

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:) Chapter 11
)
COLT HOLDING COMPANY LLC, et al.,) Case No. 15-11296 (LSS)
)
Debtors.) (Jointly Administered)
)
) Re: Docket Nos. 10, 76
)
) Obj. Deadline: 7/1/15, 4:00 p.m.
) Hearing Date: 7/10/15, 9:30 a.m.
)

**OBJECTION OF THE CONNECTICUT LIGHT AND POWER COMPANY
d/b/a EVERSOURCE ENERGY AND CONNECTICUT NATURAL GAS
CORPORATION TO THE DEBTORS' MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) PROHIBITING UTILITIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE; (II) APPROVING THE
DEBTORS' PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO
UTILITIES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING
OBJECTIONS TO THE DEBTORS' PROPOSED FORM OF ADEQUATE ASSURANCE**

The Connecticut Light and Power Company d/b/a Eversource Energy ("CL&P") and Connecticut Natural Gas Corporation ("CNG") (collectively, the "Utilities"), by counsel, hereby object to the *Debtors' Motion For Entry of Interim and Final Orders (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors' Proposed Form of Adequate Assurance of Payment To Utilities; and (III) Establishing Procedures For Resolving Objections To the Debtors' Proposed Form of Adequate Assurance* (the "Utility Motion"), and set forth the following:

Introduction

The Debtors' Utility Motion improperly seeks to shift the Debtors' obligations under Section 366(c)(3) from modifying the amount of the adequate assurance of payment requested by the Utilities under Section 366(c)(2) to setting the form and amount of the adequate assurance of payment acceptable to the Debtors. This Court should not permit the Debtors to shift their statutory burden.

With respect to Section 366(c) of the Bankruptcy Code, it specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include a segregated bank account. Despite the foregoing, the Debtors seek to have this Court approve their form of adequate assurance of payment, which is a bank account containing one-half of the Debtors' approximate average monthly utility charges (the "Bank Account").

Even if this Court were to improperly consider the Bank Account as a form of adequate assurance of payment, the Court should reject it as an insufficient form of adequate assurance of payment for the following reasons:

- (i) Unlike all of the identified and permissible forms of adequate assurance of payment listed in Section 366(c)(1)(A), the Bank Account is not something held by the Utilities, so the Utilities have no control over: (A) when the Bank Account will be terminated; or (B) If the Bank

Account will remain in place if there is an event of a default by the Debtors on their use of DIP financing (this is in complete contrast to the \$500,000 Carve-Out received by the Debtors' professionals in the DIP Financing pleadings, which remains in place even if there is an event of default);

(ii) In order to access the Bank 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;

(iv) The Debtors are not required to replenish the Bank Account following pay-outs.

The post-petition deposits sought by the Utilities in these jointly-administered cases are the following 45-day deposits that the Utilities are authorized to obtain from all of the customers in their service territories pursuant to applicable state law:

(A) CL&P - \$185,450; and (B) CNG - \$46,350.

Based on all the foregoing, this Court should deny the Utility Motion because the amounts of the post-petition deposit requests of the Utilities are reasonable under the circumstances and should not be modified.

Facts

Procedural Facts

1. On June 14, 2015 (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.

2. The Debtors' chapter 11 bankruptcy cases are being jointly administered.

The Utility Motion

3. On the Petition Date, the Debtors filed the Utility Motion.

4. Proper notice of the Utility Motion was not provided to the Utilities prior to the Court entering the *Interim Order (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Service; (II) Approving Debtors' Proposed Form of Adequate Assurance of Payment To Utilities; and (III) Establishing Procedures For Resolving Objections To Debtors' Proposed Form of Adequate Assurance* (the "Interim Utility Order") on June 16, 2015.

5. Because the Utilities were not properly or timely 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* hearing on the Utility Motion that took place on June 16, 2015, despite the fact that Section 366(c)(3) (presuming this was the statutory basis for the relief sought by the Debtors) requires that there be "notice and a hearing" to the Utilities.

6. In the Utility Motion, the Debtors seek 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 the Bank Account containing \$79,000 that supposedly reflects one-half of the Debtors' approximate average monthly utility charges. Utility Motion at ¶¶ 8, 9. The foregoing proposal is unacceptable to the Utilities and should not be 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).

