

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

AMERICAN SIGNATURE, INC., et al.,

Debtors.

)
) Chapter 11
)
) Case No. 25-12105 (JKS)
)
) (Jointly Administered)
)
) Re: Docket Nos. 9, 75
)
) Obj. Deadline: 12/29/25, 4:00 p.m.
) Hearing Date: 1/5/26, 1:00 p.m.
)

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

American Electric Power ("AEP"), Florida Power & Light
Company ("FPL"), Georgia Power Company ("Georgia Power"), New
York State Electric & Gas Corporation ("NYSEG"), Rochester Gas
and Electric Corporation ("RG&E"), Tampa Electric Company
("TEC"), Peoples Gas System, Inc. ("Peoples Gas"), Virginia
Electric and Power Company d/b/a Dominion Energy Virginia
("DEV"), Dominion Energy South Carolina, Inc. ("DESC"),
Constellation NewEnergy, Inc. ("CNE"), Constellation NewEnergy -
Gas Division, LLC ("CNEG"), Baltimore Gas and Electric Company
("BGE"), The Potomac Electric Power Company ("Pepco"),
Commonwealth Edison Company ("ComEd"), Delmarva Power & Light
Company ("DPL"), Vectren Energy Delivery of Ohio, LLC



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("Vectren"), Indiana Gas Company, Inc. ("Indiana Gas") and Southern Indian Gas and Electric Company ("Southern Indiana Gas") (collectively, the "Utilities"), hereby object to the *Motion of Debtors For Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment For Future Utility Services, (II) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures For Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* (the "Utility Motion")(Docket No. 9), and 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 seeking to modify 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 avoid the plain language and requirements of Section 366(c).

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 \$579,000 that supposedly reflects approximately 50% of the Debtors' estimated monthly post-petition utility charges (the "Bi-Monthly Spend"), plus an

additional ten percent of the Bi-Monthly Spend included for any utility that may have been excluded from the Utility Services List attached as Exhibit "C" to the Utility Motion (the "Bank Account"). The Utility Service List does not reflect the proposed amounts to be contained in the Bank Account on behalf of the Utilities.

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, regulations and/or contracts, such that a supposed two-week account maintained by the Debtors is not sufficient in amount or in form to provide the Utilities 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 the Utilities (which it should not), 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.

As discussed below, the Debtors filed the *Debtor's Motion For Entry of Interim and Final Orders Authorizing the Debtors To (A) Assume the Consulting Agreement, (B) Conduct Store Closing*

Sales With Such Sales To Be Free and Clear of All Liens, Claims, and Encumbrances, and (C) Granting Related Relief (the "Store Closing Sales Motion") (Docket No. 18) requesting the authorization and approval of the continuation of certain store closing sales and store closures, or the initiation of store closing sales and store closures at additional stores. The Store Closing Sales Motion does not include procedures or requirements for the Debtors to timely contact the applicable Utilities to terminate utility service to any Debtor store locations once a store closing sale is completed. As such, there is no way for a Utility to know when the Debtors no longer require service at a store location where store closings have been completed.

Outside of bankruptcy, applicable state law and/or tariffs require the Debtors to close accounts when they no longer require utility service. Accordingly, the Debtors should be required to close their accounts with the Utilities on the date that the Debtors no longer require post-petition utility service or remain administratively obligated for the payment of such charges until they close the applicable account(s).

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 or contract: (a) AEP - \$71,799; (b) FPL - \$31,028; (c) Georgia Power - \$81,255; (d) NYSEG - \$11,000; (e) RG&E - \$18,640; (f) TEC

- \$15,035; (g) Peoples Gas - \$95; (h) DEV - \$32,476; (i) DESC - \$32,200; (j) CNE - \$19,910; (k) CNEG - \$18,826; (l) BGE - \$14,907; (m) Pepco - \$10,890; (n) ComEd - \$61,195; (o) DPL - \$9,135; (p) Vectren - \$5,074; (q) Indiana Gas - \$11,282; and (r) Southern Indiana Gas - \$24,839. 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 November 22, 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 November 24, 2025, the Debtors filed the Utility Motion.

