UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	)	**Chapter 11**
WALTER ENERGY, INC., *et al.*,	)	**Case No. 15-02741-TOM11**
Debtors.	)	**(Jointly Administered)**

OBJECTION OF APPALACHIAN POWER COMPANY d/b/a AMERICAN ELECRIC POWER TO THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT, (IV) SETTING A FINAL HEARING RELATED THERETO; AND (B) GRANTING RELATED RELIEF

Appalachian Power Company d/b/a American Electric Power ("AEP"), by counsel, hereby objects to *The Debtors' Motion For Entry of Interim and Final Orders (A) (I) Prohibiting Utility Companies From Altering, Refusing or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Performance, (III) Establishing Procedures For Determining Adequate Assurance of Payment, (IV) Setting a Final Hearing Related Thereto, and (B) Granting Related Relief* (the "Utility Motion"), and sets 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 AEP 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 AEP, so AEP would have no control over the purported security. As a result, AEP would have no control over: (A) when the Bank Account could 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 cash collateral (this is in complete contrast to the $5 million Carve-Out received by the Debtors' professionals through the interim order granting use of cash collateral, which remains in place even if there is an event of default);

(ii) In order to access the Bank Account, AEP 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 AEP issues monthly bills;

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

The post-petition deposit sought by AEP in these jointly-administered cases is a two-month cash deposit in the amount of $242,628. The two-month deposit is the deposit amount that AEP is authorized to obtain from all of the customers in AEP's service territories pursuant to applicable state

law. Based on all the foregoing, this Court should deny the Utility Motion because the amount of AEP's post-petition deposit request is reasonable under the circumstances and should not be modified.

Facts

Procedural Facts

1. On July 15, 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 AEP prior to the Court entering the *Interim Order (A) (I) Prohibiting Utility Companies From Altering, Refusing or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Performance, (III) Setting a Final Hearing Related Thereto; and (B) Granting Related Relief* (the "Interim Utility Order") on July 16, 2015.

5. Because AEP was not properly or timely served with the Utility Motion and the Debtors never attempted to contact AEP regarding its adequate assurance request prior to the filing of the Utility Motion, AEP 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 the Petition Date, 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 AEP.

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 approximately $1.8 million that is supposedly equal to 50% of the Debtors' average monthly utility charges. Utility Motion at ¶ 7. The foregoing proposal is unacceptable to AEP 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 AEP under Section 366(c)(2).

7. The Interim Utility Order and proposed Final Utility Order provide that any payment to be made therein would be subject to the terms of the Interim Cash Collateral Order (defined below) and related final order. Interim Utility Order at ¶ 8; proposed Final Utility Order at ¶ 8. It is not clear if the Debtors and their secured lenders are trying to subordinate all of the post-petition payments made to AEP 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 AEP, 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 AEP to provide post-petition utility goods/services, any and all post-petition payments made to AEP 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.

8. The Debtors' claim that they had a good payment history with their utility providers and have made payments on a regular and timely basis. Utility Motion at ¶ 10. 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. Moreover, even with the Debtors' purported "good payment history," AEP would have incurred a $102,111.13 loss if it had not held a $226,296 prepetition deposit.

9. 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 AEP is required by applicable state laws, regulations and tariffs to bill the Debtors monthly. Moreover, AEP presumes that the Debtors want AEP to continue to bill them monthly in arrears pursuant to the billing cycle established by applicable state law.

10. Furthermore, the Utility Motion does not address why this Court should consider modifying, if at all, the amount of AEP's adequate assurance request pursuant to Section 366(c)(2). Rather, without providing any specifics, the Utility Motion merely states that the Bank Account "constitutes sufficient Adequate Assurance to the Utility Companies." Utility Motion at ¶ 15.

Facts Regarding the Debtors

11. The Company (which includes the Debtors, non-Debtor Canadian subsidiaries, and non-Debtor U.K. subsidiaries) is a leading producer and exporter of metallurgical coal for the global steel industry from underground and surface mines with mineral reserves located in the United States, Canada and the U.K. *Declaration of William G. Harvey In Support of First Day Motions* ("First Day Declaration") at ¶ 7.

12. The Company conducts its primary business through two business segments: the U.S. Operations and the Canadian and U.K. Operations. First Day Declaration at ¶ 12.

The Debtors' Capital Structure

13. As of the Petition Date, the Debtors' principal funded debt obligations comprised: (a) the First Lien Credit Facility; (b) the 9.500% Senior Secured First Lien Notes; (c) the 11.0%/12.0% Senior Secured Second Lien PIK Toggle Notes; (c) the 9.875% Senior Notes due

2020; and (d) the 8.500% Senior Notes due 2021. First Day Declaration at ¶ 87.