7. The Debtors propose that the monies contained in the Bank Account shall be returned to the Debtors at the earlier of (i) the Debtors' termination of utility services, (ii) entry of an order authorizing the return of the monies contained in the

Bank Account, or (iii) the effective date of a Chapter 11 Plan. Utility Motion at ¶ 9. As the Utilities bill the Debtors in arrears and the proposed two-week Bank Account is insufficient to cover their monthly billing charges, the Bank Account, if approved, should not be released until the Debtors confirm payment in full of their post-petition utility expenses.

8. The Interim Utility Order and proposed Final Utility Order provide that any payment to be made therein would be subject to the requirements imposed on the Debtors under any approved order regarding post-petition financing or use of cash collateral. Interim Utility Order at ¶ 14; proposed Final Utility Order at ¶ 15. It is not clear if the Debtors and their secured lenders are trying to subordinate all of the post-petition payments made to the Utilities to the secured lenders' liens or just the proposed amount contained in the Bank Account. 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, 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.

9. The Debtors' claim that they had a very good payment

history with their utility providers. Utility Motion at ¶ 7. However, Section 366(c)(3)(B)(ii) expressly provides that in making an adequate assurance of payment determination, a court may not consider a debtor's timely payment of prepetition utility charges.

10. The Utility Motion does not address why the Bank Account would be undercapitalized at only a supposed two-week deposit amount when the Debtors know that the Utilities are required by applicable state laws, regulations, tariffs or contract to bill the Debtors monthly. Moreover, the Utilities presume that the Debtors want the Utilities to continue to bill them monthly in arrears pursuant to the billing cycles established by applicable state law.

11. Furthermore, 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 the Bank Account "together with the Debtors' ability to pay for postpetition Utility Services in the ordinary course of business . . . constitutes sufficient 'adequate assurance of payment' to Utility Companies . . . " Utility Motion at ¶ 10.

Facts Regarding the Debtors

12. The Debtors are designers, developers and manufacturers

of firearms for military, law enforcement, personal defense, and recreational purposes. *Keith A. Maib's Declaration In Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* ("First Day Declaration") at ¶ 32.

13. In 1992, Colt Manufacturing Company ("CMC"), at the time the Debtors' principal operating subsidiary, filed Chapter 11 petitions in the U.S. Bankruptcy Court for the District of Connecticut. After that filing, which was precipitated by excessive debt and a loss of key military and police orders, CMC languished in Chapter 11 for over two years while key government customers continued to send purchase orders to competitors. In 1994, an investment allowed CMC to confirm a Chapter 11 plan and emerge from bankruptcy. First Day Declaration at ¶ 36.

The Debtors' Prepetition Indebtedness and Capital Structure

14. As of the Petition Date, the Debtors had funded outstanding debt of approximately \$357 million, consisting of the following principal balances under the Senior Loan Credit Agreement, the Term Loan Agreement, and the Senior Notes Indenture: (i) Senior Loan - \$35 million; (ii) Term Loan - \$72.9 million; and (iii) Senior Notes - \$250 million. First Day Declaration at ¶ 41.

15. Obligations under the Term Loan Agreement are secured by a first lien on intellectual property and a second lien on all other assets of the borrowers and guarantors. First Day

Declaration at ¶ 42.

16. Obligations under the Senior Loan Agreement are secured by a second lien on intellectual property and a first lien on all other assets of the borrowers and guarantors. First Day

Declaration at ¶ 44.

17. The Senior Notes represent the overwhelming majority of the Debtors' unsecured debt. First Day Declaration at ¶ 46.

Events Leading To the Filing of the Debtors' Chapter 11 Cases

18. The Debtors' current liquidity issues are the result of business trends that include (i) a decline in modern sporting rifle sales from 2013 peak levels as well as declines in aggregate handgun demand, and (ii) delays in anticipated timing of U.S. Government sales, which includes foreign military sales through the U.S. Government and certain international sales. Such trends are expected to continue to put pressure on the Debtors' liquidity for the foreseeable future. First Day Declaration at ¶ 54.

