

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
)
Dynamic Aerostructures LLC,) Case No. 25-10292 (LSS)
et al.,)
) (Jointly Administered)
Debtors.)
) Re: Docket Nos. 6, 53
)
) Obj. Deadline: 3/18/25 at 4:00 p.m.
) Hearing Date: 3/25/25 at 11:00 a.m.
)

**OBJECTION OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE
DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) (A)
APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE UTILITY SERVICES, (B) APPROVING THE DEBTORS' PROPOSED
PROCEDURES FOR RESOLVING ADDITIONAL ASSURANCE REQUESTS, AND (C)
PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICES; AND (II) GRANTING RELATED RELIEF**

Southern California Edison Company ("SCE") hereby objects to
the *Debtors' Motion For Entry of Interim and Final Orders (I) (A)
Approving the Debtors' Proposed Adequate Assurance of Payment For
Future Utility Services, (B) Approving the Debtors' Proposed
Procedures For Resolving Additional Assurance Requests, and (C)
Prohibiting Utility Providers From Altering, Refusing, or
Discontinuing Services, and (II) Granting Related Relief* (the
"Utility Motion") (Docket No. 6), and sets forth the following:

Introduction

The Debtors' Utility Motion improperly seeks to shift the
Debtor's obligations under Section 366(c)(3) of the Bankruptcy
Code from modifying the amount of the adequate assurance of



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payment requested by SCE under Section 366(c)(2) to setting the form and amount of the adequate assurance of payment acceptable to the Debtors. This Court should not permit the Debtors to shift their clear statutory burden in this fashion.

Through the Utility Motion, the Debtors seek to have this Court approve their proposed form of adequate assurance of payment, which is a bank account containing \$78,250 that supposedly reflects an amount equal to half of the Debtors' average monthly utility charges, calculated as a historical average payment for the last six months (the "Bank Account"). The Utility Providers List attached at Exhibit "C" to the Utility Motion reflects that the Bank Account would contain \$72,500 on behalf of SCE.

The Court should reject the Debtors' proposed Bank Account because: (1) SCE bills the Debtors on a monthly basis and provides the Debtors with generous payment terms pursuant to applicable state law, tariffs and/or regulations, such that a two-week account maintained by the Debtors is not sufficient in amount or in form to provide SCE with adequate assurance of payment; (2) Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include a segregated bank account; and (3) Even if this Court were to improperly consider the Bank Account as a form of adequate assurance of payment for SCE, this

Court should reject it as an insufficient form of adequate assurance of payment for the reasons set forth in Section A.1. of this Objection.

SCE is seeking a two-month cash deposit in the amount of \$468,614 from the Debtors, which is the amount that SCE is authorized to obtain pursuant to applicable state law. Based on all of the foregoing, this Court should deny the Utility Motion as to SCE because the amount of SCE's post-petition deposit request is reasonable under the circumstances and should not be modified.

Facts

Procedural Facts

1. On February 26, 2025 (the "Petition Date"), the Debtors commenced their cases under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") that are now pending with this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. The Debtors' chapter 11 bankruptcy cases are being jointly administered.

The Utility Motion

3. On the Petition Date, the Debtors filed the Utility Motion.

4. On February 27, 2025, the Court entered the *Interim Order (I) (A) Approving the Debtors' Proposed Adequate Assurance of Payment For Future Utility Services, (B) Approving the Debtors' Proposed Procedures For Resolving Additional Assurance Requests, and (C) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services; and (II) Granting Related Relief* (the "Interim Utility Order") (Docket No. 53). The Interim Utility Order set (i) an objection deadline of March 18, 2025 and (ii) the final hearing on the Utility Motion to take place on March 25 2025 at 11:00 a.m.

5. Through the Utility Motion, the Debtors seek to avoid the applicable legal standards under Sections 366(c)(2) and (3) by seeking Court approval for their own form of adequate assurance of payment, which is the Bank Account containing \$78,250 that supposedly reflects an amount equal to half of the Debtors' average monthly utility charges, calculated as a historical average payment for the last six months. Utility Motion at ¶ 15.

