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Objection Deadline: March 23, 2026 at 12:00 p.m.
Hearing Date: March 24, 2026 at 9:59 a.m.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:	)	**Chapter 11**
Vanderbilt Minerals, LLC,	)	**Case No. 26-60110 (WAK)**
Debtor.	)	**Re: Docket Nos. 7, 49**

OBJECTION OF CERTAIN UTILITY COMPANIES TO THE MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION TO ESTABLISH ADEQUATE ASSURANCE PROCEDURES WITH RESPECT TO THE DEBTOR'S UTILITY PROVIDERS

Constellation NewEnergy, Inc. ("CNE"), Dominion Energy South Carolina, Inc. ("DESC"), Niagara Mohawk Power Corporation d/b/a National Grid ("NIMO") and Yankee Gas Services Company d/b/a Eversource ("Yankee Gas") (collectively, the "Utilities"), hereby object to the *Motion of the Debtor and Debtor In Possession To Establish Adequate Assurance*

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Procedures With Respect To the Debtor's Utility Providers (the "Utility Motion") (Docket No. 7), and set forth the following:

Introduction

The Debtor's Utility Motion improperly seeks to shift the Debtor's obligations under Section 366(c)(3) of the Bankruptcy Code from modifying the amounts of the adequate assurance of payment requested by the Utilities under Section 366(c)(2) to setting the form and amounts of the adequate assurance of payment acceptable to the Debtor. This Court should not permit the Debtor to shift its clear statutory burden in this fashion.

Through the Utility Motion, the Debtor seeks to have this Court approve its proposed form of adequate assurance of payment, which is a bank account containing $97,715 which supposedly reflects approximately two weeks of the Debtor's estimated aggregate utility charges, net of any prepetition deposits or similar forms of prepetition security (the "Bank Account"). As an initial matter, the Debtor's proposal that the monies contained in the Bank Account should be net of any prepetition deposits does not make sense because the Debtor does not know if any prepetition security will remain after the payment of prepetition charges, or if prepetition deposit amounts will remain after recoupment of prepetition deposits against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. The Utility Service Providers List attached as Exhibit "C" to the Utility Motion does not reflect the proposed amounts that would be contained in the Bank Account on behalf of the Utilities.

The Court should reject the Debtor's proposed Bank Account because: (1) The Utilities bill the Debtor on a monthly basis and provide the Debtor with generous payment terms pursuant to applicable state law, tariffs, regulations and/or contracts, such that a segregated bank account supposedly containing two-weeks of utility charges, net of any prepetition deposits, that is

maintained by the Debtor is not sufficient in amount or in form to provide the Utilities with adequate assurance of payment; (2) Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include a segregated bank account; and (3) Even if this Court were to improperly consider the Bank Account as a form of adequate assurance of payment for the Utilities, this Court should reject it as an insufficient form of adequate assurance of payment for the reasons set forth in Section A.1. of this Objection.

The Utilities are seeking the following cash deposits from the Debtor, which are amounts that they are authorized to obtain pursuant to applicable state law or contracts: (a) CNE - $97,761 (2-month); (b) DESC - $58,215 (2-month); (c) NIMO - $32,935; and (d) Yankee Gas - $25,755 (1.5-month). Based on all of the foregoing, this Court should deny the Utility Motion as to the Utilities because the amounts of the Utilities' post-petition deposit requests are reasonable under the circumstances and should not be modified.

Facts

Procedural Facts

1. On February 16, 2026 (the "Petition Date"), the Debtor commenced its case under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") now pending with this Court. The Debtor continues to operate its businesses and manage its properties as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

The Utility Motion

2. On the Petition Date, the Debtor filed the Utility Motion.

3. On February 18, 2026, the Court entered the *Interim Order Establishing Adequate Assurance Procedures With Respect To the Debtor's Utility Providers* (the "Interim Utility Order") (Docket No. 49). The Interim Utility Order set an objection deadline of March 23, 2026

at 12:00 p.m., with a final hearing on the Utility Motion to take place on March 24, 2026 at 9:59 a.m.

