

This order is SIGNED.

Dated: June 16, 2023

Kevin R. Anderson
KEVIN R. ANDERSON
U.S. Bankruptcy Judge



slo

Order prepared and submitted by:
J. Thomas Beckett, USB #5587

Brian M. Rothschild, USB #15316
Darren Neilson, USB #15005

PARSONS BEHLE & LATIMER

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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>In re:</p> <p>PolarityTE, Inc., a Delaware corporation</p> <p style="text-align: center;">Debtor</p>	<p>Case No. 23-bk-22358-KRA</p> <p>Case No. 23-bk-22360-KRA</p> <p>Case No. 23-bk-22361-KRA</p>
<p>In re:</p> <p>PolarityTE, MD Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p>Chapter 11</p> <p>Judge Kevin R. Anderson</p>
<p>In re:</p> <p>PolarityTE, Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p style="text-align: center;">THIS FILING RELATES TO ALL DEBTORS¹</p>

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are PolarityTE, Inc. (9524); PolarityTE MD, Inc. (1555); and PolarityTE, Inc. (6882). The location of the Debtors' service address is 1960 S. 4250 W., Salt Lake City, UT 84104.



**INTERIM ORDER GRANTING FIRST DAY MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS UNDER 11 U.S.C. §§ 105(a) AND 366 DETERMINING
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND
ESTABLISHING DETERMINATION PROCEDURES AND SETTING A FINAL
HEARING AND OBJECTION DEADLINE**

Upon the motion (the “**Motion**”)² filed by the above-captioned debtors and debtors in possession (the “**Debtors**”) seeking entry of an order authorizing the First Day Motion for Entry of Interim and Final Orders under 11 U.S.C. §§ 105(A) and 366 Determining Adequate Assurance of Payment for Future Utility Services and Establishing Determination Procedures, and the Court, having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at the hearing before the Court (the “**Hearing**”), and the *Declaration of Richard Hague in Support of Chapter 11 Petition and First Day Motions*, and upon the record of the proceedings before this Court, and the Court finding that it has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, that this is a core matter under 28 U.S.C. § 157(b)(2), that notice of the Motion and the Hearing were sufficient under the circumstances and that no further notice need be given for the interim relief sought herein; and the legal and evidentiary bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein and that such relief is necessary to avoid immediate and irreparable harm to the Debtors’ estates,

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED on an interim basis to the extent provided herein pending the hearing on the Final Order granting the Motion.
2. Any objection to the relief requested in the Motion being granted on a final basis must be filed in the Court and served (a) Proposed counsel for the Debtor, **PARSONS BEHLE &**

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

LATIMER, Attn: Brian M. Rothschild, One Utah Center, 201 S. Main St., Ste 1800, Salt Lake City, UT 84111, (b) the Office of the United States Trustee for the District of Utah, (c) any official committee appointed in the Chapter 11 Cases; and (d) all ECF notice parties so that such objection is received no later than **June 23, 2023, at 5:00 p.m. (Mountain Standard Time)** (the “**Objection Deadline**”). If any party in interest files an objection, the Court will hold a hearing on the relief sought in the Motion on a final basis on **June 29, 2023 at 1:30 p.m. (Mountain Standard Time)** (the “**Final Hearing**”). If no objections are filed to the Motion, this Court may enter a Final Order on the Motion without holding the Final Hearing.

3. Entry of this Interim Order is without prejudice to the rights of any party in interest to interpose an objection to the Motion, and any such objection will be considered on a *de novo* basis at the final hearing.

4. In the interim, the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

5. This order applies to all Utilities providing utility services to the Debtors and is not limited to those on the list of Utilities attached as Exhibit C to the Motion. If the Debtors discover any Utility not listed on Exhibit C, it will promptly give such Utility notice of the Motion and this Interim Order constitutes notice of the Final Hearing and Objection Deadline.

6. The Debtors are authorized but not required to pay on a timely basis and in accordance with its prepetition practices all undisputed invoices for post-petition utility services provided and may also pay any *de minimis* amounts for prepetition utility services rendered if separation of prepetition services and post-petition services would be administratively burdensome.

7. Utilities seeking a Utility Deposit must comply with the following procedure:

- (a) Any Utility may request a Utility Deposit by sending a deposit request (a “**Deposit Request**”) to the Debtors’ proposed counsel at the following address by U.S. Mail or e-mail so that such Deposit Request is received no later than 21 days after entry of the Interim Order ([date], 2023):

Brian M. Rothschild
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
BRothschild@parsonsbehle.com

- (b) The Deposit Request must include (i) a record of the Debtors’ actual use of the Utility’s services for a minimum period of 12 months immediately prior to the Petition Date (if available); (ii) a calculation showing one-half of the Debtors’ estimated average monthly cost for the Utility’s services (the “**Presumptive Deposit Requirement**”); (iii) the amount that the Utility requests be set aside as a Utility Deposit; and (iv) an explanation and all evidence supporting any upward deviation of the request from the Presumptive Deposit Requirement.
- (c) Upon receipt of the Deposit Request, the Debtors will determine within 14 days of receipt whether it accepts the proposed amount in the Deposit Request. If the Debtors agree with the Deposit Request, the Debtors will set aside the Utility Deposit and notify the Utility that its Deposit Request has been accepted. The Debtors will be authorized under the Interim Order to make such determinations and provide the Utility Deposits in the exercise of its reasonable business judgment without further Court authorization.
- (d) If the Debtors and the Utility cannot agree on a Utility Deposit, the Debtors will notify the Utility that the Debtors have rejected its Deposit Request. The Utility will have 21 days from the date of such notice is sent to the Utility (the “**Request Bar Date**”) to file and serve a request with the Court (a “**Request for Determination**”) under section 366 of the Bankruptcy Code seeking a determination by the Court of the appropriate amount of a Utility Deposit.
- (e) The Court will treat all Requests for Determination as motions under section 366 of the Bankruptcy Code, and will follow the rules and procedures governing motions, objections, replies, and hearing schedules with respect to each Request for Determination.
- (f) Any Utility that does not timely (1) send the Debtors a Deposit Request and (2) file a Request for Determination will be deemed to have consented to the payment by the Debtors post-petition in the ordinary course of business without a Utility Deposit and provision of such Utility and will be deemed

to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code.