6. The Debtors propose to "deposit" monies into the Bank Account, and refer to the proposed monies to be contained in the Bank Account as the "Adequate Assurance Deposit." Utility Motion at ¶ 15. Monies contained in an escrow account controlled by a customer of a utility such as the proposed Bank Account are not recognized as a "cash deposit" provided by a

customer to a utility by any public utility commission. Additionally, Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include a segregated utility bank account. Simply put, the Debtors are not proposing to provide SCE with a cash deposit as adequate assurance of payment pursuant to Section 366(c) of the Bankruptcy Code.

7. The proposed Bank Account is not acceptable to SCE and should not be considered relevant by this Court because Sections 366(c)(2) and (3) do not allow the Debtors to establish the form or amount of adequate assurance of payment. Under Sections 366(c)(2) and (3), this Court and the Debtors are limited to modifying, if at all, the amount of the security sought by SCE under Section 366(c)(2).

8. The Debtors claim that they are substantially current with respect to their utility services obligations. Utility Motion at ¶ 13. However, even if true, Section 366(c)(3)(B)(ii) expressly provides that in making an adequate assurance of payment determination, a court may not consider a debtor's timely payment of prepetition utility charges.

9. The Debtors propose that monies contained in the Bank Account attributable to a utility shall be returned to the Debtors, less any amounts owed on account of unpaid, post-petition utility charges, by no later than five business days

following the earlier of (i) the date that the Debtors' pay final post-petition utility charges owed to a utility company, or (ii) the effective date of any Chapter 11 plan. Utility Motion at ¶ 18(e). SCE bills the Debtors in arrears and will likely provide post-petition utility goods/services to the Debtors through a sale closing date or effective date of a plan, meaning that any monies contained in the Bank Account should not be returned to the Debtors until the Debtors confirm that they have paid in full their post-petition utility expenses owed to their utility companies.

10. The Utility Motion does not address why the Bank Account would be underfunded with only two-weeks of utility charges when the Debtors know that SCE is required by applicable state laws, regulations or tariffs to bill the Debtors monthly. Moreover, presumably the Debtors want SCE to continue to bill them monthly and provide them with the same generous payment terms that they received prepetition. Accordingly, if the Bank Account is relevant, which SCE disputes, the Debtors need to explain: (A) why they are only proposing to deposit a supposed two-week amount into the Bank Account for SCE; and (B) how such an insufficient amount could even begin to constitute adequate assurance of payment for SCE's monthly bills.

11. Furthermore, the Utility Motion does not address why this Court should consider modifying, if at all, the amount of

SCE's adequate assurance request pursuant to Section 366(c)(2). Rather, without providing any specifics, the Utility Motion merely states that the monies contained in the Bank Account, "in conjunction with the Debtors' ability to pay for future Utility Services with their prepetition practices," constitutes sufficient adequate assurance of payment. Utility Motion at ¶ 17.

The Debtors' Financing Motion

12. On the Petition Date, the Debtors filed the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors To Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors To Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Financing Motion") (Docket No. 14).

13. Through the Financing Motion, the Debtors seek the approval of a debtor-in-possession credit facility (the "DIP Facility") providing for new funds in the amount of \$12.5 million of which up to an aggregate principal amount of \$4 million will be made available upon entry of the Interim Financing Order (discussed below). Financing Motion at ¶ 2.

14. The Debtors have the following milestones: (i) no later than 25 days after the Petition Date - entry of order approving bidding procedures; (ii) no later than 45 days after the Petition Date - an auction for the acquired assets; (iii) no later than 45 days after the Petition Date - entry of final order approving the DIP Facility; (iv) no later than 50 days after the Petition Date - entry of one or more sale orders approving winning bid(s); and (v) no later than 60 days after the Petition Date - entry of an order closing of the winning bid(s).

Financing Motion at pages 17-18.

15. On February 28, 2025, the Court entered the *Interim Order (I) Authorizing the Debtors To Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors To Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Interim Financing Order") (Docket No. 65).

16. The Interim Financing Order approved a carve-out for payments to the Debtors' professionals incurred prior to the delivery of a Carve-Out Trigger Notice, plus an additional \$100,000 after delivery of a Carve-Out Trigger Notice (the "Carve-Out"). Financing Motion at ¶ 33.

