



SO ORDERED.

SIGNED this 27th day of October, 2012.

Dale L. Somers

Dale L. Somers
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
)	Case No. 12-22602
DICKINSON THEATRES, INC.,)	
a Kansas corporation,)	Chapter 11
)	
)	
Debtor.)	

FINAL ORDER PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES TO, OR DISCRIMINATING AGAINST, DEBTOR DICKINSON THEATRES, INC., ON ACCOUNT OF PRE-PETITION AMOUNTS DUE; (II) DETERMINING THAT UTILITIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT; (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ASSURANCE; AND (IV) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion (the "Motion") (Docket No. 14)¹ of Dickinson Theatres, Inc., the debtor and debtor-in-possession (the "Debtor"), seeking entry of an order pursuant to Section 366 of the Bankruptcy Code (I) prohibiting utilities from altering, refusing or discontinuing services to, or discriminating against, the Debtor on account of pre-petition amounts due; (II) determining that the utilities are adequately assured of future payment; (III)

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

establishing procedures for determining requests for additional assurance; and (IV) granting related relief; the Court having reviewed the Motion; the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing thereon; the Court having entered its Order granting the Motion on an interim basis on October 2, 2012 (Docket No. 82) the ("Prior Order"); and the Court having found that: (a) the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion and the hearings thereon were sufficient under the circumstances and that no further notice need be provided and; it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate, and its creditors; and the Court having determined that the legal and factual bases set forth in the Motion and adduced at the hearing thereon establish good and sufficient cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein. Except as otherwise provided herein, the Prior Order is amended and superseded in its entirety by this Order.
2. All objections to the Motion or the relief requested therein that have not been made, withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and disallowed on the merits.
3. Notice of the Motion was proper, timely, adequate and sufficient under the particular circumstances.

4. Subject to the procedures described below and the terms of any adequate assurance agreements between the Debtor and any Utility Companies, no Utility Company may (a) alter, refuse, terminate or discontinue utility services to, and/or discriminate against, the Debtor on the basis of the commencement of these Chapter 11 Cases or on account of outstanding pre-petition amounts due or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtor receiving such utility services.

5. A Utility Company shall be entitled to an Adequate Assurance Deposit and the Debtor is hereby authorized to pay such Adequate Assurance Deposit (to the extent it has not) to such Utility Company (at the discretion of the Debtor) without further order of the Court, provided that: (a) such Utility Company requests such prepayment in writing no later than 30 days after the Petition Date (the "Request Deadline"); (b) such requesting Utility Company does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit otherwise shall be deemed to be the Adequate Assurance Deposit and no such further assurances are necessary); and (c) such requesting Utility Company is not currently paid in advance for its services.

6. A request by a Utility Company for, and acceptance of, an Adequate Assurance Deposit shall be deemed an acknowledgement and admission from the Utility Company that the Adequate Assurance Deposit is the form of adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code. Any Adequate Assurance Deposit requested by, and provided to, any Utility Company pursuant to the procedures described herein shall be returned to the Debtor at the conclusion of these Chapter 11 Cases, if not returned or applied earlier.

7. Any Utility Company that does not request an Adequate Assurance Deposit by the Request Deadline and does not file an Objection to opt out of the Adequate Assurance Procedures (as described below) shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code.

8. The following Adequate Assurance Procedures are approved in all respects and the Debtor is directed to act in accordance therewith:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received by the Debtor's counsel by the Request Deadline at Stinson Morrison Hecker LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106, Attn: Sharon L. Stolte, Esq.
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the requesting Utility Company; (iv) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) set forth the form and amount (if applicable) of additional adequate assurance requested.
- c. Upon the Debtor's receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall have the greater of (i) 14 days from the receipt of such Additional Assurance Request or (ii) 30 days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtor and the applicable Utility Company.
- d. The Debtor, in its discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional adequate assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtor believes such additional assurance is reasonable.

- e. If the Debtor determines that an Additional Assurance Request is not reasonable, and it is not able to resolve such request during the Resolution Period, the Debtor, during or immediately after the Resolution Period (as the same may be extended by agreement of the Debtor and the Utility Company in question), will request a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to Section 366(c)(3)(A) of the Bankruptcy Code.
- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtor on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance.
- g. Other than through the Opt-Out Procedures (as defined herein), any Utility Company that does not comply with the Adequate Assurance Procedures set forth herein is deemed to have adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code, and is forbidden from discontinuing, altering or refusing service on account of any unpaid pre-petition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order shall be deemed the Final Order with respect to all Utility Companies that do not timely file and serve an Objection (as defined herein).

9. The following Opt-Out Procedures are approved in all respects, and the Debtor is directed to act in accordance therewith:

- a. A Utility Company that desires to opt-out of the Adequate Assurance Procedures must file an objection (the "Objection") with the Bankruptcy Court and serve such Objection so that it is actually received within 15 days of entry of the Interim Order by (including any other parties who require notice pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and/or the local rules of this Court or District) the Debtor's counsel at Stinson Morrison Hecker LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106, Attn: Sharon L. Stolte, Esq.
- b. Any Objection must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided to the Debtor and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the objecting Utility Company; (iv) explain why the objecting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) identify,

and explain the basis of, the proposed adequate assurance requirement under Section 366(c)(2) of the Bankruptcy Code.

- c. The Debtor, in its discretion, may resolve any Objection by mutual agreement with the objecting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide such objecting Utility Company with additional assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtor believes such additional assurance is reasonable. In the event that the Debtor and any objecting Utility Company, pursuant to this paragraph, consensually resolve an Objection to the Adequate Assurance Procedures, such Utility Company shall withdraw its Objection prior to any hearing date set by the Court.
- d. If the Debtor determines that an Objection is not reasonable and/or the Debtor is not otherwise able to consensually resolve an Objection with a Utility Company, then such Objection will be heard at the Final Hearing.
- e. Any Utility Company that does not timely file an Objection as set forth above is deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

10. The Opt-Out Procedures described in the Prior Order are approved in all respects. Any Utility Company that did not timely file an Objection is deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

11. Notwithstanding, and in addition to, the above Adequate Assurance Procedures, any Utility Company that accepts payment of a pre-petition obligation on account of any claim that it may have against the Debtor, such Utility Company shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code.

12. A Utility Company shall be deemed to have adequate assurance of payment under Section 366 of the Bankruptcy Code under this Order without any further action unless and until: (a) the Debtor, in its discretion, agree to (i) an Adequate Assurance Request or (ii) an alternative assurance of payment with the Utility Company during the Resolution Period; or (b) this Court

enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

13. The Debtor is authorized, in its sole discretion, to amend the Service List to add or delete any Utility Company, and this Order shall apply to any such Utility Company that is subsequently added to the Service List. Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or a utility under Section 366 of the Bankruptcy Code, whether or not such entity is listed on the Service List.

14. The Debtor shall serve a copy of this Order on each Utility Company listed on the Service List within two business days of the date this Order is entered, and shall also serve this Order on each Utility Company subsequently added to the Service List by the Debtor or as a result of the Provider Request Procedures.

15. The terms of this Order shall be effective and enforceable immediately upon its entry.

16. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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Order prepared by:

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