4. On November 25, 2025, this Court entered the *Interim Order (I) Determining Adequate Assurance of Payment For Future*

Utility Services, (II) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures For Resolving Adequate Assurance Requests, and (IV) Granting Related Relief (the "Interim Utility Order")(Docket No. 75). The Interim Utility Order set (i) an objection deadline of December 29, 2025 and (ii) the final hearing on the Utility Motion to take place on January 5, 2026 at 1:00 p.m.

5. The Debtors claim that they pay approximately \$1,258,000 each month for utility services, calculated as the historical average payment for the 12-month period ending August 31, 2025. Utility Motion at ¶ 10.

6. Through the Utility Motion, the Debtors seek to avoid the applicable legal standards under Bankruptcy Code Sections 366(c)(2) and (3) by seeking Court approval for their own proposed form of adequate assurance of payment, which is the Bank Account containing \$579,000 that supposedly reflects approximately 50% of the Debtors' estimated monthly post-petition utility charges, plus an additional ten percent of the Bi-Monthly Spend included for any utility that may have been excluded from the Utility Services List attached as Exhibit "C" to the Utility Motion. Utility Motion at ¶ 12.

7. The Debtors propose to "deposit" \$579,000 into the Bank Account, and refer to the monies contained in the Bank

Account as the "Adequate Assurance Deposit." Utility Motion at ¶ 12. However, monies contained in an escrow account controlled by a customer of a utility such as the proposed Bank Account are not recognized by any state public utility commission as a "cash deposit" provided by a customer to a utility. 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 their 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 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 the Utilities under Section 366(c)(2).

9. The Debtors claim that they historically have a good payment record with their utility companies, and 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. The Debtors propose that monies contained in the Bank Account will be held until either (i) the Debtors' termination of utility services if there are no outstanding disputes related to post-petition utility payments due, or (ii) the conclusion of the Chapter 11 cases, if not applied earlier. Utility Motion at ¶

13. The Utilities bill the Debtors in arrears and will likely provide post-petition utility goods/services to the Debtors through the effective date of a plan, a sale closing date or a store closing date, 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.

11. The Utility Motion does not address why the Bank Account would be underfunded with supposedly two-weeks of utility charges when the Debtors know that the Utilities are required by applicable state laws, regulations, tariffs or contracts 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, and two-week amounts were

actually contained in the Bank Account for each of the Utilities, the Debtors need to explain: (A) Why they are only proposing to deposit supposed two-week amounts into the Bank Account; and (B) How such an insufficient amount could even begin to constitute adequate assurance of payment for the Utilities' monthly bills.

12. Furthermore, 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' ability to pay for future Utility Services in accordance with their prepetition practices," constitutes sufficient adequate assurance of payment. Utility Motion at ¶

14. Section 366(c)(B) specifically provides that an administrative expense priority shall not constitute an assurance of payment. Moreover, as numerous recent administratively insolvent bankruptcy cases demonstrate, a debtor's claim to have budgeted sufficient funds for the payment of post-petition expenses is not a reliable form of assurance. *See, e.g., In re Christmas Tree Shops, LLC, et al.*, (Bankr. D. Del., Case No. 23-10576); *In re Big Lots, Inc., et al.*, (Bankr. D. Del., Case No. 24-11967); *In re Party City Holdco Inc., et al.*, (Bankr. S.D. Tex., Case No. 24-90621).

The Debtors' Financing Motion

13. On November 24, 2025, the Debtors filed the *Motion of the Debtors For Entry of Interim and Final Orders Under Bankruptcy Code Sections 105, 361, 362, 363, 503, 506, 507, and 552, and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (I) Authorizing Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection To Prepetition Secured Creditors, (III) Modifying Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Financing Motion") (Docket No. 14).

14. Through the Financing Motion, the Debtors seek authority to obtain post-petition financing consisting of a superpriority senior secured asset-based credit facility in the aggregate principal amount of \$50 million (the "DIP Facility"). Financing Motion at page 2.

15. The Debtors also seek through the Financing Motion a carve-out for payments to the Debtors' professionals incurred prior to the delivery of a Carve-Out Trigger Notice, plus an additional \$500,000 after delivery of a Carve-Out Trigger Notice (the "Carve-Out"). Financing Motion at pages 21-22.

