

This order is SIGNED.

Dated: June 29, 2023

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



slo

Order prepared and submitted by:
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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.



FINAL ORDER GRANTING FIRST DAY MOTION FOR 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 Court having entered the Interim Order on the Motion, and on 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, the Court finds 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; and the legal and factual 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’ estate,

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED as provided herein on a final basis.
2. The Debtors are authorized, but not required, to take all actions necessary to implement the relief granted in this Order.

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

3. This order applies to all Utilities providing utility services to the Debtors and is not limited to those on the list of Utilities attached to the Motion as Exhibit C and as set forth below.

4. The Debtor 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.

5. 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 (June 18, 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 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.

6. 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.

7. Nothing in this 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.

8. The Court finds that interruption of utility services would cause immediate and irreparable harm to the Debtors’ 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 Final Order shall be immediately effective and enforceable upon its entry.

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

LIST OF UTILITY PROVIDERS

<p><u>Electricity Provider</u> Paid by landlord and allocated to Debtors as additional rent under the real property lease</p>	<p><u>Gas Provider</u> Paid by landlord and allocated to Debtors as additional rent under the real property lease</p>
<p><u>Phone Service Provider</u> Lumen Technologies (CenturyLink): 100 Centurylink Dr. Monroe, LA 71203</p>	<p><u>Internet Service Provider</u> Comcast Business: PO Box 8587 Philadelphia, PA 19101-8587 Lumen Technologies (CenturyLink): 100 Centurylink Dr. Monroe, LA 71203</p>
<p><u>Trash Removal Provider</u> Ace Recycling & Disposal 2274 South Technology Road West Valley City, UT 84129</p>	<p><u>Medical Waste Provider</u> Trilogy Med Waste 2500 Decker Lake Blvd #12 West Valley City, UT 84119 Clean Harbors Disposal Services Inc.: 42 Longwater Drive PO Box 9149 Norwell, MA 02061-9149</p>
<p><u>Mobile Communications Service Provider</u> Verizon Wireless PO Box 660 108 Dallas, TX 75266-0108</p>	<p><u>Water/Sewer Service Provider</u> Paid by landlord and allocated to Debtors as additional rent under the real property lease</p>

[END OF DOCUMENT]

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DESIGNATION OF PARTIES TO RECEIVE NOTICE

Service of the foregoing **FINAL ORDER GRANTING FIRST DAY MOTION FOR 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
- Gary M. Freedman gary.freedman@nelsonmullins.com, sarah.castillo@nelsonmullins.com;francis.santelices@nelsonmullins.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
- Rachel A. Sternlieb rachel.sternlieb@nelsonmullins.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;Rachelle.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
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Rocky Mountain Advisory, LLC
15 W South Temple
Ste 500
Salt Lake City, UT 84101

Crowell & Moring LLP
Attn: Michael V. Blumenthal
590 Madison Avenue, 20th Floor
New York, NY 10022

Dated this 27th day of June, 2023.

/s/ Brian M. Rothschild

Brian M. Rothschild