14. The First Lien Credit Agreement provides for the making of loans to, and the issuance of letters of credit ("Letters of Credit") for Walter Energy, and Walter Energy Canada Holdings, Inc. and Western Coal Corp. as Canadian Borrowers (Walter Energy and the Canadian Borrowers, the "Borrowers"). The First Lien Credit Agreement provides for loans in the form of term and revolving loans. As of the Petition Date, under the First Lien Credit Agreement: (a) $978.2 million in term loans were outstanding (the "Term B Loan") and (b) $10.3 million foreign exchange adjusted revolving loan commitments were available (the "Revolver"). First Day Declaration at ¶ 89.

15. Pursuant to an indenture dated as of September 27, 2013, Walter Energy issued $970 million in aggregate principal amount of 9.500% senior secured notes with a maturity of October 15, 2019 (the "(.500% Senior Secured First Lien Notes"). First Day Declaration at ¶ 94.

16. As of the Petition Date, the 9.500% Senior Secured First Lien Notes had a remaining principal balance of $970 million outstanding, plus accrued and unpaid interest of approximately $23 million. First Day Declaration at ¶ 95.

17. Pursuant to an indenture dated as of March 27, 2014, Walter Energy issued $350 million in aggregate principal amount of 11.0%/12.0% senior second lien PIK toggle notes with a maturity of April 1, 2020 (the "11.0%/12.0% Senior Secured Second Lien PIK Toggle Notes"). First Day Declaration at ¶ 96.

18. As of the Petition Date, the 11.0%/12.0% Senior Secured Second Lien PIK Toggle Notes had a remaining principal balance of $360.5 million outstanding, plus accrued and unpaid interest of approximately $12 million.

19. Pursuant to an indenture dated as of November 21, 2012, Walter Energy issued $500 million in aggregate principal amount of 9.875% senior unsecured notes with a maturity of

December 15, 2020 (the "9.875% Senior Notes due 2020"). First Day Declaration at ¶ 99.

20. As of the Petition Date, the 9.875% Senior Notes due 2020 had a remaining principal balance of $388 million outstanding, plus accrued and unpaid interest including penalty interest of approximately $22.5 million. First Day Declaration at ¶ 100.

21. Pursuant to an indenture dated as of March 27, 2013, Walter Energy issued $450 million in aggregate principal amount of 8.500% senior unsecured notes with a maturity of April 15, 2021 (the "8.500% Senior Notes due 2021"). First Day Declaration at ¶ 101.

22. As of the Petition Date, the 8.500% Senior Notes due 2021 had a remaining principal balance of $383.3 million outstanding, plus accrued and unpaid interest of approximately $8.1 million. First Day Declaration at ¶ 102.

Events Leading to the Debtors' Chapter 11 Cases

23. Since 2011, metallurgical coal prices have declined dramatically due to several external pressures, including greatly reduced Chinese import demand, significantly increased sources of seaborne supply and the strength of the U.S. dollar against other currencies in coal producing countries, such as Australia. Prices for both thermal and metallurgical coal declined steadily from 2011 through 2014. The decline intensified in early 2015, with spot prices for metallurgical coal falling below US$110 per metric ton, down from $330 per metric ton in Q2 of 2011. The benchmark metallurgical coal price for Q3 of 2015 recently settled at $93 per metric ton. First Day Declaration at ¶ 108.

24. The burden on the Debtors of their funded debt obligations and labor-related liabilities has become unsustainable. The Debtors suffer from crippling legacy labor costs, principally in the form of medical benefits and pension obligations, as well as insupportable hourly labor costs. With cash reserves of approximately $270 million as of June 30, 2015, the Debtors continue to suffer substantial losses from operations. As such, the Debtors risk

exhausting their liquidity by the end of 2015 based on the following: (a) declining metallurgical coal environment; (b) The existence of over $3 billion in debt that has an annual interest expense of $264 million; and (c) the weight of the Company's labor costs and legacy retiree obligations. First Day Declaration at ¶ 110.