16. On November 26, 2025, the Court entered the *Interim Order Under Bankruptcy Code Sections 105, 361, 362, 363, 364 503, 506, 507, and 552, and Bankruptcy Rules 2002, 4001, 6003,*

6004, and 9014 (I) Authorizing Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection To Prepetition Secured Creditors, (III) Modifying Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief (the "Interim Financing Order") (Docket No. 83).

17. The Interim Financing Order approved the Carve-Out. Interim Financing Order at pages 53-59.

18. Attached as Exhibit "3" to the Interim Financing Order is a 13-week Approved Budget through the week ending February 21, 2026 (the "Budget"). Importantly, however, 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.

19. Attached as Exhibit "4" to the Interim Financing Order are required debtor-in-possession ("DIP") Milestones and Store Closing and Sale Milestones. The Debtors have the following DIP Milestones: (i) on or before January 5, 2026 - Court shall have entered the final order authorizing the DIP Facility on a final basis. The Debtors have the following Store Closing and Sale Milestones: (i) on or before December 9, 2025 - Court approval of Bid Procedures Motion (defined below); (ii) December 30, 2025

- deadline for submission of bids to purchase any portion of, or all or substantially all of, the Debtors' assets in connection with the Sale; (iii) on or before December 31, 2025 - deadline for Debtors to distribute to the DIP Agent all bids received for the Sale; (iv) on or before January 6, 2026 - auction (if necessary); (v) on or before January 8, 2026 - entry of order approving the Sale; (vi) on or before January 9, 2026 - the initial installment of the guaranteed amount under the Purchase Agreement shall have been made; and (vii) on or before January 9, 2026 - the Sale shall have been consummated.

The Debtors' Store Closing Sales Motion

20. On November 24, 2025, the Debtors filed the Store Closing Sales Motion (Docket No. 18), requesting the authorization and approval of the continuation of certain store closing sales and store closures, or the initiation of store closing sales and store closures at additional stores.

21. On November 26, 2025, this Court entered the *Interim Order Granting In Part and Continuing In Part Debtors' Motion To (A) Assume the Consulting Agreement, (B) Conduct Store Closing Sales, With Such Sales To Be Free and Clear of All Liens, Claims, and Encumbrances, (C) Scheduling a Hearing, and (D) Granting Related Relief* (the "Interim Store Closing Sales Order") (Docket No. 104).

22. The Interim Store Closing Sales Order does not set forth procedures or requirements for the Debtors to timely contact the applicable Utilities to terminate utility service to any Debtor store locations as of a store closing date.

The Bid Procedures Motion

23. On November 26, 2025, the Debtors filed the *Motion of the Debtors For Entry of Orders (I)(A) Approving Bid Procedures For the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors To Enter Into (I) Stalking Horse Asset Purchase Agreement and To Provide Bid Protections Thereunder, (C) Scheduling An Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (the "Bid Procedures Motion")(Docket No. 108).

24. The Debtors' propose the following dates and deadlines in connection with the Bid Procedures: (i) December 30, 2025 - bid deadline; (ii) January 5, 2026 - auction (if necessary); (iii) December 30, 2025 - sale objection deadline; (iv) January 7, 2026 - sale hearing. Bid Procedures Motion at page 7.

Facts Regarding CNE

25. CNE provides electricity and related services to the Debtors pursuant to two Electricity Supply Agreement - Fixed Price Solutions (collectively, the "Electricity Agreements") that set forth the terms and conditions concerning CNE's provision of electricity and related services to the Debtors. CNE has continued to provide the Debtors with electricity and related services pursuant to the Electricity Agreements since the Petition Date.

26. Pursuant to the Electricity Agreements, the Debtors receive approximately one month of electricity and related services before CNE issues a bill. Once a bill is issued, the Debtors have approximately twenty (20) days after an invoice date to pay the bill. Accordingly, the Debtors could receive at least two months of electricity and related services before CNE could terminate the Electricity Agreements after a post-petition payment default.

27. The pre-petition debt owed by the Debtors to CNE is estimated to be not less than \$15,234.15. CNE is requesting a two-month cash deposit of \$19,910 as adequate assurance of payment from the Debtors, which is an amount it can obtain from the Debtors pursuant to the terms and conditions of the Electricity Agreements.