8. Pending entry of an order by the Court resolving any Request for Determination, no Utility may alter, refuse, or discontinue services to the Debtors or recover or setoff against a prepetition deposit. Further, the Debtors' assurance of future payment is deemed satisfied for any Utility that fails to timely send a Deposit Request and make a timely Request for Determination. No Utility may alter, refuse, or discontinue services to the Debtors or recover or setoff against a prepetition deposit without further order of this Court.

9. Nothing in this Interim Order or the Motion shall be deemed to constitute post-petition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code or admission of the validity of any claim of any Utility or waiver of the Debtors' right to dispute any claim under section 502 of the Bankruptcy Code or otherwise.

10. The requirement set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion. The Court finds that interruption of utility services would cause immediate and irreparable harm to the Debtor's businesses to the detriment of the Debtors' estates. Accordingly, notwithstanding the possible applicability of Bankruptcy Rule 6004, 7062, or 9014, or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Interim Order.

[END OF ORDER]

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DESIGNATION OF PARTIES TO RECEIVE NOTICE

Service of the foregoing **INTERIM ORDER GRANTING FIRST DAY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS UNDER 11 U.S.C. §§ 105(a) AND 366 DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND ESTABLISHING DETERMINATION PROCEDURES AND SETTING A FINAL HEARING AND OBJECTION DEADLINE** shall be served to the parties and in the manner designated below:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users.

- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com
- Darren B. Neilson dneilson@parsonsbehle.com
- Ellen E. Ostrow eostrow@foley.com, lbailey@foley.com;ellen-ostrow-4512@ecf.pacerpro.com;tschuman@foley.com;docketflow@foley.com
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Melinda Willden tr melinda.willden@usdoj.gov, Lindsey.Huston@usdoj.gov;James.Gee@usdoj.gov;Rinehart.Peshell@usdoj.gov;Rachell e.D.Armstrong@usdoj.gov;Brittany.Eichorn@usdoj.gov

The following parties in interest are not registered ECF users and must be notified manually:

Kurtzman Carson Consultants, LLC
222 N Pacific Coast Highway
3rd Floor
El Segundo, CA 90245

Rocky Mountain Advisory, LLC
15 W South Temple
Ste 500
Salt Lake City, UT 84101

Dated this 12th day of June, 2023.

/s/ Brian M. Rothschild
Brian M. Rothschild

In re:
PolarityTE, Inc.
Debtor

Case No. 23-22358-KRA
Chapter 11

CERTIFICATE OF NOTICE

District/off: 1088-2
Date Rcvd: Jun 16, 2023

User: admin
Form ID: pdfor1

Page 1 of 2
Total Noticed: 2

The following symbols are used throughout this certificate:

Symbol Definition

+ Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jun 18, 2023:

Recip ID	Recipient Name and Address
op	+ Kurtzman Carson Consultants, LLC, 222 N Pacific Coast Highway, 3rd Floor, El Segundo, CA 90245-5614
fa	+ Rocky Mountain Advisory, LLC, 15 W South Temple, Ste 500, Salt Lake City, UT 84101-1500

TOTAL: 2

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jun 18, 2023

Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 16, 2023 at the address(es) listed below:

Name	Email Address
Brian M. Rothschild	on behalf of Debtor PolarityTE MD Inc. brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Brian M. Rothschild	on behalf of Debtor PolarityTE Inc. brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Brian M. Rothschild	on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Darren B. Neilson	on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) dneilson@parsonsbehle.com
Darren B. Neilson	on behalf of Debtor PolarityTE MD Inc. dneilson@parsonsbehle.com
Darren B. Neilson	

District/off: 1088-2

User: admin

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Date Rcvd: Jun 16, 2023

Form ID: pdfor1

Total Noticed: 2

on behalf of Debtor PolarityTE Inc. dneilson@parsonsbehle.com

Ellen E. Ostrow

on behalf of Interested Party Grander Acquisition LLC eostrow@foley.com,
lbailey@foley.com;ellen-ostrow-4512@ecf.pacerpro.com;tschuman@foley.com;docketflow@foley.com

J. Thomas Beckett

on behalf of Debtor PolarityTE Inc. tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com

J. Thomas Beckett

on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) tbeckett@parsonsbehle.com,
ecf@parsonsbehle.com;brothschild@parsonsbehle.com

J. Thomas Beckett

on behalf of Debtor PolarityTE MD Inc. tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com

Melinda Willden tr

on behalf of U.S. Trustee United States Trustee melinda.willden@usdoj.gov
Lindsey.Huston@usdoj.gov;James.Gee@usdoj.gov;Rinehart.Peshell@usdoj.gov;Rachelle.D.Armstrong@usdoj.gov;Brittany.Eich
orn@usdoj.gov

United States Trustee

USTPRegion19.SK.ECF@usdoj.gov

TOTAL: 12