4. The Debtor seeks to avoid the applicable legal standards under Sections 366(c)(2) and (3) by seeking Court approval for its own form of adequate assurance of payment, which is the Bank Account containing $97,715 which supposedly reflects approximately two weeks of the Debtor's estimated aggregate utility charges, net of any prepetition deposits or similar forms of prepetition security. Utility Motion at ¶ 11.

5. The Debtor's proposal that the monies contained in the Bank Account should be net of prepetition deposits does not make sense because the Debtor does not know if any of the prepetition deposit amounts will remain after recoupment of prepetition deposits against prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code.

6. The Debtor proposes to "deposit" $97,715 into the Bank Account, and refers to the proposed monies to be contained in the Bank Account as the "Adequate Assurance Deposit." Utility Motion at ¶ 11. Monies contained in an escrow account controlled by a customer of a utility such as the proposed Bank Account are not recognized as a "cash deposit" provided by a customer to a utility by any public utility commission. Additionally, Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include a segregated utility bank account. Simply put, the Debtor is not proposing to provide any of the Utilities with cash deposits as adequate assurance of payment pursuant to Section 366(c) of the Bankruptcy Code.

7. The proposed Bank Account is not acceptable to the Utilities and should not be considered relevant by this Court because Sections 366(c)(2) and (3) do not allow the Debtor to establish the form or amounts of adequate assurance of payment. Under Sections 366(c)(2) and

(3), this Court and the Debtor are limited to modifying, if at all, the amounts of the security sought by the Utilities under Section 366(c)(2).

8. The Utility Motion does not address why the Bank Account would be funded at supposedly two-weeks of utility charges, less any prepetition deposit amounts held by a utility, for the Utilities when the Debtor knows that the Utilities are required by applicable state laws, regulations, tariffs and/or contracts to bill the Debtor monthly. Moreover, the Debtor presumably wants the Utilities to continue to bill the Debtor monthly and provide it with the same generous payment terms that it received prepetition. Accordingly, if the Bank Account is relevant, which the Utilities dispute, the Debtor needs to explain: (A) why it is only proposing that the Bank Account would contain a supposed two-week amounts for the Utilities; and (B) how such insufficient amounts could even begin to constitute adequate assurance of payment for the Utilities' monthly bills.

9. The Debtor claims that it intends to pay any post-petition obligations to a utility company in a timely fashion, in the ordinary course of business, and in accordance with the Approved Budget (discussed below). However, Section 366(c)(1)(B) expressly provides that an administrative expense priority shall not constitute an assurance of payment. See also Section 366(c)(3)(B)(iii).

10. The Utility Motion does not address why this Court should consider modifying, if at all, the amounts of the Utilities' adequate assurance requests pursuant to Section 366(c)(2). Rather, without providing any specifics, the Utility Motion merely states that "[a]ny Utility Company that fails to timely object to this Motion" will be deemed to have agreed that the Bank Account constitutes adequate assurance of payment. Utility Motion at ¶ 11.

The Debtor' Financing Motion

11. On the Petition Date, the Debtor filed the *Motion of the Debtor and Debtor In Possession Pursuant To Sections 105, 362, 363, 503, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rules 2002-1, 4001-2 and 9013-1 For Interim and Final Orders (I) Authorizing the Debtor To Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing and (V) Granting Related Relief* (the "Financing Motion") (Docket No. 17).

12. Through the Financing Motion, the Debtor seeks the entry of an order authorizing the Debtor to obtain senior secured priming post-petition financing in a total amount of up to $15 million, not to exceed $6.5 million on an interim basis and an additional $8.5 million on a final basis. Financing Motion at ¶ 11.

13. The Debtor has the following milestones: (i) on or before 21 days after the Petition Date – entry of Bid Procedures Order; (ii) on or before 21 days after the Petition Date – entry of Final Financing Order; (iii) on or before 45 days after the Petition Date – auction to be held; (iv) on or before 50 days after the Petition Date – entry of Sale Order; and (vi) on or before 60 days after the Petition Date – consummation of sale. Financing Motion at pages 25-26.