Facts Regarding CNEG

28. CNEG provides natural gas and related services to the Debtors pursuant to a Master Retail Natural Gas Supply Agreement (the "Gas Agreement") that sets forth the terms and conditions concerning CNEG's provision of natural gas and related services to the Debtors. CNEG has continued to provide the Debtors with natural gas and related services pursuant to the Gas Agreement since the Petition Date.

29. Pursuant to the Gas Agreement, the Debtors receive approximately one month of natural gas and related services before CNEG issues a bill. Once a bill is issued, the Debtors have approximately thirty (30) days after the date of an invoice to pay the applicable bill. Accordingly, the Debtors could receive more than two months of natural gas and related services before CNEG could terminate the Gas Agreement after a post-petition payment default.

30. The pre-petition debt owed by the Debtors to CNEG is estimated to be not less than \$11,855.61. CNEG is requesting a two-month cash deposit of \$18,826 as adequate assurance of payment from the Debtors, which is an amount it can obtain from the Debtors pursuant to the terms and conditions of the Gas Agreement.

Facts Regarding the Utilities Other Than CNE and CNEG

31. 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.

32. 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 their 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.

33. 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 their tariffs and/or state laws, regulations and/or ordinances are set forth in Exhibit "A" attached hereto.

34. 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 Accts.</u>	<u>Est. Prepet. Debt</u>	<u>Dep. Request</u>
AEP	12	\$40,391.10	\$71,799 (2-month)
FPL	3	\$23,066.98	\$31,028 (2-month)
Georgia Power	6	To be supplemented	\$81,255 (2-month)
NYSEG	1	To be supplemented	\$11,000 (2-month)
RG&E	3	To be supplemented	\$18,640 (2-month)
TEC	1	\$12,107.44	\$15,035 (2-month)
Peoples Gas	1	\$36.82	\$95 (2-month)
DEV	4	\$27,700	\$32,476 (2-month)
DESC	3	\$15,073.27	\$32,200 (2-month)
BGE	2	\$27,389.32	\$14,907 (2-month)
Pepco	1	\$8,609.54	\$10,890 (2-month)
ComEd	13	\$33,505.17	\$61,195 (2-month)
DPL	1	\$34,992.38	\$9,135 (2-month)
Vectren	2	\$726.26	\$5,074 (2-month)
Indiana Gas	3	\$1,900.19	\$11,282 (2-month)

<u>Utility</u>	<u>No. of Accts.</u>	<u>Est. Prepet. Debt</u>	<u>Dep. Request</u>
Southern Indiana Gas	1	\$14,014.89	\$24,839 (2-month)

35. AEP held prepetition a cash deposit in the amount of \$2,850 that it recouped against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount remains after recoupment.

36. FPL holds a surety bond in the amount of \$88,627 that it will make a claim upon for payment of the prepetition debt that the Debtors owe to FPL.

37. Georgia Power holds prepetition a cash deposit in the amount of \$6,888.33 that it will recoup against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment. Georgia Power also holds two surety bonds totaling \$86,400 that it will make claims upon for payment of the prepetition debt that the Debtors owe to Georgia Power.

38. TEC holds a surety bond in the amount of \$16,800 that it will make a claim upon for payment of the prepetition debt that the Debtors owe to TEC.

39. Peoples Gas hold a prepetition cash deposit in the amount of \$55 that it will recoup against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code.

40. ComEd held prepetition cash deposits totaling \$2,868.38

that it recouped against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount remains after recoupment.

Discussion

A. 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 set forth 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)). *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 it 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 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 statutorily 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. It is underfunded from the outset because even if the Debtors were to place two-week amounts in the Bank Account for the Utilities, 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.
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 the 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, this Court should not approve the Bank Account as adequate assurance as to the Utilities because the Bank Account: (a) Is not the form of adequate assurance requested by the Utilities; (b) Is not a form recognized by Section 366(c)(1)(A); and (c) Is 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, this 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 the Utilities.

B. THIS 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-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).

The Utilities bill the Debtors on a monthly basis for the charges already incurred by the Debtors in the prior month. They 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,

regulations, and/or contracts. Based on the foregoing state-mandated, or contract-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 days or more 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, or contract, permits a Utility to request from its customers. The Utilities are not taking the position that the cash deposits that they are entitled to obtain under applicable state law or contract are binding on this Court, but instead are introducing those forms and amounts as evidence of the forms and amounts that the applicable regulatory entity or contract 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 Bank Account supposedly containing approximately two-weeks of the Debtors' 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 the Utilities, the Debtors have made certain that post-petition professionals are favored creditors over the Utilities by ensuring 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 \$500,000 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.

Additionally, the Interim Store Closing Sales Order does not include procedures or requirements for the Debtors to (i) timely contact the applicable Utilities to terminate utility service to any Debtor store locations once a store closing sale is completed and the Debtors no longer require utility services at an applicable closed Debtor store, or (ii) close a post-petition account with the Utilities when the Debtors no longer require post-petition service for that account. As such, there is no way for a Utility to know when the Debtors no longer require service at a store location where store closings have been completed. The Debtors should be required to close accounts with the Utilities when they no longer require post-petition service for such accounts, or otherwise they should

remain administratively responsible for such charges until they do close the applicable account(s).

Despite the fact that the Utilities continue to provide the Debtors with admittedly crucial post-petition utility goods/services on the same generous terms that were provided prepetition, with the risk of non-payment, the Debtors are seeking to deprive the Utilities of any adequate assurance of payment for which they are entitled to receive 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 that 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 amount requested herein;
3. Require the Debtors to close any account(s) with the Utilities when they no longer require post-petition service from the Utility for the account(s) or remain administratively responsible for such charges until they do close the account(s); and

4. Providing such other and further relief as this Court
deems just and appropriate.

Dated: December 11, 2025

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d/b/a Dominion Energy Virginia,
Dominion Energy South Carolina, Inc.,
Constellation NewEnergy, Inc.,
Constellation NewEnergy - Gas
Division, LLC, Baltimore Gas and
Electric Company, The Potomac Electric
Power Company, Commonwealth Edison
Company, Delmarva Power & Light
Company, Vectren Energy Delivery of
Ohio, LLC, Indiana Gas Company, Inc.
and Southern Indian Gas and Electric
Company*

EXHIBIT A

AEP:

Indiana -

<https://www.indianamichiganpower.com/account/bills/rates/IandMRatesTariffsIN.aspx>

Ohio -

<https://www.aepohio.com/account/bills/rates/AEPOhioRatesTariffsOH.aspx>

West Virginia -

<https://www.appalachianpower.com/company/about/rates/wv>

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

DESC: <https://www.dominionenergy.com/south-carolina/rates-and-tariffs>

Georgia Power: <https://www.georgiapower.com/business/prices-rates/business-tariffs.cshtml>

BGE:

Electric -

<https://www.bge.com/MyAccount/MyBillUsage/Pages/ElectricServiceRatesTariffs.aspx>

Gas -

<https://www.bge.com/MyAccount/MyBillUsage/Pages/GasServiceRatesTariffs.aspx>

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>

DPL:

Delaware -

Electric:

<https://www.delmarva.com/MyAccount/MyBillUsage/Pages/DE/Electric/CurrentTariffs.aspx>

Gas:

<https://www.delmarva.com/MyAccount/MyBillUsage/Pages/DE/Gas/CurrentTariffs.aspx>

Pepco:

Maryland:

<https://www.pepco.com/MyAccount/MyBillUsage/Pages/Maryland.a>

spx

TEC:

<http://www.tampaelectric.com/company/ourpowersystem/tariff/>

Peoples Gas:

<https://www.peoplesgas.com/company/ournaturalgassystem/tariff/>

NYSEG: <https://www.nyseg.com/w/electricity-pricing-and-tariffs>

RG&E: <https://www.rge.com/account/understandyourbill/pricing>

FPL:

http://www.fpl.com/customer/rates_and_bill/rules_tariffs.shtml

Southern Indiana Gas:

<https://midwest.centerpointenergy.com/assets/downloads/rates/in-south-electric-tariff.pdf>

Indiana Gas:

<https://midwest.centerpointenergy.com/assets/downloads/rates/in-north-gas-tariff.pdf>

Vectren:

<https://midwest.centerpointenergy.com/assets/downloads/rates/oh-gas-tariff.pdf>

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 December 11, 2025, I caused a true and correct copy of the *Objection of Certain Utility Companies to the Motion of Debtors for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* to be served by email on:

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