



ENTERED
10/09/2020

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

In re:	§	Chapter 11
	§	
UTEX INDUSTRIES, INC., et al.,	§	Case No. 20-34932 (DRJ)
	§	
Debtors.¹	§	(Jointly Administered)
	§	Re: Docket No. 6

ORDER APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated October 8, 2020 (the “**Motion**”)² of UTEX Industries, Inc. and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 (i) approving Debtors’ proposed form of adequate assurance of payment to the Utility Companies, (ii) establishing procedures for resolving objections by the Utility Companies, (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service, and (iv) granting related relief, all as more fully set forth in the Motion; and upon consideration of the Sanchez Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: UTEX Industries, Inc. (9867), RSH Utex Holdings, LLC (4048), Industrial Sealing Solutions Holdings Inc. (0104), UI Sealing Technologies Intermediate Holdings, Inc. (9553), UTEX Holding, Inc. (8260), Applied Rubber Technology, Inc. (1790), CAM Specialty Intermediate Holdings, Inc. (9099), CAM Specialty Products, Inc. (8342), Duraquest, Inc. (7017), Work Manufacturing, L.L.C. (5341), Energy Products LLC (8160), and Arefco Seals, Inc. (5258). The Debtors’ mailing address is 10810 Katy Freeway, Suite 100, Houston, TX 77043.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted to the extent set forth herein.
2. The Adequate Assurance Deposit is hereby approved and is deemed adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
3. The Debtors shall deposit the amount of \$135,000 in a segregated account (the “Adequate Assurance Account”) for the benefit of the Utility Companies within 20 days after the Petition Date. The account shall be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the Southern District of Texas. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the

pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit shall remain \$135,000 throughout the Chapter 11 Cases, unless adjusted as provided for herein.

4. Absent further order of this Court, the Utility Companies providing Utility Services including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing Utility Services to, or otherwise discriminating against the Debtors, on account of any unpaid prepetition invoices or charges due to the commencement of the Chapter 11 Cases, and from requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.

5. The following procedures (the “Adequate Assurance Procedures”) are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- a. The Debtors will serve a copy of this Motion and the Proposed Order on the Utility Companies on the Utility Services List within three business days after entry of the Proposed Order.
- b. Subject to entry of the Proposed Order, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$135,000, in the Utility Deposit Account within 20 days after the Petition Date.
- c. Each Utility Company will be entitled to funds in the Utility Deposit Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List.
- d. If an amount relating to Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Utility Deposit Account by giving notice to (i) proposed counsel to the Debtors, Weil, Gotshal & Manges LLP, 700 Louisiana Street, Suite 1700, Houston, TX 77002 (Attn: Alfredo R. Pérez, Esq.) and 767 Fifth Avenue, New York, NY 10153 (Attn: Ryan Preston Dahl, Esq., Jason L. Hufendick, Esq., and

Steven Evans, Esq.); (ii) the Office of the United States Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, and (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases (collectively, the “**Utility Notice Parties**”). The Debtors shall honor such request within five business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Company receives a disbursement from the Utility Deposit Account, the Debtors will replenish the Utility Deposit Account in the amount so disbursed.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Company will be returned to the Debtors automatically, without further order of the Court, on the earlier of (i) reconciliation and payment by Debtors of the Utility Company’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Company, (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases or (iii) the consummation of a sale, pursuant to 363 of the Bankruptcy Code, of all or substantially all of the assets of the Debtors.
- f. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) on the Utility Notice Parties.
- g. The Additional Assurance Request must (i) be made in writing, (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account, (iii) explain why the Utility Company believes the Adequate Assurance Deposit is not adequate assurance of payment, (iv) summarize the Debtors’ payment history relevant to the affected account(s), (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Company to the Debtors, calculated as a historical average over the 12-month period preceding the Petition Date, and (vi) certify that the Utility Company does not already hold a deposit equal to or greater than two weeks of Utility Services provided by such Utility Company.
- h. An Additional Assurance Request may be made at any time. If a Utility Company does not file and serve an Additional Assurance Request, the Utility Company will be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.

- i. Upon the Debtors' receipt of an Additional Assurance Request, the Debtors will negotiate with such Utility Company to resolve such Utility Company's Additional Assurance Request.
 - j. The Debtors may, without further order from the Court, resolve an Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable, subject to the terms of any collateral orders entered by the Court.
 - k. If the Debtors and the Utility Company are not able to reach an alternative resolution within 30 days of receipt of the Additional Assurance Request, the Debtors will request a hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code.
 - l. Pending resolution of the Determination Hearing, the Utility Company filing such Additional Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
 - m. Notwithstanding anything in these procedures to the contrary, the Debtors will request a hearing to take place no later than 30 days following the Petition Date to resolve outstanding objections to these procedures in the event any are timely filed by the Utility Companies.
 - n. The hearing required by section 366 of the Bankruptcy Code shall be held on October 23, 2020 at 1:00 p.m. (Prevailing Central Time); *provided, however*, that in the event the Prepackaged Plan is confirmed prior to such date, the hearing shall automatically be cancelled.
6. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.
7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Services List shall not be deemed an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized to amend the Utility Services List to the extent the Debtors terminate the services of any Utility Company or identify additional Utility Companies (i) with the consent of the Utility Company or (ii) within 30 days of the Petition Date and this Order shall apply to any such Utility Company that is added to the Utility Services List. The Debtors shall serve a copy of this Order upon any Utility Company added to the Utility Services List within three (3) business days.

9. The Debtors shall increase the amount of the Adequate Assurance Deposit if an additional Utility Company is added to the Utility Services List by an amount equal to two weeks of Utility Services provided by such additional Utility Company, calculated using the historical average for such payments during the 20 months prior to the Petition Date. The Debtors may terminate the services of any Utility Company and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Company provided there are no outstanding disputes related to postpetition payments due.

10. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

11. Nothing contained in the Motion or this Order or any payment made pursuant to the authority granted by this Order is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

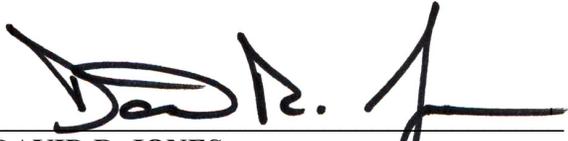
14. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

17. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and authorizing the use of cash collateral (any such order, a "DIP Order"). To the extent that there may be any inconsistency between the terms of this Order and the terms of any DIP Order, the terms of the DIP Order will govern.

Signed: October 09, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE