

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:) **Chapter 11**
)
IEH AUTO PARTS HOLDING LLC, et al.,) **Case No. 23-90054 (CML)**
)
Debtors.) **(Jointly Administered)**

MOTION AND MEMORANDUM OF CERTAIN UTILITY COMPANIES TO: (A) VACATE, AND/OR RECONSIDER, AND/OR MODIFY ORDER 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 ADDITIONAL ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF; AND (B) DETERMINE ADEQUATE ASSURANCE OF PAYMENT AS TO THE UTILITIES
[Relates To Docket No. 47]

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

American Electric Power (“AEP”), CenterPoint Energy Resources Corp. (“CERC”), Florida Power & Light Company (“FPL”), Georgia Power Company (“Georgia Power”), Consolidated Edison Company of New York, Inc. (“Con Ed”), Orange & Rockland Utilities, Inc. (“ORU”), The Connecticut Light & Power Company (“CL&P”), Eversource Gas of Massachusetts (“Eversource Gas”), NStar (East) Electric Company (“NStar East”), NStar Gas Company (“NStar Gas”), NStar Electric Company, Western Massachusetts (“NStar West”), New York State Electric and Gas Corporation (“NYSEG”), Rochester Gas & Electric Corporation (“RG&E”), Baltimore



Gas and Electric Company (“BGE”), PECO Energy Company (“PECO”), The Cleveland Electric Illuminating Company (“CEI”), Ohio Edison Company (“Ohio Edison”), West Penn Power Company (“WPP”), Monongahela Power Company (“Mon Power”), Pennsylvania Power Company (“Penn Power”), Potomac Edison Company (“PE”), Pennsylvania Electric Company (“Penelec”), Metropolitan Edison Company (“Met-Ed”), Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“DEV”), The East Ohio Gas Company d/b/a Dominion Energy Ohio (“DEO”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, the “Utilities”), hereby move this Court (the “Motion”) pursuant to Rule 60 of the Federal Rules of Civil Procedure, made applicable in Bankruptcy under Federal Rules of Bankruptcy Procedure 9024, to (A) vacate and/or reconsider, and/or modify the *Order 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 Additional Assurance Requests, and (IV) Granting Related Relief* (the “Utility Order”) (Docket No. 47), and (B) to determine adequate assurance of payment as to the Utilities pursuant to 11 U.S.C. Section 366(c). In support of their Motion, the Utilities set forth the following:

Introduction

The plain language of Section 366(c)(2) requires a Chapter 11 debtor to provide a utility with adequate assurance of payment that is satisfactory to the utility within 30 days of the petition date. If a debtor believes the amount of the utility’s request pursuant to Section 366(c)(2) needs to be modified, the debtor can file a motion pursuant to Section 366(c)(3) seeking to modify the amount of the utility’s request, which is to be heard after “notice and a hearing.” Here, the Debtors completely ignored all of the foregoing statutory requirements, including the notice requirements of Section 366 and the Utilities’ due process rights, by filing the *Debtors’ Emergency Motion for*

Entry of an 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 Additional Assurance Requests, and (IV) Granting Related Relief (the "Utility Motion") (Docket No. 11) on February 1, 2023 and scheduling it and having it heard on an *ex parte* final basis on the same day at 4:00 p.m., the second day of the case. Unfortunately the Debtors' blatant disregard for the substantive and notice requirements of Section 366 and the Utilities' due process rights was rewarded with the entry of the Utility Order, which the Utilities are now required to set aside by this Motion to assert their lawful rights.

The *Certificate of Service* (the "COS") (Docket No. 34) reflects that none of the Utilities were "served" with the Utility Motion, or the *Agenda For Hearing Scheduled For February 1, 2023, at 4:00 p.m. Prevailing Central Time* (the "Agenda")(Docket No. 33) prior to the final hearing on the Utility Motion that took place on February 1, 2023. Additionally, the *Supplemental Certificate of Service* (the "Supplemental COS")(Docket No. 79) reflects that some of the Utilities were supposedly "served" with the Utility Motion and Utility Order via first-class mail to post-office boxes on February 3, 2023, two days after the final hearing on the Utility Motion took place and the entry date of the Utility Order. As such, the Utilities never received proper notice and an opportunity to be heard with respect to the Utility Motion.

The Utility Order provides that the Court found that "[t]he Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided." Utility Order at page 2. As the Utilities did not receive any notice, let alone proper and timely notice, of the final hearing on the Utility Motion held at 4:00 p.m. on the second day of the case and the very same day that the Utility Motion was filed with the Court, it

is respectfully difficult to ascertain how a lack of any “notice” could somehow be considered appropriate. Furthermore, nowhere in the Utility Motion is there any explanation for why “emergency relief” and a final order were required without any notice or an opportunity to be heard being provided to the impacted Utilities.

The *Procedures for Complex Chapter 11 Cases in the Southern District of Texas (Effective January 1, 2023)* (the “Complex Case Procedures”) provide that final orders on motions filed pursuant to Section 366 of the Bankruptcy Code “(i) do not prejudice the right of a utility to propose alternative procedures; and (ii) provide for a hearing not later than 30 days after the petition date upon any timely filed **objection** to the adequate assurance procedures.” Complex Case Procedures at ¶ 4.f. (emphasis added). The Utility Order does not provide for (i) a deadline to file an objection to the Utility Motion, including the “Adequate Assurance Procedures” set forth therein, or (ii) a hearing date within 30 days of the January 31, 2023 petition date (the “Petition Date”) to resolve any disputes between the Debtors and any utility regarding adequate assurance of payment and the Adequate Assurance Procedures.

Moreover, without providing the Utilities with notice and an opportunity to be heard, the Utility Order sets forth Adequate Assurance Procedures for utilities regarding any “Adequate Assurance Request” for adequate assurance of payment for additional or different adequate assurance of payment. Specifically, the Utility Order provides that:

A. The Additional Assurance Request must be in writing and contain the following information set forth in Section 7.c. of the Utility Order: (i) identify the location(s) for which utility services are provided, and the account number(s) for such location(s), (ii) a summary of the

Debtors' payment history relevant to the affected accounts including security deposits¹; (ii) explain why the utility believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (iii) certify that the utility does not already hold a prepetition deposit equal to or greater than two weeks of utility services².

B. If the Debtors and a utility provider are not able to reach an alternative resolution within 14 days of the Debtors' receipt of an Additional Assurance Request, the Debtors will request a hearing before the Court to determine adequate assurance of payment with respect to a particular utility provider.

Respectfully, the foregoing procedure does not make sense because it does not provide for a deadline for the Debtors' to schedule an adequate assurance of payment determination hearing within 30 days of the Petition Date pursuant to the Complex Case Procedures which expressly provide that an adequate assurance determination hearing must take place within 30 days of the Petition Date to resolve any disputes between the Debtors and a utility regarding adequate assurance of payment. Accordingly, the Utilities are filing this Motion to vacate the Utility Order which is not in accord with the express provisions of Section 366 of the Bankruptcy Code and the Complex Case Procedures, and request that this matter be set for the next available hearing date.

The Utilities are seeking the following cash deposits from the Debtors as assurance of payment under Section 366(c)(2), which are amounts that they are authorized to obtain pursuant to applicable state law or contract: (a) AEP - \$20,483 (2-month); (b) CERC - \$15,590 (2-month); (c) FPL - \$25,237 (2-month); (d) Georgia Power - \$6,130 (2-month); (e) Con Ed - \$13,360 (2-

¹ Other than to make the Adequate Assurance Request procedure more burdensome, it is unclear why summaries of the Debtors' payment history for each account are required when the Debtors' timely payment of prepetition charges is no longer statutorily relevant under Section 366(c)(3)(B)(ii). Information on final prepetition charges are generally not available for weeks and possibly months based on applicable meter read dates and other factors.

² Information regarding any prepetition security held by a Utility is irrelevant because Section 366(c)(4) expressly provides that utilities can recoup prepetition deposits against prepetition debt without notice or order of the Court.

month); (f) ORU - \$55,920 (2-month); (g) CL&P - \$2,525 (1.5-month); (h) Eversource Gas - \$8,250 (2-month); (i) NStar East - \$18,550 (2-month); (j) NStar Gas - \$2,550 (2-month); (k) NStar West - \$7,250 (2-month); (l) NYSEG - \$25,150 (2-month); (m) RG&E - \$13,490 (2-month); (n) BGE - \$10,455 (2-month); (o) PECO - \$17,035 (2-month); (p) CEI - \$1,768 (2-month); (q) Ohio Edison - \$344 (2-month); (r) WPP - \$558 (2-month); (s) Mon Power - \$1,270 (2-month); (t) Penn Power - \$124 (2-month); (u) PE - \$178 (2-month); (v) Penelec - \$516 (2-month); (w) Met-Ed - \$4,796 (2-month); (x) DEV - \$15,842 (2-month); (y) DEO - \$12,392 (2-month); and (z) CNE - \$225,795 (2-month). For the reasons set forth herein, the Utilities request that this Court promptly vacate the Utility Order as to the Utilities and order the Debtors to immediately provide the Utilities with adequate assurance of payment in the form of cash deposits in the amounts set forth herein.

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b).
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).
3. Venue of this Motion is proper in this district pursuant to 28 U.S.C. § 1409.

Facts

Procedural Facts

4. On January 31, 2023 (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.

5. The Debtors’ Chapter 11 bankruptcy cases are being jointly administered.

The Utility Motion

6. On February 1, 2023 – one day after the Petition Date, the Debtors filed the Utility Motion.

7. Rule 9014 of the Federal Rules of Bankruptcy Procedure provides that “reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” In addition, as the Utilities are corporations, Rule 7004(b)(3) requires service to be served “to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. . . .”

8. The COS and Supplemental COS reflect that the Utilities were not properly or timely “served” with the Utility Motion. As such, the Utilities never received notice and an opportunity to be heard with respect to the Utility Motion at the final hearing on the Utility Motion that took place at 4:00 p.m. on February 1, 2023 – the very same day that the Utility Motion was filed.

