plan [Docket No. 814] (the “Confirmation Order”). The Effective Date of the Plan occurred on March 15, 2010.

#### **The Adequate Assurance Deposit Account**

7. On April 8, 2009, the Debtors filed the *Debtors’ Motion for Entry of an Order (i) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (ii) Deeming Utilities Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Request for Additional Adequate Assurance* (the “Utilities Motion”) [Docket No. 8], which was approved on a final basis by the Utilities Order. Pursuant to the Utilities Order and as adequate assurance under section 366 of the Bankruptcy Code, the Court authorized the Debtors to maintain a sum equal to approximately fifty percent (50%) of the Debtors’ estimated monthly cost of utility service (the “Adequate Assurance Deposit”), in a newly created segregated account (the “Adequate Assurance Account”), for the benefit of the Debtors’ utility service providers (the “Utilities”). *See* Utilities Order, at p. 2. As of the date hereof, the Adequate Assurance Account has a balance of \$496,000.00.

#### **Relief Requested**

8. By this Motion, the Debtors seek entry of an order, substantially in the form of Exhibit A attached hereto, authorizing the Debtors to close the Adequate Assurance Account and transfer all funds in the Adequate Assurance Account as the Debtors deem appropriate.

### Basis for the Relief Requested

9. Bankruptcy Code section 366 is designed to protect debtors from utility service cutoffs, while also providing utility companies with adequate assurance that debtors will be able to pay for postpetition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6306.

10. In addition, Bankruptcy Code section 105(a) provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01, at 105-6 (15th ed. rev. 2004).

11. The Court’s entry of the Utilities Order established procedures that provided an orderly process for providing adequate assurance of payment to the Utilities during the pendency of these chapter 11 cases. However, such adequate assurance of payment is no longer necessary under the circumstances.

12. As previously stated, the Court confirmed the Plan on February 24, 2010, and the Effective Date occurred on March 15, 2010. Upon the occurrence of the Effective Date, all claims against, and interests in the Debtors will be completely satisfied, discharged, and released, in accordance with the Plan. Therefore, there is no further need to maintain the Adequate Assurance Account. Moreover, the Utilities have been paid for all services provided during the pendency of these chapter 11 cases, or will be duly paid in the ordinary course of business. Accordingly, the Debtors should be authorized to close the Adequate Assurance Account and transfer all remaining funds as the Debtors deem appropriate.

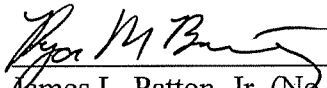
Notice

13. Notice of this Motion has been provided to (a) the United States Trustee for the District of Delaware; (b) the Utilities; (c) any bank where the Adequate Assurance Account is maintained; and (d) parties in interest who have requested notice pursuant to Bankruptcy Rule 2002 prior to the date hereof. In light of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form attached hereto as Exhibit A, granting the relief requested herein and granting the Debtors such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
April 21, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

  
\_\_\_\_\_  
James L. Patton, Jr. (No. 2202)  
Joel A. Waite (No. 2925)  
Matthew B. Lunn (No. 4119)  
Ryan M. Bartley (No. 4985)  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

*Counsel to the Reorganized Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

AVENTINE RENEWABLE ENERGY  
HOLDINGS, INC., a Delaware Corporation, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

Case No. 09-11214 (KG)

(Jointly Administered)

Hearing Date: May 20, 2010 at 3:00 p.m. (ET)

Obj. Deadline: May 13, 2010 at 4:00 p.m. (ET)

**NOTICE OF MOTION**

TO: (A) THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (B) THE UTILITIES; (C) ANY BANK WHERE THE ADEQUATE ASSURANCE ACCOUNT IS MAINTAINED; AND (D) PARTIES IN INTEREST WHO HAVE REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002 (B)

PLEASE TAKE NOTICE that the reorganized debtors in the above-captioned cases (the “Debtors”) have filed the **Debtors’ Motion for Entry of an Order Pursuant to Sections 105(a), and 366 of the Bankruptcy Code Authorizing the Debtors to (A) Close the Adequate Assurance Account Established by the Utilities Order and (B) Transfer All Funds in the Adequate Assurance Account as the Debtors Deem Appropriate** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that responses to the Motion, if any, are required to be filed on or before **May 13, 2010 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must also serve a copy of the response upon the Debtors’ undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **MAY 20, 2010 AT 3:00 P.M. (ET)**, BEFORE THE HONORABLE KEVIN GROSS, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6<sup>TH</sup> FLOOR, COURTROOM NO. 3 WILMINGTON, DELAWARE 19801.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, LLC (0195), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy – Aurora West, LLC (9285), Aventine Renewable Energy – Mt Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware  
April 21, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ryan M. Bartley

James L. Patton, Jr. (No. 2202)

Joel A. Waite (No. 2925)

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*Counsel to the Reorganized Debtors*

**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

AVENTINE RENEWABLE ENERGY  
HOLDINGS, INC., a Delaware Corporation, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

Case No. 09-11214 (KG)

(Jointly Administered)

Docket Ref. No. \_\_\_\_\_

**ORDER PURSUANT TO SECTIONS 105(a), AND 366 OF THE BANKRUPTCY CODE  
AUTHORIZING THE DEBTORS TO (A) CLOSE THE ADEQUATE  
ASSURANCE ACCOUNT ESTABLISHED BY THE UTILITIES ORDER  
AND (B) TRANSFER ALL FUNDS IN THE ADEQUATE ASSURANCE  
ACCOUNT AS THE DEBTORS DEEM APPROPRIATE**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned Debtors for entry of an order pursuant to sections 105(a) and 366 of the Bankruptcy Code (i) authorizing the Debtors to (a) close the Adequate Assurance Account established by the Utilities Order [Docket No. 126] and (b) transfer all funds in the Adequate Assurance Account as the Debtors deem appropriate; and due and proper notice of the Motion having been given; and it appearing that no other or further notice is required; and upon consideration of the Motion and all pleadings related thereto; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Aventine Renewable Energy Holdings, Inc. (9368), Aventine Renewable Energy, LLC (0195), Aventine Renewable Energy, Inc. (8352), Aventine Renewable Energy – Aurora West, LLC (9285), Aventine Renewable Energy – Mt Vernon, LLC (8144), Aventine Power, LLC (9343), and Nebraska Energy, L.L.C. (1872). The corporate headquarters address for all of the Debtors is 120 North Parkway Drive, Pekin, Illinois 61554.

<sup>2</sup> All capitalized terms used but otherwise not defined herein shall have the meanings ascribed to such terms in the Motion.

the Motion is in the best interests of the Debtors, their estates, and creditors; and after due deliberation thereon, and good and sufficient cause appearing therefor; it is hereby

ORDERED that:

1. The Motion is GRANTED.
2. The Debtors are authorized to close the Adequate Assurance Account and transfer all funds in the Adequate Assurance Account as the Debtors deem appropriate.
3. Any bank with which the Adequate Assurance Account is maintained shall take any and all steps necessary to terminate the Adequate Assurance Deposit Account and comply with paragraph 2 above.
4. The Debtors are authorized to take all action necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. Except as expressly provided herein, the Utilities Order shall remain in full force and effect.
6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2010

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Kevin Gross  
United States Bankruptcy Judge