UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

IPIC THEATERS, LLC, **Case No. 26-12313-EPK**

Debtor. **Chapter 11, Subchapter V**
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OBJECTION OF FLORIDA POWER & LIGHT COMPANY AND CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO THE EMERGENCY MOTION OF DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING DEBTOR'S PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF

Florida Power & Light Company ("FPL") and Consolidated Edison Company of New York, Inc. ("Con Edison") (collectively, the "Utilities"), by counsel, hereby object to the *Emergency Motion of Debtor For Entry of Interim and Final Orders (I) Approving Debtor's Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures For Resolving Objections and Requests For Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the "Utility Motion") (Docket No. 16), 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.

Although certain provisions in the Utility Motion appear to provide that the Debtor is proposing to provide its utilities with deposits equal to two weeks of utility charges, less any prepetition deposit held by a utility, it appears from other provisions in the Utility Motion that the Debtor is actually seeking to have this Court approve its proposed form of adequate assurance of payment which is a bank account that will supposedly contain approximately two weeks of the Debtor's estimated aggregate utility charges, based on the Debtor's average monthly payments over the six-month period prior to the February 25, 2026 petition date (the "Petition Date"), less any prepetition deposits held by the Debtor's utility providers (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 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 List attached as Exhibit "C" to the Utility Motion reflects that the following proposed amounts would be contained in the Bank Account on behalf of the Utilities: (a) FPL - $22,117.50; and (b) Con Edison - $13,350.20.

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 and/or regulations, 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 two-month cash deposits from the Debtor, which are amounts that they are authorized to obtain pursuant to applicable state law: (a) FPL - $86,720; and (b) Con Edison - $61,911. 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 25, 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 March 2, 2026, the Court entered the *Interim Order (I) Approving Debtor's Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures For Resolving Objections and Requests For Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the "Interim Utility Order") (Docket No. 42). The Interim Utility Order set an objection deadline of March 22, 2026 (within 20 days of entry of the Interim Utility Order), with a final hearing on the Utility Motion to take place on March 25, 2026 at 1:30 p.m.

4. Certain provisions in the Utility Motion appear that the Debtor is proposing to provide its utilities with deposits equal to two weeks of utility charges, less any prepetition deposit held by a utility. Utility Motion ¶ 7. However, other provisions of the Utility Motion reflect that the Debtor is actually proposing a utility escrow account (i.e. the Bank Account) as its proposed form of adequate assurance of payment. See Utility Motion at ¶ 11 (providing that no creditor of the Debtor shall have any interest or lien on the "Adequate Assurance Deposit"); Utility Motion at ¶ 13 (discussing the duration that the "Adequate Assurance Deposits" will be maintained). For purposes of this Objection, the Utilities will assume that the Debtor is proposing a utility escrow account, i.e. the Bank Account, as adequate assurance of payment.

5. 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 that will supposedly contain approximately two weeks of the Debtor's estimated aggregate utility charges, based on the Debtor's average monthly payments over the six-month period prior to the Petition Date, less any prepetition deposits held by the Debtor's utility providers. Utility Motion at ¶ 7.

6. Without identifying them, the Debtor contends that approximately five utility providers hold a prepetition security deposit or bond, and as such, those utilities "are already protected and are requesting that it not be required to provide an Adequate Assurance Deposit to any Utility Companies that hold security deposits in excess of an Adequate Assurance Deposit." Utility Motion at ¶ 12.

7. 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.

8. The Debtor proposes to "deposit" monies into the Bank Account, and refers to the to the Bank Account as the "Adequate Assurance Deposit." Utility Motion at ¶ 7. 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.

9. The Debtor proposes that no creditor of the Debtor will have any interest in or lien on the Bank Account. Utility Motion at ¶ 11.

10. 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).

11. The Debtor proposes that monies contained in the Bank Account will be maintained until the earlier of (i) entry of an order authorizing or directing the return of the monies contained in the Bank Account to the Debtor, (ii) entry of an order authorizing the sale of the Debtor's assets where a utility company provides services, or (iii) the effective date of any plan in the Debtor's case. Utility Motion at ¶ 13. As the Utilities bill the Debtor in arrears, and the Utilities would

likely provide post-petition utility goods/services to the Debtor through a sale closing date or an effective date of any plan, any monies contained in the Bank Account should not be returned to the Debtor until the Debtor confirms that it has paid in full all of its post-petition utility expenses owed to the Utilities.

12. 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 and/or tariffs 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.

13. The Debtor claims that it intends to pay all undisputed post-petition obligations owed to the utility companies in a timely manner, and anticipates that the cash flow from operations and the cash on hand will be sufficient to pay all post-petition obligations to the utility companies. Utility Motion at ¶ 9. 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).

14. 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 availability of a prepetition deposit or bond, (*i.e.*, the Adequate Assurance Deposit) for any requesting Utility

Company, together with the Debtor's ability to pay for future Utility Services during this Subchapter V Case in the ordinary course of business," constitutes adequate assurance of payment to the utility companies for purposes of Section 366 of the Bankruptcy Code. Utility Motion at ¶ 10.

Facts Regarding the Utilities

15. 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.

16. 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.

17. 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: FPL: http://www.fpl.com/customer/rates_and_bill/rules_tariffs.shtml

Con Edison: https://www.coned.com/en/rates-tariffs/rates

18. 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
FPL	6	$50,702.92	$86,720 (2-month)
Con Edison	1	$38,312.37	$61,911 (2-month)

19. FPL held a prepetition deposit in the amount of $75,802 that it recouped against the prepetition debt owing to FPL from the Debtor pursuant to Section 366(c)(4) of the Bankruptcy Code. Any prepetition deposit amount remaining after recoupment can be applied to the FPL post-petition deposit request.

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.

5. The Debtor proposes that the monies contained in the Bank Account would be less any prepetition deposits held by the Debtor's utility providers.

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 or regulations. Based on the foregoing state-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, 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 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 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.

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.

Dated: March 18, 2026

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[1] Ex Parte Motion to Appear Pro Hac Vice is pending at ECF No. 71.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2026, a true and correct copy of the foregoing *Objection* was filed via electronic filing using the CM/ECF system with the Clerk of Court which sent email notification of such filing to all CM/ECF participants in the above-referenced bankruptcy case, including the debtor, the Subchapter V Trustee, and the Office of the United States Trustee c/o counsel at their designated email addresses.

By: /s/ Stephen C. Breuer
Stephen C. Breuer, FBN 99709