9. The Utility Order provides that the Court found that “the notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given.” Utility Order at page 2. As set forth herein, nothing was appropriate regarding the Debtors’ lack of any notice to the Utilities regarding the Utility Motion and the final hearing on the Utility Motion that took place on just the second day of the case.

10. The Utility Order also provides that the Court “determined that the legal and factual basis set forth in the Motion and at the Hearing establishes just cause for the relief granted herein.” Utility Order at page 2. Respectfully, the Utilities are not aware of the factual or legal bases for the findings that: (i) holding a hearing on no notice to the Utilities was appropriate, or (ii) just

cause was established at the *ex parte* final hearing on the second day of the case (and the very day that the Utility Motion was filed) that justified the relief granted in the Utility Order.

11. Because the Utilities were not served with the Utility Motion and the Debtors never attempted to contact the Utilities regarding their adequate assurance requests prior to the filing of the Utility Motion, the Utilities had no opportunity to respond to the Utility Motion or otherwise be heard at the *ex parte* final hearing on the Utility Motion that took place on February 1, 2023, despite the fact that Section 366(c)(3) (presuming this was the statutory basis for the relief sought by the Debtors) expressly requires that there be “notice and a hearing” to the Utilities.

12. In the Utility Motion, the Debtors improperly sought 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 a bank account containing \$386,488.29 that supposedly reflects one-half of the Debtors’ average monthly utility charges for the twelve-month period ended December 31, 2022, net of any prepetition deposits provided to the Debtors’ utility providers (the “Adequate Assurance Account”). Utility Motion at ¶ 13. 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 reduce the amount of adequate assurance they provide to the Utilities based on the existence of prepetition deposits.

13. The Adequate Assurance Account is an unacceptable form of adequate assurance of payment for the Utilities and should not have been 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).

14. The Utility Motion did 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 Debtors contended that the Adequate Assurance Account, "in conjunction with the Debtors' cash flow from operations, cash on hand, and cash from the proposed debtor-in-possession financing, demonstrates the Debtors' ability to pay for future Utility Services in accordance with their prepetition practices," and allegedly constitutes sufficient adequate assurance of future payment to the Debtors' utility providers. Utility Motion at ¶ 15.

The Utility Order

15. Following the *ex parte* final hearing on the Utility Motion that took place on February 1, 2023 at 4:00 p.m., the same day that the Utility Motion was filed and the second day of the case, the Court entered the Utility Order on February 1, 2023.

16. The Utility Order granted the Debtors' proposed form of adequate assurance of payment in the form of the Adequate Assurance Account.

17. As set forth in the Introduction to this Motion, the procedures established on an *ex parte* basis are not appropriate or in accord with the provisions of Section 366 of the Bankruptcy Code. Hence, the Utilities are filing this Motion to Vacate the Adequate Assurance Procedures as to the Utilities and the *ex parte* holding in paragraph 1 of the Utility Order that the Adequate Assurance Deposit constitutes adequate assurance of payment. It is unclear how such a holding could have been reached without providing the Utilities with notice and an opportunity to be heard on the matter as required by applicable law.

18. Although not requested in the Utility Motion, the Utility Order provides that the monies contained in the Adequate Assurance Account on behalf of each utility company shall be returned to the Debtors on the earlier of (a) payment of the utility company's final invoice, and (b)

the effective date of any Chapter 11 Plan confirmed in these Chapter 11 cases. Utility Motion at ¶ 6. As the Utilities bill the Debtors in arrears, and the Utilities would likely provide post-petition utility goods/services to the Debtors through the effective date of a plan or a sale closing date, 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.

19. Although not requested in the Utility Motion, the Utility Order provides that any payment to be made, or any authorization contained thereunder, shall be subject to and consistent with the terms and conditions contained in any orders entered by the Court approving post-petition financing and authorizing the use of cash collateral. Utility Order at ¶ 15. It is not clear if the Debtors and the secured lenders are trying to subordinate all of the post-petition payments made to the Utilities to the secured lenders' liens. At a minimum, all post-petition payments made by the Debtors to the Utilities, including any post-petition security, should not be subordinated to the lenders' liens or subject to subsequent disgorgement by the secured lenders. If the Debtors want the Utilities to provide post-petition utility goods/services, then any and all post-petition payments made to the Utilities should be free and clear of any and all liens. Otherwise, all of the relief sought in the Utility Motion is nothing more than a subterfuge.

The Debtors' Financing Motion

20. On February 1, 2023, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Post-Petition Financing, Secured by Senior Liens, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Financing Motion") (Docket No. 16).

21. Through the Financing Motion, the Debtors seek approval of a DIP Facility consisting of a multiple-draw delayed draw term loan facility in the aggregate maximum principal amount of \$75 million, with \$35 million of new money available to the Debtors following the entry of the Interim Financing Order (defined below).

22. On February 10, 2023, the Court entered the *Corrected Interim Order (I) Authorizing Post-Petition Financing Secured by Senior Liens, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Interim Financing Order”) (Docket No. 90).

23. The Interim Financing Order authorized the Debtors to draw \$35 million on an interim basis. Interim Financing Order at page 4.