19. A Section 363 sale process, supported by the Debtors' Prepetition Secured Lenders, supposedly represents the Debtors' best hope to de-lever their balance sheet and solve their liquidity issues. First Day Declaration at ¶ 31.

The Debtors' Post-Petition Financing

20. On the Petition Date, the Debtors filed the *Debtors' Motion (I) Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, and*

507 Authorizing the Debtors To (A) Obtain Post-Petition Financing, (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral of Pre-Petition Secured Parties; (II) Granting Adequate Protection To Pre-Petition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363, and 364; (III) Scheduling a Final Hearing; and (III) Granting Related Relief (the "Financing Motion").

21. Through the Financing Motion, the Debtors are seeking approval to borrow under (i) a \$6,666,667 multi-draw term loan facility, with \$3,333,333 being available upon entry of the Interim Financing Order (the "Senior DIP Facility"), and (ii) a \$13,333,333 multi-draw term loan facility, with \$6,666,667 being available upon entry of the Interim Financing Order (the "Term DIP Facility"). Financing Motion at p. 7.

22. Through the Financing Motion, the Debtors also seek a \$500,000 carve-out for the payment of fees and expenses of the Debtors' professionals. Financing Motion at p. 12.

23. On June 16, 2015, the Court entered the *Interim Order: (I) Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 Authorizing the Debtors To (A) Obtain Postpetition Financing, (B) Grant Senior Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection To Prepetition Secured Parties; (II) Scheduling a Final Hearing; and (III) Granting Related*

Relief (the "Interim Financing Order"). The Interim Financing Order authorized the Debtors to borrow \$6 million on an interim basis. Interim Financing Order at p. 17.

24. The Interim Financing Order also approved the \$500,000 Carve-Out. Interim Financing Order at p. 38.

25. Attached as Exhibit "C" to the Interim Financing Order is a 13-week budget through September 11, 2015 (the "Budget"). It is unclear from the Budget whether the Debtors have budgeted sufficient sums for the payment of their post-petition utility expenses.

26. On June 25, 2015, the Court entered the Second Interim Financing Order [Docket No. 132]. In Schedule 5.23 attached to the Second Interim Financing Order, the following "Milestones" are listed:

A. A plan of reorganization and disclosure statement that are reasonably satisfactory to the "Required Lenders" must be filed by August 31, 2015;

B. The disclosure statement must be approved by October 15, 2015;

C. The confirmation hearing for the plan must be commenced by November 23, 2015; and

D. An order confirming the Plan in a form and substance reasonably satisfactory to the Lenders must be entered by November 30, 2015.

The Sale Motion

27. On June 15, 2015, the Debtors filed the *Debtors' Motion Pursuant To 11 U.S.C. §§ 105, 363, and 365, and Fed. R. Bankr. P. 2002, 6004, 6006, 9008 and 9014, For Entry of (A) An Order (I) Approving Bid Procedures In Connection With the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Approving Procedures Related To the Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With Such Sale, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling the Hearing To Consider Approval of Such Sale, and (V) Granting Certain Related Relief; and (B) An Order Approving the Sale of Substantially All of the Debtors' Assets* (the "Sale Motion").

28. The Debtors have entered into discussions with their equity sponsor, Sciens Capital Management (the "Stalking Horse Bidder") to serve as the stalking horse bidder. The Debtors intend to file an executed asset purchase agreement among the Stalking Horse Bidder and the Debtors by June 29, 2015. Sale Motion at ¶ 13.

29. The Debtors propose the following dates for the sale of their assets: (i) proposed bid procedures objection deadline - June 29, 2015; (ii) proposed bid procedures hearing date - July 13, 2015; (iii) proposed bid deadline - July 30, 2015; (iv)

proposed sale hearing objection deadline - July 31, 2015; (v) proposed auction - August 3, 2015; and (vi) proposed sale hearing date - August 7, 2015. Sale Motion at ¶ 31.

The Debtors' Critical Vendor Motion

30. On the Petition Date, the Debtors filed the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors To Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief* (the "Critical Vendor Motion"). Through the Critical Vendor Motion, the Debtors sought authority to pay the claims of certain creditors that the Debtors deem to be "critical vendors" in the ordinary course of business in an amount not to exceed \$10.6 million on an interim basis and \$11.3 million on a final basis. Critical Vendor Motion at ¶ 13. Despite the fact that the Utilities are the electricity and natural gas suppliers to the Debtors' primary manufacturing facility, the Debtors do not consider the Utilities and other utility companies to be "critical vendors."

