

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
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and	
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In re: MULTI-COLOR CORPORATION., <i>et al.</i> , Debtors.	Chapter 11 Case No. 26-10910 (MBK) (Jointly Administered)

**OBJECTION OF CERTAIN UTILITY COMPANIES TO THE DEBTORS' MOTION
 FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING THE DEBTORS'
 PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY
 SERVICES, (II) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
 REFUSING, OR DISCONTINUING SERVICES, (III) APPROVING THE DEBTORS'
 PROPOSED PROCEDURES FOR RESOLVING ADEQUATE ASSURANCE
REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Commonwealth Edison Company ("ComEd"), PECO Energy Company ("PECO"),
 Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("DEV") and Southern

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California Edison Company (“SCE”) (collectively, the “Utilities”), hereby object to the *Debtors’ Motion For Entry of Interim and Final Orders (I) Approving the Debtors’ Proposed Adequate Assurance of Payment For Future Utility Services, (II) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors’ Proposed Procedures For Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* (the “Utility Motion”) (Docket No. 7), and respectfully set forth the following:

Introduction

The Debtors’ Utility Motion improperly seeks to shift the Debtors’ obligations under Section 366(c)(3) of the Bankruptcy Code from modifying the amounts of the adequate assurance of payment requested by the Utilities under Section 366(c)(2) to setting the form and amounts 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 form of adequate assurance of payment, which is a bank account containing approximately \$1.2 million that supposedly reflects an amount equal to one-half of the Debtors’ average monthly utility charges, less any prepetition deposits held by a utility. As an initial matter, the Debtors’ proposal that the monies contained in the Bank Account should be net of any prepetition deposits does not make sense because the Debtors do not know if any prepetition deposit amount will remain after recoupment of prepetition deposits against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code.

The Utility Providers List attached at Exhibit “C” to the Utility Motion reflects that the Debtors’ propose that Bank Account would contain the following amounts on behalf of the Utilities: (a) ComEd - \$0; (b) PECO - \$27,928; (c) DEV - \$10,451; and (d) SCE - \$38,000.

This Court should reject the Debtors' proposed Bank Account because: (1) The Utilities bill the Debtors on a monthly basis and provide the Debtors with generous payment terms pursuant to applicable state law, tariffs and/or regulations, such that a two-week account (less any prepetition deposit amounts) maintained by the Debtors is not sufficient in amount or in form to provide the Utilities with adequate assurance of payment even if the Bank Account contained two-week amounts for both of the Utilities; (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 the Utilities, 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.

Although not requested in the Utility Motion, and without providing the Utilities with notice and an opportunity to be heard, the Interim Utility Order (defined below) contains injunctive relief that strip the Utilities of their offset rights under Section 366(c)(4) of the Bankruptcy Code. Specifically, Paragraph 6.e. of the Utility Order provides:

“Each Utility Provider holding an existing deposit, if any, is permitted to maintain its existing deposit in addition to its right to funds, if any, in the Adequate Assurance Account. Such Utility Provider may not, absent a separate order granting relief from Section 362 of the Bankruptcy Code, apply such existing deposit to any prepetition amount owed.”

(the “Injunctive Relief Provision”). The Injunctive Relief Provision does not take into account that the Utilities are entitled to offset prepetition deposits against the unpaid prepetition debt pursuant to the express provisions Section 366(c)(4) of the Bankruptcy Code without notice or order of this Court.

Nowhere in the Utility Motion did the Debtors explain the need for, or justify the need for, this Court to award it extraordinary injunctive relief. If the Debtors believe that they require such injunctive relief, they should be required to set forth their case and put on evidence in an adversary proceeding as required by Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure. Accordingly, Paragraph 6.e. of the Interim Utility Order is an improper grant of injunctive relief that this Court should not have approved or granted, especially on an *ex parte* basis and not via an adversary proceeding. This Court should also not enter the Debtors' proposed Final Utility Order that also contains the Injunctive Relief Provision. Accordingly, this Court should deny the Debtors' proposed injunctive relief barring a utility from offset prepetition deposits against the unpaid prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code.

The Utilities are seeking the following two-month cash deposits from the Debtors, which are amounts that they are authorized to obtain pursuant to applicable state law: (a) ComEd - \$41,270; (b) PECO - \$119,520; (c) DEV - \$45,148; and (d) SCE - \$200,959. Based on all of the foregoing, this Court should deny the Utility Motion as to the Utilities because the amounts of the Utilities' post-petition deposit requests are reasonable under the circumstances and should not be modified.