24. The Interim Financing Order approved the DIP Term Sheet attached as Exhibit “1” to the Interim Financing Order.

25. The DIP Term Sheet sets forth the following milestones: (i) no later than 45 days after the Petition Date – entry of an order approving bidding procedures for the sale of all or substantially all of the Debtors’ assets; (ii) no later than 110 days after the Petition Date – entry of order approving the Sale; (iii) no later than 120 days after the Petition Date – consummation of the Sale; and (iv) no later than 90 days after consummation of the Sale – confirmation of a liquidating Chapter 11 Plan. DIP Term Sheet at page 10.

26. The DIP Term sheet includes a carve-out for the payment of fees of the Debtors’ professionals incurred prior to a Carve-Out Trigger Notice, plus an additional \$750,000 following delivery of a Carve-Out Trigger Notice (the “Carve-Out”). DIP Term Sheet a pages 19-20.

27. Attached as Exhibit “2” to the Interim Financing Order is a 20-week budget through the week ending June 18, 2023 (the “Budget”). Although there is a line-time in the Budget for

“Rents & Utilities,” it is not stated or known whether the Debtors’ budgeted sufficient funds for the timely payment of their lawfully incurred post-petition utility charges.

The Debtors’ Bid Procedures Motion

28. On February 10, 2023, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving the Bid Procedures, (II) Approving the Sale of the Debtors’ Assets Free and Clear, and (III) Granting Related Relief* (the “Bid Procedures Motion”) (Docket No. 96).

29. As of the filing of the Bid Procedures Motion, the Debtors had not identified a stalking horse bidder.

Facts Regarding CNE

30. CNE provides electricity and related services to the Debtors pursuant to numerous electricity supply agreements (collectively, the “Electricity Agreements”) that set forth the terms and conditions concerning CNE’s provision of electricity and related services to the Debtors. The Debtors have approximately 177 accounts supplied by CNE.

31. 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 20 days to pay the bill. If the Debtors fail to timely pay a bill, a late fee may be subsequently imposed on the account. Accordingly, the Debtors could receive approximately two months of electricity and related services before CNE could terminate an Electricity Agreement after a post-petition payment default.

32. The pre-petition debt owed by the Debtors to CNE is estimated to be not less than \$238,516. CNE is requesting a two-month cash deposit of \$225,795 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 the Utilities Other Than CNE

33. 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.

34. 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.

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

36. 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' post-petition deposit requests are as follows:

<u>Utility</u>	<u>No. of Accts.</u>	<u>Est. Prepetition Debt</u>	<u>Deposit Request</u>
AEP	15	\$13,055.91	\$20,483 (2-month)
CERC	8	\$15,274.45	\$15,590 (2-month)
FPL	24	\$18,088.54	\$25,237 (2-month)
Georgia Power	4	\$4,286.30	\$6,130 (2-month);
Con Ed	5	\$2,456.76 (after applying prepetition deposits)	\$13,360 (2-month)
ORU	8	To be supplemented	\$55,920 (2-month)
CL&P	3	\$1,849.51	\$2,525 (1.5-month)
Eversource Gas	5	\$9,194.62	\$8,250 (2-month)
NStar East	8	To be supplemented	\$18,550 (2-month)
NStar Gas	4	To be supplemented	\$2,550 (2-month)
NStar West	6	\$1,849.51	\$7,250 (2-month)
NYSEG	18	To be supplemented	\$25,150 (2-month)
RG&E	8	To be supplemented	\$13,490 (2-month)
BGE	14	\$18,590.43	\$10,455 (2-month)
PECO	8	\$12,440.10	\$17,035 (2-month)
CEI	3	\$3,752.85	\$1,768 (2-month)
Ohio Edison	1	\$429.51	\$344 (2-month)
WPP	5	\$516.58	\$558 (2-month);
Mon Power	2	\$1,175.38	\$1,270 (2-month)
Penn Power	1	\$106.96	\$124 (2-month)
PE	1	\$96.30	\$178 (2-month)
Penelec	4	\$649.53	\$516 (2-month)

<u>Utility</u>	<u>No. of Accts.</u>	<u>Est. Prepetition Debt</u>	<u>Deposit Request</u>
Met-Ed	4	\$878.29	\$4,796 (2-month)
DEV	13	\$19,323.56	\$15,842 (2-month)
DEO	5	\$25,430.71	\$12,392 (2-month)

37. AEP held prepetition deposits totaling \$5,339.93 that it recouped against the prepetition debt owing to AEP from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

38. FPL held prepetition deposits totaling \$4,809 that it recouped against the prepetition debt owing to FPL from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

39. Georgia Power held prepetition deposits totaling \$5,234.65 that it recouped against the prepetition debt owing to Georgia Power 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 Georgia Power post-petition deposit request.

40. NYSEG held prepetition deposits totaling \$9,610 that it will recoup against the prepetition debt owing to NYSEG 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 NYSEG post-petition deposit request.

41. RGE held prepetition deposits totaling \$2,075 that it will recoup against the prepetition debt owing to RGE 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 RGE post-petition deposit request.

42. BGE held prepetition deposits totaling \$17,306 that it recouped against the

prepetition debt owing to BGE from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

43. CEI held prepetition deposits totaling \$905.87 that it recouped against the prepetition debt owing to CEI from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

44. Penelec held prepetition deposits totaling \$444 that it recouped against the prepetition debt owing to Penelec from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

45. Met-Ed held prepetition deposits totaling \$2,797 that it recouped against the prepetition debt owing to Met-Ed 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 Met-Ed post-petition deposit request.

46. Met-Ed held prepetition deposits totaling \$2,797.50 that it recouped against the prepetition debt owing to Met-Ed 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 Met-Ed post-petition deposit request.

47. DEV held a prepetition deposit plus interest in the amount of \$911.05 that it recouped against the prepetition debt owing to DEV from the Debtors pursuant to Section 366(c)(4) of the Bankruptcy Code. No prepetition deposit amount will remain after recoupment.

Discussion

A. THE UTILITY ORDER SHOULD BE VACATED AS TO THE UTILITIES BECAUSE IT WAS ENTERED IN VIOLATION OF THE UTILITIES' DUE PROCESS RIGHTS AND THE UTILITY MOTION WAS NOT PROPERLY SERVED ON THE UTILITIES.

The relief sought by the Debtors in the Utility Motion was in violation of the Utilities' due process rights, Rules 7004(b)(3) and 9014 of the Federal Rules of Bankruptcy Procedure and Section 366(c) of the Bankruptcy Code.

1. The Utility Motion Was Not Properly Served In Accordance With Rules 7004(b)(3) And 9014 Of The Federal Rules Of Bankruptcy Procedure.

Bankruptcy Rules 7004 and 9014 require that service of a motion upon a corporation be made by mail to the attention of an officer, a managing or general agent or to any other agent authorized by appointment or by law. Specifically, Rule 4(b)(3) of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 7004, provides for service of process by mail on a corporation as follows:

Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is on authorized by appointment to receive service and the statute so requires, by also mailing a copy to the defendant.

Courts have held that the notice requirements set forth in Fed. R. Civ. P. 4(b)(3) are to be strictly adhered to and that service of process must be addressed to a specific officer, managing or general agent. *See In re Golden Books Family Entertainment, Inc.*, 269 B.R. 300, 305 (D. Del. 2001) (holding that notices addressed to the "Asst. Controller" were deficient because "they failed to address any of the copies of the notice to a person of authority or to a person authorized to accept service"); *see also In re Schoon*, 153 B.R. 48 (Bankr. N.D. Cal. 1993) (holding that notices addressed to "Attn: President" did not constitute valid service upon an officer and "makes a joke

of the requirement that an officer be served”); *Addison v. Gibson Equipment Co., Inc. (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453 (Bankr. E.D.Va. 1995) (holding that because "nationwide service of process by first class mail was a rare privilege," notice addressed to "President or Corporate Officer" was improper because no individual was named).

Adequate and timely notice of the filing of a suit is an essential element of our judicial system. As held by the Supreme Court of the United States and reiterated by Judge McKelvie in *Golden Books*, “due process of law in any proceeding which is to be accorded finality [requires] notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Rule 4(b)(3) operates to assure that a corporate defendant is placed on actual notice of a suit filed against it and strict compliance with this notice requirement in turn serves to protect its due process rights as well as assure that bankruptcy matters proceed expeditiously. *Pittman Mechanical*, 180 B.R. at 457.

The Utilities are corporations. Therefore, Rule 7004(b)(3) requires service to be served “to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. . . .” In addition to the Rule 7004(b)(3) requirements, Rule 9014 of the Federal Rules of Bankruptcy Procedure provides that “reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” The Affidavit reflects that the Utilities were not properly or timely “served” with the Utility Motion. As such, the Utilities never received notice and an opportunity to be heard with respect to the Utility Motion. Based on the foregoing, the Utility Order should be vacated as to the Utilities because the Utility Motion was not properly served on the Utilities pursuant to Rules 7004(b)(3)

and 9014 of the Federal Rules of Bankruptcy Procedure for a final hearing on the Utility Motion that took place on February 1, 2023, the second day of the case and the same day that the Utility Motion was filed.

2. Section 366 Of The Bankruptcy Code

With respect to Section 366(c) of the Bankruptcy Code, it specifically requires that a motion under Section 366(c)(3)(A) be determined after notice and a hearing. Moreover, the Complex Case Procedures provide that final orders on motions filed pursuant to Section 366 of the Bankruptcy Code “(i) do not prejudice the right of a utility to proposed alternative procedures; and (ii) provide for a hearing not later than 30 days after the petition date upon any timely filed **objection** to the adequate assurance procedures.” Complex Case Procedures at ¶ 4.f. (emphasis added). Here, the Utility Order failed to provide an objection deadline or a hearing date no later than 30 days after the petition date. Accordingly, based on all of the foregoing, it is clear that the Utilities did not receive any, let alone reasonable, notice of the February 1, 2023 final hearing on the Utility Motion that took place at 4:00 p.m. on the same day that the Utility Motion was filed, thereby depriving the Utilities of the opportunity to prepare for and participate at a hearing that resulted in the entry of the final Utility Order that very same day. Therefore, this Court should vacate the Utility Order as to the Utilities and permit the Utilities to be heard on the issues raised in the Utility Motion and in this Motion.

