Docket #0172 Date Filed: 05/01/2026

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

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*[1]	)	Case No. 26-90440 (CML)
Debtors.	)	(Jointly Administered)

UNITED ELECTRIC COMPANY, INC.'S LIMITED OBJECTION AND JOINDER IN RESPONSE TO DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

United Electric Company, Inc. ("United Electric") files this limited objection and joinder (the "Limited Objection") in response to the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 18] (the "Cash Collateral Motion")[2] and, in support thereof, shows the Court as follows:

Preliminary Statement

1. United Electric holds at least an $18.7 million mechanic's and materialman's lien on the Debtors' Apex-1 facility in Hopkinsville, Kentucky—one of at least $120 million in aggregate M&M lien claims that collectively constitute the estate's largest creditor constituency. The Interim Order was negotiated exclusively between the Debtors and the Secured Noteholders

[1] The Debtors in this Chapter 11 case, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581

[2] Capitalized and undefined terms use the definitions found in the Cash Collateral Motion.

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without effective notice or input from United Electric or any other M&M lienholder. It contains overreaching protections for the Secured Noteholders (while providing little to no protection for the M&M lienholders) even though the Secured Noteholders are ***not*** providing a single penny of new money to fund the case. Instead, they are only funding the case as necessary to run a suboptimal sale process on a 38-day timeline from Petition Date to Sale Hearing, without any evidence of extensive (or even adequate) prepetition marketing. The Court should modify the terms of the proposed Final Order as outlined herein, which modifications will both maximize the estate's value and preserve the rights of United Electric and other similarly situated M&M lienholders and creditors.

Limited Background

2. United Electric is an electrical contractor that was engaged by the design-build general contractor Turner-Kokosing Joint Venture ("TKJV") to provide electrical services at the Apex-1 plant in Hopkinsville, Kentucky (the "Property"). United Electric was not fully compensated for the performance of its work and thereafter properly recorded a mechanic's and materialmen's lien ("M&M Lien") on the Property pursuant to applicable Kentucky law in the amount of at least $18.7 million, plus costs and interest.

Objection

3. United Electric raises the following objections to the proposed Final Order:

4. ***First*, the Adequate Protection Liens may improperly prime United Electric's M&M Lien on the Hopkinsville Property.** The Debtors seem to acknowledge that the Prepetition Liens and the Adequate Protection Liens are subject to "Prepetition Permitted Liens," yet the Interim Order and Final Order fail to expressly acknowledge that United Electric's M&M Lien constitutes a Prepetition Permitted Lien. The Final Order must expressly provide that the

Prepetition Liens and the Adequate Protection Liens are junior to all valid and perfected M&M liens, including the United Electric M&M Lien.

5. ***Second*, the waiver of marshaling is prejudicial to United Electric and other M&M lienholders.** The Interim Order provides that, subject to entry of the Final Order, the Prepetition Secured Parties "shall not be subject to the equitable doctrine of 'marshaling' or any other similar doctrine." *See* Interim Order, ¶ 24. The Senior Secured Holders hold blanket liens on substantially all of the Debtors' personal property assets, while United Electric's M&M Lien attaches only to the Hopkinsville Property. If the Senior Secured Holders were required to satisfy their claims first from assets other than the Hopkinsville Property—such as the Georgia facility, intellectual property portfolio, and the Debtors' equity in the Polish operations—there would be more value available at the Property for United Electric and other M&M lienholders. Waiving marshaling eliminates this critical protection. The Final Order should preserve the doctrine of marshaling or, at minimum, reserve the issue until the sale hearing. Alternatively, the Prepetition Secured Parties should be required to exhaust all non-Hopkinsville collateral before looking to the Hopkinsville Property as a source of recovery.

6. ***Third*, the Final Order should not foreclose investigation into whether certain Secured Noteholder claims should be equitably subordinated.** Upon information and belief, certain of the Secured Noteholders may also be equity holders of the Debtors. (It is unknown at this early stage of the case whether any Secured Noteholders are also current or former members of management.) To the extent any Secured Noteholders hold dual roles as both secured creditors and equity holders, their claims may be subject to equitable subordination under § 510(c) of the Bankruptcy Code or recharacterization as equity contributions. The Debtors' Stipulations disclaim any claims for "recharacterization, subordination … or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code." *See* Interim Order, ¶ E.3. The

Final Order must preserve the right of any creditors' committee to investigate and, if warranted, pursue equitable subordination or recharacterization claims against Secured Noteholders.

7. ***Fourth*, the release in Paragraph 15 is overbroad.** The Interim Order contains a sweeping release in which the Debtors "unconditionally, irrevocably, and fully forever release" the Prepetition Secured Parties from all claims, including "lender liability" and equitable subordination claims. *See* Interim Order, ¶ 15. The release in Paragraph 15 exceeds the scope of what is customary in a cash collateral order, which typically extends only to the secured parties' conduct in negotiating and consenting to the use of cash collateral. Here, the Prepetition Secured Parties are not providing any new money, yet the cash collateral order purports to provide a release with respect to the entire prepetition lending relationship. This must be modified in the Final Order.

8. ***Fifth*, the Senior Secured Holders' consent rights over case administration are overbroad.** The Interim Order gives the Senior Secured Holders effective veto power over virtually all major case decisions, including approval of all budgets, any asset dispositions or contract rejections, approval of any sale or bidding procedures, and designation of any stalking horse or winning bidder. *See* Interim Order, ¶¶ 3(e), 4(e), 7. These consent rights, combined with the extremely compressed sale milestones give the Senior Secured Holders disproportionate control over the sale process to the detriment of other creditors. Given that Secured Noteholders are not advancing any new money, consent rights should be replaced with consultation rights, and M&M lienholders should be afforded equivalent information and consultation rights.

9. ***Finally*, the payment of the Senior Secured Holders' professional fees is improper.** Payment of the Senior Secured Holders' professional fees and expenses is not a recognized form of adequate protection under the Bankruptcy Code, which is limited to cash payments, additional or replacement liens, or such other relief as will result in the indubitable equivalent of the secured party's interest in the collateral. *See* 11 U.S.C. § 361. In fact, the Debtors

are already adequately protecting the Secured Noteholders by running a sale process to sell the collateral of the Secured Noteholders, precisely in the manner dictated by the Secured Noteholders. To the extent the process does not adequately protect the Secured Noteholders, they only have themselves to blame for implementing a less-than-optimal sale process. To the extent the Senior Secured Holders are entitled to recover fees at all, the proper mechanism is to file an application pursuant to § 506(b), which is available only to oversecured creditors and subject to a reasonableness determination by the Court—neither of which has been established here.

Joinder and Reservation of Rights

10. United Electric reserves all right to amend and/or supplement this Objection, as well as to object to all issues at the Final Hearing on the Cash Collateral Motion. In addition, United Electric further joins in all objections that are not contrary to its position.

Conclusion

United Electric requests that this Court (i) modify the proposed Final Order as set forth herein and (ii) grant United Electric such other and further relief, both at law and in equity, which is just and proper.

Dated: May 1, 2026

/s/ *Michael S. Held*

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CERTIFICATE OF SERVICE

This is to certify that on May 1, 2026, I caused a true and correct copy of the foregoing to be served via the CM/ECF notification system for the Southern District of Texas.

/s/ *Michael S. Held*
Michael S. Held