14. On February 18, 2026, the Court entered the *Interim Order (I) Authorizing the Debtor To (A) Obtain Postpetition Financing and (B) Grant Liens and Superpriority Administrative Expense Claims To the DIP Lender; (II) Modifying the Automatic Stay; and (III) Granting Related Relief* (the "Interim Financing Order") (Docket No. 50).

15. The Interim Financing Order authorized the Debtor to borrow up to $3 million during the First Interim Period. Interim Financing Order at pages 8-9.

16. The Interim Financing Order approved a carve-out for payments to the Debtor's

professionals incurred prior to the delivery of a Carve-Out Trigger Notice, plus an additional $1 million after the delivery of a Carve-Out Trigger Notice (the "Carve-Out"). Interim Financing Order at pages 14-16.

17. Attached as Schedule "1" to the Interim Financing Order is a budget through the week ending April 17, 2026 (the "Budget"). The Budget does not include any line-items for the payment of post-petition utility charges. As such, it is not apparent from the Budget whether sufficient funds have in fact been budgeted for the timely (and full) payment of the Debtor's post-petition utility charges.

The Debtor's Critical Vendor Motion

18. On the Petition Date, the Debtor filed the *Motion of the Debtor and Debtor In Possession For Authorization To Pay Prepetition Claims of Certain Critical Vendors, Lien Claimants and 503(b)(9) Claimants* (the "Critical Vendor Motion") (Docket No. 12). Through the Critical Vendor Motion, the Debtor sought authority to pay Critical Vendors Claims estimated to be $325,000 on an interim basis and $650,000 on a final basis. Critical Vendor Motion at ¶ 10.

19. On February 17, 2026, the Court entered the *Interim Order Authorizing the Debtor To Pay Prepetition Claims of Certain Critical Vendors, Lien Claimants and 503(b)(9) Claimants* (the "Interim Critical Vendor Order") (Docket No. 43). The Interim Critical Vendor Order authorized the Debtor to pay Critical Vendor Claims in an aggregate amount not to exceed $325,000 on an interim basis. Interim Critical Vendor Order at ¶ 2.

20. The Debtor claims in Paragraph 9 of the Utility Motion that "[b]ecause the Utility Companies provide services essential to the Debtor's operations, any interruption in Utility Services could prove damaging." However, the Critical Vendor Motion does not reflect that the Debtor sought Court authority to pay prepetition utility charges.

The Bid Procedures Motion

21. On the Petition Date, the Debtor filed the *Motion of the Debtor and Debtor In Possession For Entry of Orders (I)(A) Approving Bidding Procedures For the Sale of Substantially All of the Debtor's Assets, (B) Authorizing the Debtor To Enter Into the Stalking Horse Agreement and To Provide Bidding Protections Thereunder, (C) Scheduling An Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtor's Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* (the "Bid Procedures Motion")(Docket No. 16).

22. The sale process has the following key dates and deadlines regarding the sale process: (i) March 27, 2026 – sale objection deadline, cure objection deadline and auction notice deadline; (ii) April 2, 2026 – auction; (iii) April 7, 2026 – sale hearing and deadline to obtain entry of Sale Order; and (iv) April 17, 2026 – deadline to consummate approved sale transaction(s). Bid Procedures Motion at pages 6-7.

Facts Regarding CNE

23. CNE provides electricity and related services to the Debtor pursuant to two *Electricity Supply Agreements – Fixed Price Solutions* (collectively, the "Electricity Agreements") that set forth the terms and conditions concerning CNE's provision of electricity and related services to the Debtor. CNE has continued to provide the Debtor with electricity supply and related services pursuant to the Electricity Agreements since the Petition Date. The Debtor has two (2) accounts supplied by CNE.