B. THE UTILITY ORDER SHOULD BE VACATED AS TO THE UTILITIES BECAUSE THE RELIEF PROVIDED IS NOT IN ACCORD WITH SECTION 366(c) OF THE BANKRUPTCY CODE.

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 U.S. 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. 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 actually 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 should vacate the Utility Order as to the Utilities. *See In re Viking Offshore (USA), Inc.*, 2008 WL 782449 at *3 (Bankr. S.D. Tex. Mar. 20, 2008) (“The relief requested by Debtors would reverse the burden, by making an advance determination that the proposed assurance was adequate. . . . the court lacks the power to reverse the statutory framework for provision of adequate assurance of payment.”); *see also In re Pilgrim’s Pride Corporation*, Case No. 08-45664 (DML)(Docket No. 447), Bankr.

N.D. Tex., *Memorandum Order* entered on January 5, 2009 (denying debtors' motion seeking to establish adequate assurance of payment).

1. The Debtors' Proposed Adequate Assurance Account Is Not Relevant And Is Unsatisfactory Because It Does Not Provide the Utilities With Adequate Assurance of Payment.

This Court should not have considered the Adequate Assurance 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 Adequate Assurance Account is not a form of adequate assurance of payment recognized by Section 366(c)(1)(A). Moreover, the Adequate Assurance Account is an improper and otherwise unreliable form of adequate assurance of future payment for the following reasons:

- i. Unlike the statutorily approved forms of adequate assurance of payment, the Adequate Assurance Account is not something held by the Utilities. Accordingly, the Utilities have no control over how long the Adequate Assurance Account will remain in place.
- ii. To access the Adequate Assurance Account, the Utilities may 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.
- iii. It is underfunded from the outset because the Utilities issue monthly bills in arrears and by the time a default notice is issued, the Debtors will have used approximately 60 days of commodity or service.
- iv. The Debtors should not close the Adequate Assurance Account before all post-petition utility charges are paid in full.
- v. The Debtors believe they can reduce the amount of adequate assurance they provide to the Utilities based on the existence of prepetition deposits in contravention of the express provisions of Section 366(c)(4) of the Bankruptcy Code that allows utilities to recoup prepetition deposits against prepetition debt without notice or Court approval.

Accordingly, the Court should not have approved the Adequate Assurance Account as adequate assurance as to the Utilities because the Adequate Assurance 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 Debtors Have Not Set Forth Any Basis For Modifying the Utilities' Requested Deposits.

In the Utility Motion, the Debtors failed 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 did not provide the 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 vacate the Utility Order as to the Utilities 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. Each Utility then provides the Debtors with a certain period of time to pay the bill, the timing of which is set forth in applicable state laws, tariffs, regulations or contract. Based on the foregoing state 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 50 to 60 days of service based on their billing cycles. Furthermore, the amounts of the Utilities' deposit requests are the amounts that the applicable state public service commissions, which are neutral third-party entities, or contracts, permit the Utilities to request from their customers. The Utilities are not taking the position that the deposits that they are entitled to obtain under applicable state law or contract are binding on this Court, but, instead are introducing those amounts as evidence of amounts that their regulatory entities or contract permit them 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. The Debtors did not provide an objective, much less an evidentiary, basis for their proposed adequate assurance in the form of the Adequate Assurance Account. Moreover, in contrast to the improper treatment proposed to the Debtors' 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 \$750,000 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 the Utilities continue to provide the Debtors with crucial 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 for continuing to provide the Debtors with valuable 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.

Request for Hearing

The Utilities request that this Motion be heard at the next available hearing date in these bankruptcy cases to remedy the violations of their due process and Section 366 rights.

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

- i. Vacating the Utility Order as to the Utilities;
- ii. Denying the Utility Motion as to the Utilities;

- iii. Awarding the Utilities the post-petition adequate assurance of payment deposits they have requested from the Debtors herein;
- iv. Awarding such other and further relief as the Court deems just and appropriate; and
- v. Scheduling a prompt hearing on this Motion.

Dated: February 17, 2023

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*Dominion Energy Virginia, The East Ohio Gas Company
d/b/a Dominion Energy Ohio and Constellation NewEnergy,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2023, a true and correct copy of the foregoing *Motion* was served via the Court's CM/ECF electronic notification system on all parties requesting same, and via email to the parties listed below.