31. On June 16, 2015, the Court entered the *Interim Order (I) Authorizing the Debtors To Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief* (the "Interim Critical Vendor Order"). The Interim Critical Vendor Order authorized the Debtors' to pay critical vendor claims in an amount not to exceed \$6.8 million on an interim basis. Interim Critical Vendor Order at p. 3.

Facts Concerning the Utilities

32. 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.

33. 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 its 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.

34. In order 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 the tariffs and/or state laws, regulations and/or ordinances are as follows:

CL&P:

<https://www.eversource.com/Content/ct-e/business/my-account/my-bill/electric-tariffs-rules>

CNG:

http://www.cngcorp.com/wps/portal/cng/yourbusiness/ratesandregulations!/ut/p/a1/pZJdb4IwFib_ijdemjbQ8nHJyII42LI5I_RmKbRgjRakxWz79at4sSyZQ7MmvTgnb9_z9JwDCMgAkfQoaqpFI-nuFBPnLXmKozR04yBYIRvG8_s7GEeL6PkVgTUggJRSt3oD8lLWk9nko-m7oldCcqWm0OSm8Gego5orKlnH6343VFInl5bWnHElajlEpWAg577DXA9CZC5nhEujjhmyfa8qLIotaABzAwgvnAC08Z_fXxIk-Kr_jzgMgj8Qc8PgfjtYnhPC2F-uUgQf59h2wPKGhoyY4ZvMFle0z-rSMK1P49ObmZBVA7LfBmyUYns4kMCsSyM1f9cg-8e-tPu9t60eEufFgzZuj58JX38BCog9xw!!/dl5/d5/L2dBISEvZ0FBIS9nQSEh/

35. 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. Prepet. Debt</u>	<u>Dep. Request</u>
CL&P	4	n/a	\$185,450 (45-day)
CNG	3	\$6,193.60	\$46,350 (45-day)

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 set forth by the United States 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 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 deny the Utility Motion as to the Utilities.

1. The Debtors' 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 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:

- (i) 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.
- (ii) In order to access the Bank 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 and by the time a default notice is issued the Debtors will have used at least 45 to 60 days of commodity or service.
- (iv) The Debtors are not required to replenish the Bank Account following pay-outs.

Accordingly, the Court should not approve the Bank Account as adequate assurance 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 Debtors Have Not Set Forth Any Basis For Modifying the Utilities' Requested Deposits.

In the Utility Motion, the Debtors fail to address why this Court should modify the amount 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 do not provide the Court with any evidence or factually supported documentation to explain why the amount of the Utilities' adequate assurance requests should be modified. Accordingly, the Court should deny the relief requested by Debtors in the Utility Motion and require the Debtors to comply with the requirements of Section 366(c) with respect to the Utilities.

B. 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), that held 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 payers 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).

Although the billing cycles for each of the Utilities are slightly different, they all 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, and/or regulations.

Based on the foregoing state-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 45 to 60 days based on their billing cycles. Furthermore, the amounts of the Utilities' deposit requests are the amounts that the applicable public

service commission, which is a neutral third-party entity, or applicable contract, permits 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 are binding on this Court, but, instead are introducing those amounts as evidence of amounts that their regulatory entities permit them to request from their customers.

Finally, in contrast to the improper treatment proposed to the Debtors' Utilities, the Debtors have made certain that supposed "critical vendors" and post-petition professionals are favored creditors over the Utilities by ensuring (i) the payment of prepetition critical vendor claims of up to \$11.3 million, and that (ii) the post-petition bills/expenses of Debtors' counsel are paid, even in the event of a post-petition DIP Financing default, by seeking a \$500,00 professionals carve-out for the payment of their fees/expenses after a default. Therefore, 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 adequate security for which they are entitled to for continuing to provide the Debtors with 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.

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 payment pursuant to Section 366 in the amount and form satisfactory to the Utilities, which are the form and amounts requested herein; and
3. Providing such other and further relief as the Court deems just and appropriate.

Dated: June 29, 2015

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