24. Pursuant to the Electricity Agreements, the Debtor receives approximately one month of electricity and related services before CNE issues a bill. Once a bill is issued, the Debtor has approximately 20 days to pay the bill. If the Debtor fails to timely pay a bill, a late fee may be subsequently imposed on the account. Accordingly, the Debtor could receive approximately two months of electricity and related services before CNE could terminate the Electricity Agreements after a post-petition payment default.

25. The pre-petition debt owed by the Debtor to CNE is estimated to be not less than $303,416.56. CNE is requesting a two-month cash deposit of $97,761 as adequate assurance of payment from the Debtor, which is an amount it can obtain from the Debtor pursuant to the terms and conditions of the Electricity Agreements.

Facts Regarding the Utilities Other Than CNE

26. Each of the Utilities provided the Debtor with prepetition utility goods and/or services and have continued to provide the Debtor with utility goods and/or services since the Petition Date.

27. Under the Utilities' billing cycles, the Debtor receives approximately one month of utility goods and/or services before the Utility issues a bill for such charges. Once a bill is issued, the Debtor has approximately 20 to 30 days to pay the applicable bill. If the Debtor fails 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 Debtor fails to pay the bill after the issuance of the past due notice, the Utilities issue a notice that informs the Debtor that it must cure the arrearage within a certain period of time or its service will be disconnected. Accordingly, under the Utilities' billing cycles, the Debtor 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.

28. 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 as follows:

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

NIMO: http://www.nationalgridus.com/niagaramohawk/business/rates/rates.asp

Yankee Gas: http://www.yankeegas.com/For_Your_Business/Current_Rates/List_and_Applicability_of_Rates_and_Riders/

29. Subject to a reservation of the Utilities' right to supplement their post-petition deposit requests if additional accounts belonging to the Debtor are subsequently identified, the Utilities' estimated prepetition debt and post-petition deposit requests are as follows:

Utility	No. of Accts.	Est. Prepetition Debt	Deposit Request
DESC	1	$26,407.62	$58,215 (2-month)
NIMO	5	$15,225.40	$32,935 (2-month)
Yankee Gas	3	$27,230.90	$25,755 (1.5-month)

Discussion

A. THE UTILITY MOTION SHOULD BE DENIED AS TO THE UTILITIES.

Sections 366(c)(2) and (3) of the Bankruptcy Code provide:

> (2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility

> does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility;
>
> (3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

As stated by the Supreme Court of the United States, "[i]t is well-established that 'when the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms.'" *Lamie v. United States Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (*quoting Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.,* 530 U.S. 1, 6, 120 S. Ct., 1942, 147 L. Ed. 2d 1 (2000)). *See also Rogers v. Laurain (In re Laurain)*, 113 F.3d 595, 597 (6th Cir. 1997) ("Statutes . . . must be read in a 'straightforward' and 'commonsense' manner."). A plain reading of Section 366(c)(2) makes clear that a debtor is required to provide adequate assurance of payment satisfactory to its utilities on or within thirty (30) days of the filing of the petition. *In re* Lucre, 333 B.R. 151, 154 (Bankr. W.D. Mich. 2005). If a debtor believes the **amount** of the utility's request needs to be modified, then the debtor can file a motion under Section 366(c)(3) requesting the court to modify the **amount** of the utility's request under Section 366(c)(2).

In this case, the Debtor filed the Utility Motion to improperly shift the focus of its obligations under Section 366(c)(3) from modifying the amount of the adequate assurance of payment requested under Section 366(c)(2) to setting the form and the amount of the adequate assurance of payment acceptable to the Debtor. Accordingly, this Court should not reward the Debtor for its failure to comply with the requirements of Section 366(c) and should deny the Utility Motion as to the Utilities.

1. The Debtor's Proposed Bank Account Is Not Relevant, And Even If It Is Considered, It Is Unsatisfactory Because It Does Not Provide the Utilities With Adequate Assurance of Payment.