Facts

Procedural Facts

1. On January 29, 2026 (the "Petition Date"), the Debtors commenced their cases under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") 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 January 14, 2026, this Court entered the *Interim Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment For Future Utility Services, (II) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures For Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* (the "Interim Utility Order") (Docket No. 94). The Interim Utility Order provides that objections to the Utility Motion must be filed on or before February 24, 2026, with a final hearing on the Utility Motion to take place on March 3, 2026 at 10:00 a.m. Utility Order at ¶ 2.

5. 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 approximately \$1.2 million that supposedly reflects an amount equal to one-half of the Debtors' average monthly utility charges, less any prepetition deposits held by a utility. Utility Motion at ¶ 12.

6. The Debtors' proposal that the monies contained in the Bank Account should be net of prepetition deposits does not make sense because the Debtors do not know if any of the prepetition deposit amounts will remain after recoupment of prepetition deposits against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code.

7. The Debtors further propose to provide additional adequate assurance of payment by proposing to "deposit" approximately \$1.2 million 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 ¶ 12. But 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 any of the Utilities with cash deposits as adequate assurance of payment pursuant to Section 366(c) of the Bankruptcy Code.

8. The proposed Bank Account is not acceptable to the Utilities 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 amounts 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 amounts of the security sought by the Utilities under Section 366(c)(2).

9. The Debtors claim that to the best of their knowledge, there are no defaults or arrearages with respect to the undisputed invoices for prepetition utility services. Utility Motion at ¶ 10. 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.

10. Paragraph 6.g. of the Interim Utility Order provides that the monies contained in the Bank Account attributable to each utility shall be returned to the Debtors or the Reorganized Debtors, as applicable, automatically, without further order of the Court, on the earlier of (i) the Debtors reconciling and payment final post-petition utility charges, or (ii) the effective date of any Chapter 11 plan if there are no outstanding disputes related to post-petition payment. As the Utilities bill the Debtors in arrears, and the Utilities would likely provide post-petition utility goods/services to the Debtors through an effective date of any plan, any monies contained in the

Bank Account should not be returned to the Debtors until the Debtors confirm that they have paid in full all of their post-petition utility expenses owed to the Utilities.

11. Although not requested in the Utility Motion, Paragraph 6.e. the Interim Utility Order improperly includes the following Injunctive Relief Provision:

“Each Utility Provider holding an existing deposit, if any, is permitted to maintain its existing deposit in addition to its right to funds, if any, in the Adequate Assurance Account. Such Utility Provider may not, absent a separate order granting relief from Section 362 of the Bankruptcy Code, apply such existing deposit to any prepetition amount owed.”

As Section 366(c)(4) of the Bankruptcy Code expressly provides that utilities can offset prepetition cash deposits against prepetition debt without notice or court order, it is not clear why the Debtors believe they can enjoin the Utilities from exercising their rights under Section 366(c)(4) pursuant to Paragraph 6.e. of the Interim Utility Order. Furthermore, if the Debtors truly require this improper injunctive relief, they should have actually requested it in a proper pleading in accordance with the requirements of Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure. Accordingly, this improper injunctive relief should be vacated by this Court because it was not requested in a pleading that complies with Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure. Additionally, this Court should also reject the Injunctive Relief Provision set forth in Paragraph 6.e. of the Debtors’ proposed Final Utility Order. Nowhere in the Utility Motion did the Debtors explain or justify the need for this Court to award it extraordinary injunctive relief.

12. The Utility Motion does not address why the Bank Account would be funded at supposedly two-weeks of utility charges (less any prepetition deposit amount held by a utility) when the Debtors know that the Utilities are required by applicable state laws, regulations and/or tariffs to bill the Debtors monthly. Moreover, the Debtors presumably want the Utilities 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 the Utilities dispute, the Debtors need to explain: (A) why they are only proposing to deposit two-week amounts for some of their utilities, less any prepetition deposit amounts; (B) even if two-week amounts were contained in the Bank Account for all of the Utilities, how such an insufficient amount could even begin to constitute adequate assurance of payment for the Utilities' monthly bills; and (C) the legal basis for why the Debtors are proposing that the monies contained in the Bank Account would be net of any prepetition deposit held by a utility.

13. The Utility Motion does not address why this Court should consider modifying, if at all, the amounts of the Utilities' adequate assurance requests pursuant to Section 366(c)(2). Rather, without providing any specifics, the Utility Motion merely states that the Bank Account, "in conjunction with the Debtors' cash flow from operations and ability to pay for future Utility Services in accordance with their prepetition practice," somehow constitutes sufficient adequate assurance to the Debtors' utility providers. Utility Motion at ¶ 15.