17. Attached as Exhibit "B" to the Interim Financing Order is an approved budget through April 27, 2025 (the "Budget"). Although the Budget includes a line-item for "Utility Deposit," the Budget does not include a line-item for the payment of post-petition utility charges. As such, it is not apparent from the Budget whether sufficient funds have in fact been budgeted for the timely (and full) payment of the Debtors' post-petition utility charges.

The Debtors' Critical Vendor Motion

18. On the Petition Date, the Debtors filed the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing Debtors To Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claimants, and (II) Authorizing Banks To Honor and Process Check and Electronic Transfer Requests, and (III) Granting Related Relief* (the "Critical Vendor Motion") (Docket No. 18). Through the Critical Vendor Motion, the Debtors sought authority to pay Critical Vendor Claims and Section 503(b)(9) Claims in an aggregate amount not to exceed \$1,950,000 on an interim basis and \$2,600,000 on a final basis. Critical Vendor Motion at ¶ 4.

19. On February 27, 2025, the Court entered the *Interim Order (I) Authorizing Debtors To (A) Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claimants, and (B) Follow Certain Procedures Related Thereto; (II) Authorizing*

Banks To Honor and Process Check and Electronic Transfer Requests; and (III) Granting Related Relief (the "Interim Critical Vendor Order") (Docket No. 61). The Interim Critical Vendor Order authorized the Debtors to pay Critical Vendor Claims and Section 503(b)(9) Claims not to exceed \$1,950,000. Interim Critical Vendor Order at ¶ 3.

20. The Debtors' state in Paragraph 12 of the Utility Motion that "[u]interrupted Utility Services are essential to the Debtors' ongoing business operations and, hence, the overall success of these chapter 11 cases." However, the Critical Vendor Motion does not reflect that the Debtors sought Court authority to pay prepetition utility charges.

The Bid Procedures Motion

21. On the Petition Date, the Debtors filed the *Debtors' Motion Pursuant To Sections 105, 363, and 365 of the Bankruptcy Code For Entry of Orders (A) (I) Approving Bidding Procedures For the Sale of Debtors' Assets, (II) Scheduling Hearings and Objection Deadlines With Respect To the Sale, (III) Scheduling Bid Deadlines and An Auction, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Assumption and Assignment Procedures For Executory Contracts and Unexpired Leases, (VI) Authorizing and Approving the Debtors' Entry Into the Stalking Horse APA, (VII) Authorizing and Approving Bid Protections, and (VIII) Granting Related Relief and (B) (I) Approving the Sale of*

Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief (the "Bid Procedures Motion") (Docket No. 16).

22. The Debtors' executed a stalking horse agreement with FMI Holdco LLC (the "Stalking Horse Purchaser") providing for the sale of substantially all of the Debtors' assets for a cash purchase price of \$16 million, subject to adjustments for working capital and cure costs related to executory contracts assumed and assigned to the Stalking Horse Purchaser, and the assumption by the Stalking Horse Purchaser of certain assumed liabilities. Bid Procedures Motion at ¶ 17.

23. The Debtors' propose the following timeline for the sale: (i) on or before March 20, 2025 - bid procedures hearing; (ii) within one business day after entry of the Bid Procedures Order - service of sale notice and potential assignment notice; (iii) April 7, 2025 - sale objection deadline, adequate assurance objection deadline, and bid deadline; (iv) April 9, 2025 - auction (if necessary); (v) April 10, 2025 - deadline to file notice of successful bidder; (vi) April 11, 2025 - sale hearing and adequate assurance objection deadline (if the successful bidder is not the Stalking Horse Purchaser); and (vii) April 15, 2025 - sale consummation. Bid Procedures Motion at ¶ 19.

Facts Regarding SCE

24. SCE provided the Debtors with prepetition utility goods/services and has continued to do so for the Debtors post-petition. Under SCE's billing cycle, the Debtors receive approximately one month of utility goods and/or services before SCE issues a bill for such charges. Once a bill is issued, the Debtors have approximately 19 days to pay the applicable bill. If the Debtors fail to timely pay a bill, a past due notice is issued and a late fee may be subsequently imposed on the account. If the Debtors fail to pay the bill after the issuance of the past due notice, SCE issues a notice that informs the Debtors that they must cure the arrearage within a certain period of time or its service will be disconnected. Accordingly, under SCE's billing cycle, the Debtors could receive approximately two months of unpaid service before SCE could cease the supply of goods and/or services for a post-petition payment default.