This Court should not even consider the Bank Account as a form of adequate assurance of payment because: (1) It is not relevant because Section 366(c)(3) provides that a debtor can only modify "the amount of an assurance of payment under paragraph (2)"; and (2) The Bank Account is not even a form of adequate assurance of payment recognized by Section 366(c)(1)(A). Moreover, even if the Court were to consider the Bank Account, the Bank Account is an improper and otherwise unreliable form of adequate assurance of future payment for the following reasons:

1. Unlike the statutory approved forms of adequate assurance of payment, the Bank Account is not something held by the Utilities. Accordingly, the Utilities have no control over how long the Bank Account will remain in place.

2. To access the Bank Account, the Utilities would have to incur the expense to draft, file and serve a default pleading with the Court and possibly litigate the demand if the Debtor refuses to honor a disbursement request.

3. It is underfunded from the outset because the Utilities issue monthly bills and by the time a default notice is issued the Debtor will have received approximately 60 days of commodity or service.

4. The Debtor may close the Bank Account before all post-petition utility charges are paid in full.

Accordingly, the Court should not approve the Bank Account as adequate assurance as to the Utilities because the Bank 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 Utility Motion Should Be Denied As To the Utilities Because the Debtor Has Not Set Forth Any Basis For Modifying the Utilities' Requested Deposits.

In the Utility Motion, the Debtor fails to address why this Court should modify the amounts of the Utilities' requests for adequate assurance of payment. Under Section 366(c)(3), the Debtor has 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 Debtor does 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 deny the relief requested by Debtor in the Utility Motion and require the Debtor to comply with the plain requirements of Section 366(c) with respect to the Utilities.

B. THE COURT SHOULD ORDER THE DEBTOR 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 Debtor on a monthly basis for the charges already incurred by the Debtor in the prior month. They then provide the Debtor with 20 to 30 days to pay the bill, the timing of which is set forth in applicable state laws, tariffs, regulations or contracts. Based on the foregoing state-mandated, or contract-mandated, billing cycles, the minimum period of time the Debtor 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 Debtor timely pays its post-petition utility bills, the Utilities still have potential exposure of approximately 60 days or more based on their billing cycles. Furthermore, the forms and amounts of the Utilities' adequate assurance requests are the forms and amounts that the applicable public service commission, which is a neutral third-party entity, or contracts, permit the Utilities to request from their customers. The Utilities are not taking the position that the cash deposits that they are entitled to obtain under applicable state law or contract are binding on this Court, but instead are introducing those forms and amounts as evidence of the forms and amounts that the applicable regulatory entity or contract permit the Utilities to request from their customers.

In contrast, the Debtor 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 Debtor's statutory burden. Instead, the Debtor merely asks this Court to approve the Bank Account supposedly containing approximately two-weeks of the Debtor's utility charges, less any prepetition deposits held by a utility company. The Debtor did not provide an objective, much less

an evidentiary, basis for its proposed adequate assurance in the form of the Bank Account. Moreover, in contrast to the improper treatment proposed to the Utilities, the Debtor has made certain that supposed Critical Vendors and post-petition professionals are favored creditors over the Utilities by ensuring (i) the payment of Critical Vendor Claims in the amount of up to $325,000 on an interim basis and $650,000 on a final basis, and (ii) the post-petition bills/expenses of Debtor's counsel are paid, even in the event of a post-petition default on the use of post-petition financing and the use of cash collateral, by obtaining a $1 million 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 Debtor with admittedly crucial post-petition utility goods/services on the same generous terms that were provided prepetition, with the possibility of non-payment, the Debtor is seeking to deprive the Utilities of any adequate assurance of payment for which they are entitled to for continuing to provide the Debtor with post-petition utility goods/services. Against this factual background, it is reasonable for the Utilities to seek and be awarded the full security that they have requested herein.

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

1. Denying the Utility Motion as to the Utilities;
2. Awarding the Utilities the post-petition adequate assurance of payments pursuant to Section 366 in the amount and form satisfactory to the Utilities, which is the form and amount requested herein; and
3. Providing such other and further relief as the Court deems just and appropriate.

[*Signature Page Follows*]

Dated: Albany, New York
March 5, 2026

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