The Debtors' Financing Motion

14. On the Petition Date, the Debtors filed the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection To Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Financing Motion") (Docket No. 26).

15. Through the Financing Motion, the Debtors seek approval of a debtor-in-possession (“DIP”) Facility in an aggregate principal amount of up to \$657.5 million, with \$150 million of such amount available on an interim basis. Financing Motion at ¶ 1.

16. On February 2, 2026, the Court entered the *Interim Order (I) Authorizing the Debtors To (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection To Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Interim Financing Order”) (Docket No. 106).¹

17. The Interim Financing Order authorized the Debtor to borrow up to \$125 million in Interim New Money DIP Loans. Interim Financing Order at page 31.

18. The Interim Financing Order approved a carve-out for the payment of fees of the Debtors’ professionals incurred prior to a Carve-Out Trigger Notice, plus an additional \$8 million incurred following delivery of a Carve-Out Trigger Notice (the “Carve-Out”). Interim Financing Order at pages 37-40.

19. Attached as Exhibit “1” to the Interim Financing Order is the DIP Credit Agreement that includes the following milestones: (i) no later than 35 days after the Petition Date – entry of Final Financing Order; (ii) no later than 60 days after the Petition Date – entry of Confirmation Order; and (iii) no later than 90 days after the Petition Date – Plan Effective Date shall have occurred. DIP Credit Agreement at page 108.

20. Attached as Schedule “1” to the Interim Financing Order is a 13-week initial budget through the week ending April 26, 2026 (the “Budget”). The Budget includes a line-item

¹ On February 2, 2026, the Cross-Holder Ad Hoc Group filed a Notice of Appeal regarding the Interim Financing Order at Docket No. 107.

for “Utility Deposit” in the amount of \$150,000. The Debtors propose that the Bank Account would contain \$1.2 million. As such, the Debtors have not budgeted sufficient monies to fund the Bank Account. Although the Budget includes a line item for “Utility Deposit,” it does not include any line-items 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’ Trade Claims Motion

21. On the Petition Date, the Debtors filed the *Debtors’ Motion For Entry of Interim and Final Orders (I) Authorizing Payment of All Trade Claim In the Ordinary Course of Business, (II) Granting Administrative Expense Priority To Undisputed Obligations on Account of Outstanding Orders, (III) Authorizing Satisfaction of Obligations Related Thereto, and (IV) Granting Related Relief* (the “Trade Claims Motion”) (Docket No. 15). Through the Trade Claims Motion, the Debtors sought authority to pay trade liabilities incurred prepetition in the ordinary course of business. Trade Claims Motion at ¶ 3.

22. On February 2, 2026, this Court entered the *Interim Order (I) Authorizing Payment of All Trade Claims In the Ordinary Course of Business, (II) Granting Administrative Expense Priority To Undisputed Obligations on Account of Outstanding Orders, (III) Authorizing Satisfaction of Obligations Related Thereto, and (IV) Granting Related Relief* (the “Interim Trade Claims Order”) (Docket No. 96). The Interim Trade Claims Order authorized the Debtors to pay prepetition amounts owed to “Trade Creditors” on account of the “Trade Claims” in their discretion in the ordinary course of business, not to exceed \$140 million. Interim Trade Claims Order at ¶ 5.

23. The Debtors' claim in Paragraph 8 of the Utility Motion that "[u]ninterrupted Utility Services are essential to the Debtors' ongoing business operations and overall success of these chapter 11 cases." However, upon information and belief, there are not sufficient budgeted funds in the Interim Trade Claims Order to pay the Utilities' prepetition utility charges in the ordinary course of business.

Facts Regarding the Utilities

24. Each of the Utilities provided the Debtors with prepetition utility goods and/or services and have continued to provide the Debtors with utility goods and/or services since the Petition Date.

25. Under the Utilities' billing cycles, the Debtors receive approximately one month of utility goods and/or services before the Utility issues a bill for such charges. Once a bill is issued, the Debtors have approximately 20 to 30 days to pay the applicable bill. If the Debtors fail to timely pay the bill, a past due notice is issued and, in most instances, 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, the Utilities issue a notice that informs the Debtors that they must cure the arrearage within a certain period of time or service will be disconnected. Accordingly, under the Utilities' billing cycles, the Debtors could receive at least two months of unpaid charges before the utility could cease the supply of goods and/or services for a post-petition payment default.