25. In order to avoid the need to bring witnesses and have lengthy testimony regarding SCE's regulated billing cycle, SCE requests that this Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of the SCE billing cycle. Pursuant to the foregoing request and based on the voluminous size of the applicable documents, the SCE web site link to the tariffs and/or state laws, regulations and/or

ordinances obtained at: <https://www.sce.com/regulatory/tariff-books>

26. Subject to a reservation of SCE's right to supplement its post-petition deposit request if additional accounts belonging to the Debtor are subsequently identified, SCE requests a two-month cash deposit in the amount of \$468,614 as adequate assurance of payment pursuant to Section 366(c) of the Bankruptcy Code.

Discussion

A. THE UTILITY MOTION SHOULD BE DENIED AS TO SCE.

Sections 366(c) (2) and (3) of the Bankruptcy Code provide:

(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;

(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).

As set forth by the United States Supreme Court, "[i]t is well-established that 'when the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms.'" *Lamie v. United States Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (*quoting*

Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A., 530 U.S. 1, 6, 120 S. Ct., 1942, 147 L. Ed. 2d 1 (2000)).

Rogers v. Laurain (In re Laurain), 113 F.3d 595, 597 (6th Cir. 1997) ("Statutes . . . must be read in a 'straightforward' and 'commonsense' manner."). A plain reading of Section 366(c)(2) makes clear that a debtor is required to provide adequate assurance of payment satisfactory to its utilities on or within thirty (30) days of the filing of the petition. *In re Lucre*, 333 B.R. 151, 154 (Bankr. W.D. Mich. 2005). If a debtor believes the amount of the utility's request needs to be modified, then the debtor can file a motion under Section 366(c)(3) requesting the court to modify the amount of the utility's request under Section 366(c)(2).

In this case, the Debtors filed the Utility Motion to improperly shift the focus of their obligations under Section 366(c)(3) from modifying the amount of the adequate assurance of payment requested under Section 366(c)(2) to setting the form and amount of the adequate assurance of payment acceptable to the Debtors. Accordingly, this Court should not reward the Debtors for their failure to comply with the requirements of Section 366(c) and deny the Utility Motion as to SCE.

1. The Debtors' Proposed Bank Account Is Not Relevant And Even If It Is Considered, It Is Unsatisfactory Because It Does Not Provide SCE With Adequate Assurance of Payment.

This Court should not even consider the Bank Account as a form of adequate assurance of payment because: (1) It is not relevant because Section 366(c)(3) provides that a debtor can only modify "the amount of an assurance of payment under paragraph (2)"; and (2) The Bank Account is not a form of adequate assurance of payment recognized by Section 366(c)(1)(A). Moreover, even if the Court were to consider the Bank Account, the Bank Account is an improper and otherwise unreliable form of adequate assurance of future payment for the following reasons:

1. Unlike the statutory approved forms of adequate assurance of payment, the Bank Account is not something held by SCE. Accordingly, SCE would have no control over how long the Bank Account will remain in place.
2. It is underfunded from the outset because SCE issues monthly bills and by the time a default notice is issued the Debtors will have received approximately 60 days of commodity or service.
3. The Debtors fail to state whether draws from the Bank Account would be limited to two-week amounts.
4. The Debtors should not reduce the amount of Bank Account on account of the termination of utility services to a Debtor account until the Debtors confirm that all post-petition charges on a closed account are paid in full.

Accordingly, the Court should not approve the Bank Account as adequate assurance as to SCE because the Bank Account is:

(a) not the form of adequate assurance requested by SCE; (b) not a form recognized by Section 366(c)(1)(A); and (c) an otherwise unreliable form of adequate assurance.

2. The Utility Motion Should Be Denied As To SCE Because The Debtors Have Not Set Forth Any Basis For Modifying SCE's Requested Deposit.