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P.O. Box 61209
Houston, Texas 77208-1209
Email: liz@lizfreemanlaw.com
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Vienna Flores Anaya
Matthew D. Cavanaugh
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/s/ Weldon L. Moore, III
Weldon L. Moore, III

EXHIBIT “A”

AEP:

<https://www.swepco.com/account/bills/rates/SWEPCORatesTariffsLA.aspx>
Ohio - <https://www.aepohio.com/account/bills/rates/AEPOhioRatesTariffsOH.aspx>
Oklahoma - <https://www.psoklahoma.com/account/bills/rates/>
Virginia -
<https://www.appalachianpower.com/account/bills/rates/apcoratestariffsva.aspx>

CERC: <http://www.centerpointenergy.com/en-us/corporate/about-us/rates-tariffs>

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

CL&P: <https://www.eversource.com/content/nh/business/about/doing-business-with-us/builders-contractors/interconnections/connecticut-net-metering/connecticut-tariffs-rules>

NStar West:

<https://www.eversource.com/content/wma/business/my-account/billing-payments/about-your-bill/rates-tariffs/electric-tariffs-rules>

Eversource Gas:

<https://www.eversource.com/content/ema-c/residential/account-billing/manage-bill/about-your-bill/rates-tariffs/gas-tariffs-rules>

DEV: <https://www.dominion.com/business/dominion-virginia-power/rates/business-rates-schedules>

DEO: <https://www.dominionenergy.com/ohio/rates-and-tariffs/tariffs>

CEI and Ohio Edison:

https://www.firstenergycorp.com/content/customer/customer_choice/ohio/_ohio_tariffs.html

Mon Power:

https://www.firstenergycorp.com/customer_choice/west_virginia/west_virginia_tariffs.html

Potomac Edison:

https://www.firstenergycorp.com/content/customer/customer_choice/maryland/maryland_tariffs.html

Met-Ed, Penn Power, Penelec and WPP:

https://www.firstenergycorp.com/content/customer/customer_choice/pennsylvania/pennsylvania_tariffs.html

BGE:

Electric –

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

[spx](#)

Gas –

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

PECO:

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

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

NYSEG:

Electricity -

https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill./electricpricing!/ut/p/z1/tZNbb4IwFIB_yx54ZC3gBR6REIjhoiLj8kJqQayBglid_vvVzF2yTFmWrUkmpxz-vWcryAFMUgpOpISMdJQVPFzko4yRXJNe2BAz3d8Gc7h1NK0cKGEpgyiewF6MATpT_LhjaXDvvwnkIIUU9ayDUjoeV-UqOyyjzclcFOgvOgEiDBuDpQJ8ED5ec8Qzc_NoVuRqnoUYFEVmHUEt3wTWl6qtpjkIBlphaLAGSSu1upYHEjjlahirImairAs5colKcNLdGS4meX4E93JDN9bmvESJAL0ksC0dGuReZ-I7CuR_kYUvhMlnGjySmReiWZXoqhvFOn9RkYXyp5Z9dVIOMP4VgU74OM8kuIZhLTpam5P8Ls2zkNzwW_6947aEEz7_OifQO5cw-VGtIhtRELXDYi_UQjEXxXiqWS726U6F7ShrDgxEP-hoW0dhrWq1GIMt8OyVk-iFc0c_eEF58gWWQ!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?WCM_GLOBAL_CONTEXT=%2FNYSEGAGR_Navigation%2FHeader%2FAccount%2FUnderstandYourBill.%2FElectricPricing

Gas –

https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill/naturalgaspricing!/ut/p/z0/fY3BCoJAFEW_pYXLeJNG4FJECsmkQLDZyFOncUre6DhW_n22aiG0PHDPucAhB074VBKt0oTtzFe-K7xNEh22ITulx9RIZxbvft-7eFnkQgz8_2AuqHvf8wB4pcmKt4WcpkFIKb4fTmsEVgL4zCsKj2SddhIMw8WqZ70aErVtg4jtKPBVuLQGVUpkt--a5IwkcA7tM1a0U1DvnTn14XbPXg5vYLVB2DXu6s!/

RGE:

https://www.rge.com/wps/portal/rge/account/understandyourbill/pricing!/ut/p/z1/tZJLb4JAFIV_Sxcsyb2Cii6REEwrvloKzIaMvBwjA-Jo7b_v2GjbpFGaNp3dTe45882ZAwRCIJweWEEFqzjdyDkiRqx3PGfUtXHiDkwL52jb5mzyoKHbgeDmAvaA_ESPV46FbfpnIEASLmqxgqgpMlo08ecLFFxlNM0aBWmSVHsuFNxzOe8E5elrtW-WbLNRsG5YwnhxsqoTlkKU9JOc6gaqWqpRtZtruWpijuoyWxp0oFOzY2Sn7cD2Ync8HVrj2J5OnpzwCSIFF65juYt48gVjdMawLhj-B0YkMYbvGLMzRtAWorkdWXBCa_mvNo9IMvSvM_QhOLDSBXxeNaXsyePvspv7zkLe9D8xjhDu2-oj-83W2y2xZIkqLrKjgPCvLZKeWuPZnuxTTcVKZTyvIPyugPCiqEvfL029VENc94rSPKpuYO6suzfpkgy-/

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

ORU - <https://www.oru.com/en/ny-rates-tariffs>

Con Ed:

Electric - <http://www.coned.com/rates/elec-sched1.asp>

Gas - http://www.coned.com/rates/gas_main.asp

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:) **Chapter 11**
)
IEH AUTO PARTS HOLDING LLC, et al.,) **Case No. 23-90054 (CML)**
)
Debtors.) **(Jointly Administered)**