26. To avoid the need to bring witnesses and have lengthy testimony regarding the Utilities' regulated billing cycles, the Utilities request that this Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of the Utilities' billing cycles. Pursuant to the foregoing request and based on the voluminous size of the applicable documents, the Utilities'

web-site links to the following tariffs and/or state laws, regulations and/or ordinances are as follows:

ComEd:

Tariffs: <https://www.comed.com/customer-service/rates-pricing/rates-information/Pages/current-rates.aspx>

Regulations: <http://www.ilga.gov/commission/jcar/admincode/083/08300280sections.html>

PECO:

Electric: <https://www.peco.com/SiteCollectionDocuments/CurrentElecTariff.pdf>

Gas: <https://www.peco.com/SiteCollectionDocuments/CurrentGasTariff.pdf>

DEV: <https://www.dominionenergy.com/virginia/rates-and-tariffs/business-rates>

SCE: <https://www.sce.com/regulatory/tariff-books>

27. Subject to a reservation of the Utilities’ right to supplement their post-petition deposit requests if additional accounts belonging to the Debtors are subsequently identified, the Utilities’ estimated prepetition debt and post-petition deposit requests are as follows:

<u>Utility</u>	<u>No. of Accounts</u>	<u>Estimated Prepet. Debt</u>	<u>Deposit Request</u>
ComEd	1	\$9,943.42	\$41,270 (2-month)
PECO	2	\$156,807	\$119,520 (2-month)
DEV	2	\$35,752.56	\$45,148 (2-month)
SCE	1	To be supplemented	\$200,959 (2-month)

28. ComEd held a prepetition deposit in the amount of \$36,611.25 that it will recoup against the prepetition debt owing to ComEd from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. Any prepetition deposit amount remaining after recoupment can be applied to the ComEd post-petition deposit request.

29. PECO held prepetition deposits totaling \$152,555 that it recouped against the prepetition debt owing to PECO from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount remains after recoupment.

Discussion

A. THE COURT SHOULD VACATE THE INJUNCTIVE RELIEF PROVISION IN THE INTERIM UTILITY ORDER THAT IMPROPERLY ENJOINS A UTILITY FROM RECOUPING PREPETITION DEPOSITS AGAINST PREPETITION DEBT PURSUANT TO SECTION 366(c)(4) OF THE BANKRUPTCY CODE.

Rule 7001 of the Federal Rules of Bankruptcy Procedure in part provides:

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

* * *

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

* * *

Hence, Rule 7001 requires that all proceedings seeking to obtain injunctive or other equitable relief shall be brought as an adversary proceeding. *In re Best Products*, 203 B.R. 51 (Bankr. E.D. Va. 1996). In *Best Products*, the bankruptcy court, in the context of a chapter 11 bankruptcy case, held:

The final issue which the court must address is the status of the injunction included in my September 24, 1996, order providing adequate assurance to utility companies. Fed.R.Bankr.P. 7001(7) plainly requires that any request for an injunction or other equitable relief must be sought in the context of an adversary proceeding. Since the debtor has not filed the requisite action, I cannot enjoin any utility from pursuing its rights under state law should the debtor default in its payments post-petition.

In re Best Products, 203 B.R. at 54.

In addition, Rule 7065 of the Federal Rules of Bankruptcy Procedure incorporates Rule 65 of the Federal Rules of Civil Procedure, which sets forth the requirements for obtaining preliminary and permanent injunctive relief.

Despite all of the foregoing, Paragraph 6.e. of the Interim Utility Order sets forth the following Injunctive Relief Provision:

“Each Utility Provider holding an existing deposit, if any, is permitted to maintain its existing deposit in addition to its right to funds, if any, in the Adequate Assurance Account. Such Utility Provider may not, absent a separate order granting relief from Section 362 of the Bankruptcy Code, apply such existing deposit to any prepetition amount owed.”

It is undisputed that the Debtors did not file an adversary proceeding seeking the Injunctive Relief Provision nor did the Debtors comply with any of the requirements of Rule 7065. The Injunctive Relief Provision improperly enjoins a utility from recouping prepetition deposits against prepetition debt pursuant to the express provisions of Section 366(c)(4) of the Bankruptcy Code, and without any legal basis for the approval of the Injunctive Relief Provision. The Injunctive Relief Provision is legally improper because the Utilities are entitled to offset prepetition deposits against the unpaid prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code without notice or order of the court. Therefore, this Court vacate paragraph 6.e. of the Interim Utility Order that contains the improper Injunctive Relief Provision, and require the Debtors to proceed via an adversary proceeding as required by the Federal Rules of Bankruptcy Procedure if the Debtors want to seek injunctive relief as to the Utilities.

B. THE UTILITY MOTION SHOULD BE DENIED AS TO THE UTILITIES.

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 stated by the Supreme Court of the United States, “[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)). See also *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 contrast, the Debtors here 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 the 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 should deny the Utility Motion as to the Utilities.

1. The Debtors' Proposed Bank Account Is Not Relevant, And Even If It Is Considered, It Is Unsatisfactory Because It Does Not Provide the Utilities 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 even a form of adequate assurance of payment recognized by Section 366(c)(1)(A). Moreover, even if this 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 the Utilities. Accordingly, the Utilities have no control over how long the Bank Account will remain in place.
2. Even if monies were contained in the Bank Account for all of the Utilities, to access the Bank Account, the Utilities have to incur the expense to draft, file and serve a default pleading with the Court and possibly litigate the demand if the Debtors refuse to honor a disbursement request.
3. It is underfunded from the outset because the Utilities issue monthly bills and by the time a default notice is issued, the Debtors will have received approximately 60 days of commodity or service;
4. The Debtors may close the Bank Account before all post-petition utility charges are paid in full.
5. The Debtors propose that the monies contained in the Bank Account on behalf of a utility would be net of any prepetition deposit amount held by a utility.

Accordingly, this Court should not approve the Bank Account as adequate assurance as to the Utilities because the Bank Account is: (a) not the **form** of adequate assurance requested by the Utilities; (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 the Utilities Because the Debtors Have Not Set Forth Any Basis For Modifying the Utilities' Requested Deposits.

In the Utility Motion, the Debtors fail to address why this Court should modify the amounts of the Utilities' requests for adequate assurance of payment. Under Section 366(c)(3), the Debtors have the burden of proof as to whether the amounts of the Utilities' adequate assurance of payment requests 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 this Court with any evidence or factually supported documentation to explain why the amounts of the Utilities' adequate assurance requests 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 plain requirements of Section 366(c) with respect to the Utilities.

C. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED BY THE UTILITIES 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), holding 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-paying customers 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).

The Utilities bill the Debtors on a monthly basis for the charges already incurred by the Debtors in the prior month. The Utilities then provide the Debtors with 20 to 30 days to pay the bill, the timing of which is set forth in applicable state laws, tariffs or regulations. Based on the foregoing state-mandated billing cycles, the minimum period of time the Debtors could receive service from the Utilities before termination of service for non-payment of post-petition bills is approximately two (2) months. Moreover, even if the Debtors timely pay their post-petition utility bills, the Utilities still have potential exposure of approximately 60 or more days based on their billing cycles. Furthermore, the forms and amounts of the Utilities' adequate assurance requests are the forms and amounts that the applicable public service commission, which is a neutral third-party entity, permit the Utilities to request from their customers. The Utilities are not taking the position that the cash deposits that they are entitled to obtain under applicable state law are binding on this Court, but instead are introducing those forms and amounts as evidence

of the forms and amounts that the applicable regulatory entities permit the Utilities to request from their customers.

In contrast, the Debtors failed to address in the Utility Motion why this Court should modify, if at all, the amounts of the Utilities' adequate assurance of payment requests, which is the Debtors' statutory burden. Instead, the Debtors merely asked this Court to approve the Adequate Assurance Account supposedly containing approximately two-weeks of the Debtors' utility charges, less any prepetition deposit amounts held by the Debtors' utility companies. 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 the Debtors' Utilities, the Debtors have made certain that supposed "Trade Creditors" and post-petition professionals are favored creditors over the Utilities by ensuring (i) the payment of prepetition amounts owed to "Trade Creditors" on account of the "Trade Claims" in their discretion in the ordinary course of business, not to exceed \$140 million, and (ii) that 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 professionals' carve-out of \$8 million 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 the Utilities continue 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 the Utilities of any adequate assurance of payment for which they are entitled to be paid for continuing to provide the Debtors with post-petition utility goods/services. Against this factual background, it is reasonable for the Utilities to seek and be awarded the full security they have requested herein.

WHEREFORE, the Utilities respectfully request that this Court enter an order:

1. Denying the Utility Motion as to the Utilities;
2. Awarding the Utilities the post-petition adequate assurance of payments pursuant to Section 366 in the amount and form satisfactory to the Utilities, which is the form and amounts requested herein;
3. Vacating paragraph 6.e. of the Interim Utility Order as to the Utilities that contains the Injunctive Relief Provision; and
4. Providing such other and further relief as the Court deems just and appropriate.

Dated: February 18, 2026

Respectfully Submitted,

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