In the Utility Motion, the Debtors fail to address why this Court should modify the amount of SCE's request for adequate assurance of payment. Under Section 366(c)(3), the Debtors have the burden of proof as to whether the amount of SCE's adequate assurance of payment request should be modified. *See In re Stagecoach Enterprises, Inc.*, 1 B.R. 732, 734 (Bankr. M.D. Fla. 1979) (holding that the debtor, as the petitioning party at a Section 366 hearing, bears the burden of proof). However, the Debtors do not provide the Court with any evidence or factually supported documentation to explain why the amount of SCE's adequate assurance request should be modified. Accordingly, the Court should deny the relief requested by Debtors in the Utility Motion and require the Debtors to comply with the requirements of Section 366(c) with respect to SCE.

B. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED BY SCE PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE.

Section 366(c) was amended to overturn decisions such as *Virginia Electric and Power Company v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997), that held that an administrative expense,

without more, could constitute adequate assurance of payment in certain cases. Section 366(c)(1)(A) specifically defines the forms that assurance of payment may take as follows:

- (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 upon between the utility and the debtor or the trustee.

Section 366 of the Bankruptcy Code was enacted 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 providing these essential services. *See In re Hanratty*, 907 F.2d 1418, 1424 (3d Cir. 1990). The deposit or other security "should bear a reasonable relationship to expected or anticipated utility consumption by a debtor." *In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986). In making such a determination, it is appropriate for the Court to consider "the length of time necessary for the utility to effect termination once one billing cycle is missed." *In re Begley*, 760 F.2d 46, 49 (3d Cir. 1985).

SCE bills the Debtors on a monthly basis for the charges already incurred by the Debtors in the prior month. SCE then provides the Debtors with approximately 19 days to pay a bill

before a late fee may be charged, and also provide written notice before utility service can be terminated for non-payment pursuant to applicable state laws and/or tariffs. SCE is not taking the position that the deposit that it is entitled to obtain under applicable state law is binding on this Court, but, instead are introducing that amount as evidence of the amount that SCE's regulatory entity permits SCE to request from its customers.

In contrast, the Debtors failed to address in the Utility Motion why this Court should modify, if at all, the amount of SCE's adequate assurance of payment request, which is the Debtors' statutory burden. Instead, the Debtors merely asked this Court to approve the Bank Account supposedly containing approximately two-weeks of the Debtors' monthly utility charges. The Debtors did not provide an objective, much less an evidentiary, basis for their proposed adequate assurance in the form of the Bank Account. Moreover, in contrast to the improper treatment proposed to SCE, the Debtors have made certain that certain trade vendors and post-petition professionals are favored creditors over SCE by ensuring (i) to pay Critical Vendor Claims and Section 503(b)(9) Claims in an aggregate amount not to exceed \$1,950,000 on an interim basis and \$2,600,000 on a final basis, and (ii) the post-petition bills/expenses of Debtors' counsel are paid, even in the event of a post-petition default on the use of

DIP financing and cash collateral, by obtaining a \$100,000 professionals' carve-out for the payment of their fees/expenses after a default and a guarantee of payment for fees incurred up to a default.

Despite the fact that SCE continues to provide the Debtors with admittedly essential post-petition utility goods/services on the same generous terms that were provided prepetition, with the possibility of non-payment, the Debtors are seeking to deprive SCE of any adequate assurance of payment for which it is entitled to for continuing to provide the Debtors with post-petition utility goods/services. Against this factual background, it is reasonable for SCE to seek and be awarded the full security it has requested herein.

WHEREFORE, SCE respectfully requests that this Court enter an order:

1. Denying the Utility Motion as to SCE;
2. Awarding SCE the post-petition adequate assurance of payment pursuant to Section 366 in the amount and form satisfactory to SCE, which is the form and amount requested herein; and
3. Providing such other and further relief as the Court deems just and appropriate.

Dated: March 7, 2025

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CERTIFICATE OF SERVICE

I, William F. Taylor, Jr., do hereby certify that in addition to the notice and service provided through the Court's ECF system, on March 7, 2025, I caused a true and correct copy of the *Objection of Southern California Edison Company To the Debtors' Motion For Entry of Interim and Final Orders (I) (A) Approving the Debtors' Proposed Adequate Assurance of Payment For Future Utility Services, (B) Approving the Debtors' Proposed Procedures For Resolving Additional Assurance Requests, and (C) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services, and (II) Granting Related Relief* to be served by email on:

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