

280 B.R. 701  
United States Bankruptcy Court,  
S.D. Alabama.

In re Eddie WELLS, Jr., Belinda J. Lewis, Debtors.  
In re Ricky A. Walker, Ernestine L. Walker, Debtors.  
In re William C. Sanders,  
Jesseca L. Sanders, Debtors.  
In re Christine Oliver, Debtor.

Nos. 00-14351-MAM-13, 00-14633-MAM-  
13, 00-14753-MAM-13, 00-14898-MAM-13.

|  
March 16, 2001.


### Synopsis

Chapter 13 debtors moved for leave to enter into adequate assurance agreement with utility. The Bankruptcy Court, [Margaret A. Mahoney](#), Chief Judge, held that debtors would be allowed to enter into agreement with utility whereby utility, in return for debtors' agreement to continue paying utility's pre—and postpetition bills and to the lifting of stay on any enforcement or termination proceedings brought by utility in future, agreed to waive its right to request postpetition deposit as adequate assurance of future payment from debtors.

Motions granted.

West Headnotes (2)

[1] **Bankruptcy**  **In General; Adequate Assurance or Protection**

Chapter 13 debtors would be allowed to enter into agreement with utility whereby utility, in return for debtors' agreement to continue paying utility's pre— and postpetition bills and to the lifting of stay on any enforcement or termination proceedings brought by utility in future, agreed to waive its right to request postpetition deposit as adequate assurance of future payment from debtors; agreement, that allowed debtors to continue receiving electrical power without deposit, was reasonable, was not prejudicial to creditors, and represented a fair bargain. Bankr.Code,  [11 U.S.C.A. § 366](#).

1 Cases that cite this headnote

[2] **Bankruptcy**  **In General; Adequate Assurance or Protection**

Absent agreement with Chapter 13 debtors for other assurances of future payment, utility would have right to request postpetition deposit.

Bankr.Code,  [11 U.S.C.A. § 366](#).

1 Cases that cite this headnote

### Attorneys and Law Firms


\*702 David S. Clark, Selma, AL, for Debtors.

Edward J. Peterson III, Balch & Bingham LLP, Birmingham, AL, for Alabama Power Company.

ORDER GRANTING DEBTOR'S MOTION TO WAIVE ALABAMA POWER COMPANY POSTPETITION DEPOSIT REQUIREMENT AND ALLOWING DEBTOR TO ENTER INTO AN AGREEMENT IN WHICH THE AUTOMATIC STAY WOULD NOT APPLY TO ALABAMA POWER AND THE DEBTORS WOULD CONTINUE THEIR PREPETITION ARRANGEMENT WITH ALABAMA POWER COMPANY

[MARGARET A. MAHONEY](#), Chief Judge.

[1] These cases are before the Court on the Motions of the Debtors to waive the Alabama Power Company postpetition deposit requirement in exchange for the following agreement that would be incorporated in the Debtors' chapter 13 plans:

The debtor agrees to continue paying prepetition and postpetition electrical service bills directly to Alabama Power company in the ordinary course of business as adequate assurance of future payment under  [Section 366 of the United States Bankruptcy Code](#). The debtor further agrees that the automatic stay does not apply to Alabama Power Company's efforts to collect electrical service debt.

[2] The Court has reviewed the proposed language and the case law cited by the parties that establishes that Alabama Power Company would have a right to request a deposit

postpetition but for the agreement. See, e.g., [In re Smith, Richardson & Conroy](#), 50 B.R. 5 (Bankr.S.D.Fla.1985); [In re Epling](#), 255 B.R. 549 (Bankr.S.D.Ohio 2000); [Hanratty v. Philadelphia Electric Company](#), 107 B.R. 55 (E.D.Pa.1989). The agreement allows the debtor to continue to receive electrical power without a deposit, but requires the lifting of the stay as to any enforcement or termination proceedings in the future. The Court concludes that the agreement is reasonable, not prejudicial to other creditors, and is a fair bargain considering the law.

THEREFORE IT IS ORDERED that the Motions of the Debtors to waive Alabama Power Company's postpetition deposit requirement, or, in the alternative, to determine whether the postpetition deposit requirement is allowable under the automatic stay is GRANTED to the extent that the Debtors are authorized to enter into the agreement stated above and have the agreement's language incorporated into their plans.

**All Citations**

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