25. The Company has reached an agreement in principle with the unofficial committee of holders of First Lien Claims (the "Steering Committee") and Steering Committee Advisors on the terms of a restructuring (the "Restructuring") that (a) contemplates a consensual debt-to-equity conversion of over $1.8 billion of the Company's prepetition secured debt pursuant to a pre-negotiated Chapter 11 plan (the "Plan"), and (b) permits the Debtors' consensual use of the Prepetition Secured Parties' cash collateral for no more than seven (7) months to allow the Debtors to pursue confirmation of the Plan, while simultaneously pursuing a sale of the Company to holders of First Lien Claims, subject to higher and better offers (the "Section 363 Sale"). In the event that the Debtors are unable to confirm a Plan or certain events specified in the Restructuring Support Agreement occur while the Debtors are pursuing the Plan, the Debtors will seek to effectuate the Section 363 Sale. First Day Declaration at ¶ 115.

26. The Debtors are rapidly losing cash, even excluding interest expenses. As such, a successful restructuring demands more than just the elimination of funded debt. To confirm the Plan, the Debtors must obtain material concessions from United Mine Workers of America (the "UMWA") and the United Steelworkers (the "USW") and otherwise reduce their existing and legacy labor obligations. While the Debtors will seek to reach a consensual resolution with the UMWA regarding essential concessions, the Debtors may need to seek judicial relief to obtain such relief through the procedures and processes provided for in Sections 1113 and 1114 of the Bankruptcy Code (collectively, the "1113/1114 Process") if no consensual resolution results. First Day Declaration at ¶ 116.

27. The terms of the Restructuring are set forth in the Restructuring Support Agreement (the "Restructuring Support Agreement" or "RSA") executed by the Debtors and the Steering Committee. Pursuant to the RSA, the Debtors will pursue confirmation of the Plan. However, if the Debtors fail to meet certain case milestones, the Debtors are required to abandon the Plan process and pursue a Section 363 Sale. Such milestones include: (i) the Debtors must commence the 1113/1114 Process by making an initial proposal to the UMWA by August 12, 2015 and to the USW by August 26, 2015; (ii) the Debtors must commence a 363 Sale Process by August 19, 2015; (iii) the Debtors must achieve the necessary cost savings that are acceptable to the Debtors Majority Holders (as defined in the RS) through the 1113/1114 Process, either through negotiations with the unions and retirees, or by rejection under Section 1113 of the Bankruptcy Code and termination or modification of retiree benefits under Section 1114 of the Bankruptcy Code, by December 9, 2015; (iv) the Disclosure Statement must be approved by the Bankruptcy Court by October 28, 2015; and (v) the Plan must be confirmed by the Bankruptcy Court by January 13, 2016. In addition, the RSA sets forth various events which, if they occur, will cause the RSA to terminate immediately. First Day Declaration at ¶ 117.

The Debtors' Use of Cash Collateral

28. On the Petition Date, the Debtors filed *The Debtors' Motion For Entry of Interim and Final Orders Under 11 U.S.C. §§ 105, 361, 362, 363, 507 and 552, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (A) (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection To Prepetition Secured Parties, and (III) Scheduling a Final Hearing; and (B) Granting Related Relief* (the "Cash Collateral Motion").

29. Through the Cash Collateral Motion, the Debtors seek a $5 million carve-out for the payment of fees and expenses of the Debtors' professionals. Cash Collateral Motion at p. 20.

30. On the Petition Date, the Court entered the *Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection To Prepetition Secured Parties, (C) Scheduling a Final Hearing Pursuant To Bankruptcy Rule 4001(b) and (D) Granting Related Relief* (the "Interim Cash Collateral Order"). The Interim Cash Collateral Order approved the $5 million Carve-Out. Interim Cash Collateral Order at p. 18.

31. Attached to the Cash Collateral Order is a 12-week budget through October 3, 2015 (the "Cash Collateral Budget"). It is unclear from the Cash Collateral Budget whether the Debtors have budgeted sufficient sums for the payment of their post-petition utility expenses.

The Debtors' Critical Vendor Motion

32. On the Petition Date, the Debtors filed *The Debtors' Motion For Entry of Interim and Final Orders (A) Authorizing (I) The Debtors To Pay Prepetition Claims of Certain Critical Vendors and Foreign Vendors and (II) Financial Institutions To Honor and Process Related Checks and Transfers and (B) 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 an aggregate amount not to exceed $5.7 million on an interim basis and $8.2 million on a final basis. Critical Vendor Motion at ¶ 6. Despite the fact that the Debtors' acknowledge that uninterrupted utility services are vital to the continued operation of the Debtors' businesses (Utility Motion at ¶ 20), the Debtors do not consider AEP and other utility companies to be "critical vendors."

33. On July 16, 2015, the Court entered the *Interim Order (A) Authorizing (I) The Debtors To Pay Prepetition Claims of Certain Critical Vendors and Foreign Vendors and (II) Financial Institutions To Honor and Process Related Checks and Transfers and (B) 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 $5.7 million on

an interim basis. Interim Critical Vendor at ¶ 2.

Facts Concerning AEP

34. AEP provided the Debtors with prepetition utility goods/services and has continued to do so for the Debtors post-petition.

35. Under AEP's billing cycle, the Debtors receive approximately one month of utility service before AEP issues a bill for such service. If the Debtors fail to pay the bill within approximately 20 days after the bill is issued, a past due notice is issued and a late fee is subsequently imposed on the account. If the Debtors fail to pay the bill after the issuance of the past due notice, AEP issues 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 AEP's billing cycle, the Debtors could receive at least two-months of unpaid service before its service could be terminated for a post-petition payment default.

36. In order to avoid the need to bring witnesses and have lengthy testimony regarding AEP's regulated billing cycle, AEP requests that this Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of the AEP billing cycle. Pursuant to the foregoing request and based on the voluminous size of the applicable documents, the AEP web site link to the tariffs and/or state laws, regulations and/or ordinances obtained at https://www.appalachianpower.com/account/bills/rates/APCORatesTariffsWV.aspx

37. Subject to a reservation of AEP's right to supplement its post-petition deposit request if additional accounts belonging to the Debtors are subsequently identified, AEP's estimated prepetition debt and post-petition two-month deposit request is as follows:

No. of Accts.	Est. Prepet. Debt	Deposit Request
7	$102,111.13	$242,618 (2-month)

38. AEP holds prepetition deposits totaling $226,296 that it will recoup against the Debtors' prepetition debt pursuant to Section 366(c)(4) of the Bankruptcy Code. Any deposit credit after recoupment can be applied to AEP's post-petition deposit request.

Discussion

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

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 AEP.

1. The Debtors' Proposed Bank Account Is Not Relevant And Even If It Is Considered, It Is Unsatisfactory Because It Does Not Provide AEP 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 AEP. Accordingly, AEP would have no control over how long the Bank Account will remain in place.

(ii) In order to access the Bank Account, AEP 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 AEP issues 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.

(v) The Bank Account, unlike the Professionals' Carve Out, may be subject to the Lender's liens.

Accordingly, the Court should not approve the Bank Account as adequate assurance to for AEP because the Bank Account is: (a) not the **form** of adequate assurance requested by

AEP; (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 AEP Because the Debtors Have Not Set Forth Any Basis For Modifying AEP's Requested Deposit.

In the Utility Motion, the Debtors fail to address why this Court should modify the amount of AEP's request for adequate assurance of payment. Under Section 366(c)(3), the Debtors have the burden of proof as to whether the amount of AEP's adequate assurance of payment request 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 AEP's adequate assurance request 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 AEP.

B. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED BY AEP 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).

AEP bills the Debtors on a monthly basis for the charges already incurred by the Debtors in the prior month. AEP then provides the Debtors with approximately 20 days 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 cycle, the minimum period of time the Debtors could receive service from AEP 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, AEP still has potential exposure of 50 to 60 days based on its billing cycle. Furthermore, the amount of the AEP deposit request is the amount that the applicable public service commission, which is a neutral third-party entity, permits AEP to request from its customers. AEP is not taking the position that the deposit it is entitled to obtain under applicable state law is binding on this Court, but, instead is introducing that amount as evidence of the amount that AEP's regulatory entity permits AEP to request from its customers.

Finally, in contrast to the improper treatment proposed as to AEP, the Debtors have made certain that supposed "critical vendors" and post-petition professionals are favored creditors over

AEP by ensuring (i) the payment of prepetition critical vendor claims of up to $8.2 million, and that (ii) the post-petition bills/expenses of Debtors' counsel and other professionals are paid, even in the event of a post-petition DIP Financing default, by obtaining a $5 million professionals carve-out for the payment of their fees/expenses after a default. Therefore, despite the fact that AEP continues 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 AEP of adequate security for which it is entitled to for continuing to provide the Debtors with post-petition utility goods/services. Against this factual background, it is reasonable for AEP to seek and be awarded the full security it has requested herein.

WHEREFORE, AEP respectfully requests that this Court enter an order:

1. Denying the Utility Motion as to AEP;

2. Awarding AEP the post-petition adequate assurance of payment pursuant to Section 366 in the amount and form satisfactory to AEP, which is the form and amount requested herein; and

3. Providing such other and further relief as the Court deems just and appropriate.

Dated: July 24, 2015

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been filed and delivered via filing on the Court's CM/ECP system to all persons receiving notice thereunder and upon the following by U.S. mail, properly addressed and postage prepaid, on the 24th day of July 2015.

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