ORDER GRANTING MOTION AND MEMORANDUM OF CERTAIN UTILITY COMPANIES TO: (A) VACATE, AND/OR RECONSIDER, AND/OR MODIFY ORDER 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 ADDITIONAL ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF; AND (B) DETERMINE ADEQUATE ASSURANCE OF PAYMENT AS TO THE UTILITIES

UPON CONSIDERATION of the Motion of American Electric Power, CenterPoint Energy Resources Corp., Florida Power & Light Company, Georgia Power Company, Consolidated Edison Company of New York, Inc., Orange & Rockland Utilities, Inc., The Connecticut Light & Power Company, Eversource Gas of Massachusetts, NStar (East) Electric Company, NStar Gas Company, New York State Electric and Gas Corporation, Rochester Gas & Electric Corporation, Baltimore Gas and Electric Company, PECO Energy Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, West Penn Power Company, Monongahela Power Company, Pennsylvania Power Company, Potomac Edison Company, Pennsylvania Electric Company, Metropolitan Edison Company, Virginia Electric and Power Company d/b/a Dominion Energy Virginia, The East Ohio Gas Company d/b/a Dominion Energy Ohio and Constellation NewEnergy, Inc. (collectively, the “Utilities”), to (A) vacate and/or reconsider, and/or modify the *Order 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*

Additional Assurance Requests, and (IV) Granting Related Relief (the “Utility Order”) (Docket No. 47), and (B) determine adequate assurance of payment to the Utilities pursuant to 11 U.S.C. Section 366(c) (the “Motion”), and it appearing that the Court has jurisdiction to consider the Motion; and it appearing that due notice of the Motion has been given and that no further notice need be given; and a hearing on the Motion having been held on _____, 2023, at which time all interested parties were given an opportunity to be heard; and based upon the Motion and the proceedings before the Court; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED in all respects.
2. The Utility Order is VACATED as to the Utilities.
3. Within three (3) business days of entry of this Order, the Debtors shall provide the following cash deposits (the “Deposits”) to the following Utilities as adequate assurance within the meaning of Section 366(c) of the Bankruptcy Code, and send them to the following persons and addresses:

- A. American Electric Power - \$20,483
Attn: Dwight C. Snowden
American Electric Power
1 Riverside Plaza, 13th Floor
Columbus, Ohio 43215
- B. CenterPoint Energy Resources Corp. - \$15,590
Jeanneta Johnson
CenterPoint Energy, Inc.
1111 Louisiana St.
Houston, TX 77002
- C. Florida Power & Light Company - \$25,237
Attn: Alexandre Ximenes
Revenue Recovery Department RRD/LFO
4200 W Flagler St

Coral Gables, Florida 33134

- D. Georgia Power Company - \$6,130
Attn: Daundra Fletcher
2500 Patrick Henry Parkway
McDonough, GA 30253
- E. Consolidated Edison Company of New York, Inc. - \$13,360
Attn: Patti Macri
Con Edison Law Department, Attn: Bankruptcy, 9th Floor
4 Irving Place
New York, New York 10003
- F. Orange & Rockland Utilities, Inc. - \$55,920
Attn: Jennifer Woehrle
390 W. Route 59
Spring Valley, New York 10977
- G. The Connecticut Light & Power Company - \$2,525
Eversource Gas of Massachusetts - \$8,250
NStar (East) Electric Company - \$18,550
NStar Gas Company - \$2,550
NStar Electric Company, Western Massachusetts - \$7,250
Attn: Honor S. Heath, Esq.
Eversource Energy
107 Selden Street
Berlin, Connecticut 06037
- H. New York State Electric and Gas Corporation - \$25,150
Attn: Kelly Potter
James A. Carrigg Center
Bankruptcy Department
18 Link Drive
Binghamton, NY 13904
- I. Rochester Gas and Electric Corporation - \$13,490
Attn: Patricia Cotton
89 East Avenue
Rochester, NY 14649
- J. Baltimore Gas and Electric Company - \$10,455
PECO Energy Company - \$17,035
Attn: Lynn R. Zack, Esq.
Assistant General Counsel
Exelon Corporation
2301 Market Street, S23-1

Philadelphia, Pennsylvania 19103

- K. The Cleveland Electric Illuminating Company - \$1,768
Ohio Edison Company - \$344
West Penn Power Company - \$558
Monongahela Power Company - \$1,270
Pennsylvania Power Company - \$124
Potomac Edison Company - \$178
Pennsylvania Electric Company - \$516
Metropolitan Edison Company - \$4,796
Attn: Kathy M. Hofacre
FirstEnergy Corp.
76 S. Main St., A-GO-15
Akron, Ohio 44308
- L. Virginia Electric and Power Company d/b/a Dominion Energy Virginia - \$15,842
Attn: Sherry Ward
600 East Canal Street, 16th floor
Richmond, Virginia 23219
- M. The East Ohio Gas Company d/b/a Dominion Energy Ohio - \$12,392
Attn: Delores G. Fury, Bankruptcy Representative
Dominion Energy Ohio
2100 Eastwood Avenue
Akron, OH 44305
- N. Constellation NewEnergy, Inc. - \$225,795 (to be sent via wire)

SIGNED:

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE