

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

In re: )  
) Chapter 11  
)  
ARENA ENERGY, LP, *et al.*,<sup>1</sup> ) Case No. 20-34215 (MI)  
)  
) (Joint Administration Requested)  
Debtors. ) (Emergency Hearing Requested)  
)

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER  
(I) APPROVING THE DEBTORS’ PROPOSED ADEQUATE ASSURANCE OF  
PAYMENT FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY  
PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,  
(III) APPROVING THE DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING  
ADDITIONAL ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON AUGUST 21, 2020, AT 2:30 P.M. (CENTRAL TIME) IN COURTROOM 404, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN AUGUST 21, 2020.

PLEASE NOTE THAT ON MARCH 24, 2020, THROUGH THE ENTRY OF GENERAL ORDER 2020 10, THE COURT INVOKED THE PROTOCOL FOR EMERGENCY PUBLIC HEALTH OR SAFETY CONDITIONS.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT’S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT (832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGES. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE ISGUR’S CONFERENCE ROOM NUMBER IS 954554.

YOU MAY VIEW VIDEO VIA GOTOMEETING. TO USE GOTOMEETING, THE COURT RECOMMENDS THAT YOU DOWNLOAD THE FREE GOTOMEETING APPLICATION. TO CONNECT, YOU SHOULD ENTER THE MEETING CODE “JUDGEISGUR” IN THE GOTOMEETING APP OR CLICK THE LINK ON JUDGE ISGUR’S HOME PAGE ON THE SOUTHERN DISTRICT OF TEXAS WEBSITE. ONCE CONNECTED, CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF THE HEARING. TO MAKE YOUR ELECTRONIC APPEARANCE, GO TO THE SOUTHERN DISTRICT OF TEXAS WEBSITE AND SELECT “BANKRUPTCY COURT” FROM THE TOP MENU. SELECT “JUDGES’ PROCEDURES,” THEN “VIEW HOME PAGE” FOR JUDGE ISGUR. UNDER “ELECTRONIC APPEARANCE” SELECT “CLICK HERE TO SUBMIT ELECTRONIC APPEARANCE”. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK “SUBMIT” TO COMPLETE YOUR APPEARANCE.

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Arena Energy, LP (1436); Arena Energy 2020 GP, LLC (N/A); Arena Energy GP, LLC (7454); Arena Exploration, LLC (1947); Sagamore Hill Holdings, LP (8266); and Valiant Energy, L.L.C. (7184). The location of the debtors’ service address is: 2103 Research Forest Drive, Suite 400, The Woodlands, Texas 77380.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion:<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”): (a) approving the Debtors’ Proposed Adequate Assurance (defined below) of payment for future utility services and determining that their Proposed Adequate Assurance provides the Utility Providers (defined below) with adequate assurance of payment under section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); (b) prohibiting the Utility Providers from altering, refusing, or discontinuing service; (c) approving the Debtors’ proposed procedures for resolving additional adequate assurance requests; and (d) granting related relief.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in the *Declaration of Anthony R. Horton in Support of the Chapter 11 Petitions of Arena Energy, LP and its Debtor Affiliates*, the *Declaration of Curtis Flood in Support of the Chapter 11 Petitions of Arena Energy, LP and its Debtor Affiliates*, and the *Declaration of J. Michael Vallejo, Chief Financial Officer for Arena Energy, LP, in Support of the Chapter 11 Petitions of Arena Energy, LP and its Debtor Affiliates, the Cash Collateral Motion, and Other First Day Motions* (collectively, the “First Day Declarations”), each of which is to be filed in connection herewith.

4. The bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and rule 9013-1(i) of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

5. The Debtors are collectively the most active drillers of new oil and gas wells of all current offshore upstream oil and gas exploration companies operating on the Gulf of Mexico Outer Continental Shelf. Headquartered in The Woodlands, Texas, the Debtors have approximately 57 employees. The Debtors’ operating revenue for the twelve-month period that ended December 31, 2019, was approximately \$580.8 million, and, as of the date hereof (the “Petition Date”), the Debtors have over \$1.0 billion in total funded debt obligations.

6. The Debtors commenced these prepackaged chapter 11 cases to implement the value-maximizing restructuring contemplated by the Restructuring Support and Plan Sponsor Agreement, dated August 19, 2020 (the “RSA”). The RSA—which is supported by approximately 72.4% of their first-lien revolving facility lenders and approximately 94% of their second-lien lenders—will be implemented through the *Debtors’ Joint Prepackaged Plan Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”), which will be filed in connection herewith. Importantly, the Plan contemplates that allowed general unsecured and lienholder claims will remain unimpaired and “ride through” these chapter 11 cases unaffected. The Debtors seek to consummate the Plan as expeditiously as possible, given cash constraints, the level of stakeholder consensus, and risks associated with hurricane season in the Gulf of Mexico.

7. On the Petition Date, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural

consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

**Utility Services and Proposed Adequate Assurance**

**I. The Utility Services and Utility Providers.**

8. In connection with the operation of their business and management of their properties, the Debtors obtain electricity, gas, internet, telephone, and other similar services (collectively, the “Utility Services”) from a number of utility companies (each, a “Utility Provider” and, collectively, the “Utility Providers”). A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the “Utility Services List”) is attached hereto as **Exhibit 1** to the Order.<sup>3</sup>

9. In addition, the Debtors share certain office space with their non-Debtor affiliates, including Arena Offshore LP. The Debtors pay certain Utility Providers for Utility Services, which are then evenly split among the Debtor and non-Debtor affiliates or split based on the respective amount of office space each entity uses, consistent with historical practices. The Debtors pay the required Utility Services amounts billed to them, and then seek reimbursement of each non-Debtor affiliate’s share of the Utility Services. The relief requested herein is requested with respect to all Utility Providers providing Utility Services to the Debtors, regardless of how charges may be subsequently reimbursed.

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<sup>3</sup> Although the Debtors believe that the Utility Services List includes all of their Utility Providers, the Debtors reserve the right to supplement the list if they inadvertently omitted any Utility Provider. In addition, the inclusion of any entity on the Utility Services List is not 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 with respect to any such determination.

10. Uninterrupted Utility Services are essential to the Debtors' ongoing business operations, and hence the overall success of these chapter 11 cases. The Debtors' operations and corporate offices require data communications, electricity, natural gas, internet, and telephone services. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and such disruption could jeopardize the Debtors' ability to manage their restructuring efforts. Accordingly, it is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

11. To the best of the Debtors' knowledge, there are no defaults or arrearages with respect to the undisputed invoices for prepetition Utility Services. On average, the Debtors pay approximately \$21,686 each month for third-party Utility Services, calculated as a historical average payment for the twelve-month period preceding the Petition Date. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days following the Petition Date, will be approximately \$21,686. To the best of the Debtors' knowledge, the Debtors do not have any existing prepayments or deposits with respect to any Utility Providers, but certain Debtors may have provided prepetition deposits to certain Utility Providers in the ordinary course.

## **II. Proposed Adequate Assurance of Payment.**

12. The Debtors intend to timely pay postpetition obligations owed to the Utility Providers in the ordinary course of business. The Debtors believe that cash on hand and cash generated in the ordinary course of business will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice during the pendency of their chapter 11 cases.<sup>4</sup>

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<sup>4</sup> The Debtors further submit that the Utility Providers are adequately protected since any postpetition administrative or prepetition general unsecured claims held by the Utility Providers are treated as unimpaired and will be paid in full pursuant to the Debtors' proposed Plan submitted simultaneously herewith.

13. To provide additional assurance of payment, the Debtors propose to deposit into a segregated account \$10,843 (the “Adequate Assurance Deposit”), which represents an amount equal to approximately one-half of the Debtors’ average monthly cost of Utility Services, calculated based on the Debtors’ average utility expenses for the twelve-month period preceding the Petition Date, net of any prepetition deposits provided to the Utility Providers in the ordinary course. The Adequate Assurance Deposit will be held in the segregated account for the benefit of the Utility Providers (the “Adequate Assurance Account”) for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payment to the Utility Providers. The Adequate Assurance Deposit will be held by the Debtors and no liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

14. The Adequate Assurance Deposit, in conjunction with the Debtors’ cash flow from operations and cash on hand, demonstrates their ability to pay for future Utility Services in accordance with their prepetition practices (collectively, the “Proposed Adequate Assurance”) and constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section 366 of the Bankruptcy Code.<sup>5</sup>

### **III. The Adequate Assurance Procedures.**

15. Any Utility Provider that is not satisfied with the Proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each, an “Adequate Assurance Request”) pursuant to the adequate assurance procedures set forth in the proposed order (the “Adequate Assurance Procedures”). The Adequate Assurance Procedures set forth a streamlined process for Utility Providers to address potential concerns with

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<sup>5</sup> The Debtors also note that the utility deposit and the ongoing utility payments described herein have been approved by the Debtors’ secured lenders are included in full in the Budget accompanying the proposed Cash Collateral Order (as defined in the Order).

respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to continue their business operations uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties. The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. If the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request. Unless and until a Utility Provider files an objection or serves an Additional Assurance Request, such Utility Provider shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

**IV. Modifications to the Utility Services List.**

16. The Debtors have made an extensive and good-faith effort to identify all Utility Providers and include them on the Utility Service List. Nonetheless, to the extent the Debtors subsequently identify additional Utility Providers or discontinue any Utility Services, the Debtors seek authority, to amend the Utility Service List to add or remove any Utility Provider. The Debtors further request that the relief requested in this motion, including the Proposed Adequate Assurance Procedures, and any order granting this motion shall apply to any subsequently identified Utility Provider, regardless of when such Utility Provider was added to the Utility Service List. The Debtors will serve a copy of this motion and the order approving the requested relief on any Utility Provider subsequently added to the Utility Service List, and any subsequently added Utility Provider shall have 20 days from the date of service of this motion and

the order to make a request for adequate assurance of payment. Further, the Debtors shall have the period specified in the Proposed Adequate Assurance Procedures to seek to resolve any subsequently added Utility Provider's request for adequate assurance of payment by mutual agreement with the Utility Provider without further order of this Court or the need to schedule a hearing with this Court to determine the adequacy of assurance payment in accordance with the Proposed Adequate Assurance Procedures.

### **Basis for Relief**

17. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility company within thirty days of the petition date, or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples for what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtor's ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (“Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.”).

18. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to make an informed decision as to whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See, e.g., In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)). In determining the level of adequate assurance, however, “a bankruptcy court must ‘focus

upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 650 (2d Cir. 1997) (quoting *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)).

19. Termination of the Utility Services could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at \*2 (Bankr. N.D. Tex. Jan. 4, 2009) (“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”). Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors have a history of paying all utility bills on time and in the ordinary course. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance that the Debtors will pay their future obligations to the Utility Providers.

20. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “the plain language of § 366 of the Bankruptcy Code allows the court to adopt the [p]rocedures set forth in the Utility Order”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate

Assurance Procedures. *See id.* at \*5–6. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at \*6. The Adequate Assurance Procedures, however, avoid a haphazard and chaotic process whereby each Utility Provider could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at \*5.

21. The Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and thus the Debtors respectfully request that Court grant the relief requested herein. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

22. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all

applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

**Emergency Consideration**

23. Pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm,” the Debtors respectfully request emergency consideration of this motion. An immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ restructuring. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this motion on an emergency basis.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

24. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

25. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the existence or validity of any claim, interest, or lien against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s rights to dispute any claim, interest, or lien on any grounds; (c) a promise or requirement to pay claims; (d) a waiver of the obligation of any party in interest to file a proof of claim; (e) an

implication or admission that any particular claim, interest, or lien is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid (and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens). If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

26. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas (the "U.S. Trustee"); (b) the holders of the 20 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Debtors' prepetition reserve-based credit facility and counsel thereto; (d) the administrative agent under the Debtors' prepetition term loan and counsel thereto; (e) counsel to the ad hoc group of term loan lenders; (f) San Juan Offshore, LLC; (g) the Utility Providers; (h) the United States Attorney's Office for the Southern District of Texas; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (l) the United States Department of the Interior Bureau of Ocean Energy Management; (m) the United States Department of the Interior Bureau of Safety

and Environmental Enforcement; (n) the United States Department of Transportation; (o) the state attorneys general for states in which the Debtors conduct business; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter an order, granting the relief requested in this motion and granting such other and further relief as is appropriate under the circumstances.

Houston, Texas  
August 20, 2020

Respectfully Submitted,

*/s/ Brian Schartz, P.C.*

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**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
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-and-

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Local Rule 9013-1(i).

*/s/ Brian Schartz, P.C.*

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Brian Schartz, P.C.

**Certificate of Service**

I certify that on August 20, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Brian Schartz, P.C.*

\_\_\_\_\_  
Brian Schartz, P.C.

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

	)	
In re:	)	Chapter 11
	)	
ARENA ENERGY, LP, <i>et al.</i> , <sup>1</sup>	)	Case No. 20-34215 (MI)
	)	
Debtors.	)	(Joint Administration Requested)
	)	<b>Re: Docket No. ___</b>

**ORDER (I) APPROVING  
THE DEBTORS’ PROPOSED ADEQUATE ASSURANCE  
OF PAYMENT FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY  
PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,  
(III) APPROVING THE DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING  
ADDITIONAL ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (a) approving the Proposed Adequate Assurance of payment for future utility services; (b) prohibiting Utility Providers from altering, refusing, or discontinuing services; (c) approving the Adequate Assurance Procedures for resolving Additional Assurance Requests; and (d) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Arena Energy, LP (1436); Arena Energy 2020 GP, LLC (N/A); Arena Energy GP, LLC (7454); Arena Exploration, LLC (1947); Sagamore Hill Holdings, LP (8266); and Valiant Energy, L.L.C. (7184). The location of the debtors’ service address is: 2103 Research Forest Drive, Suite 400, The Woodlands, Texas 77380.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; 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 Debtors shall cause a copy of the Motion and this Order to be served on each Utility Provider listed on the Utility Services List no later than two business days after the date this Order is entered.

2. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.

3. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

4. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Services List attached hereto as **Exhibit 1**, and as may be amended or modified in accordance with this Order.

5. If an amount relating to Utility Services provided postpetition by a Utility Provider

is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors, 2103 Research Forest Drive, Suite 400, The Woodlands, Texas 77380, Attn: Ed Menger, Interim General Counsel; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Gregory F. Pesce, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Brian Schartz, P.C., Neil E. Herman, and Maya Ben Meir; (c) the U.S. Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002; (d) counsel to San Juan Offshore, LLC, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Stephanie Massman; and (e) counsel to any statutory committee appointed in these cases (collectively, the “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 Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

6. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of: (a) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider; and (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.

7. The following “Adequate Assurance Procedures” are hereby approved:
  - a. Any Utility Provider 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 Notice Parties. An Additional Assurance Request may be made at any time.
  - b. Any Additional Assurance Request must (i) be in writing, (ii) identify the location for which the Utility Services are provided, (iii) summarize the Debtors’ payment history relevant to the affected account(s), including any security deposits, and (iv) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
  - c. Upon the Debtors’ receipt of any Additional Assurance Request, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request.
  - d. The Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to counsel to any official committee appointed in these cases, San Juan Offshore, LLC, and the U.S. Trustee upon request.
  - e. If the Debtors and the Utility Provider are not able to reach an alternative resolution within 14 days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any such Determination Hearing, the Utility Provider filing such Additional Assurance Request shall 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.
8. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

9. Unless and until a Utility Provider files an objection or serves an Additional Assurance Request, such Utility Provider shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (b) forbidden from (i) discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, and (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

10. The Debtors are authorized, following the giving of two weeks’ notice to the affected Utility Provider, and the Debtors having received no objection from any such Utility Provider, to add or remove any Utility Provider from the Utility Services List. With respect to a removal from the Utility Service List, the Debtors are authorized to subtract from the Adequate Assurance Deposit an amount equal to the amount indicated with regard to such removed entity on the Utility Service List. With respect to an addition to the Utility Service List, the Debtors shall allocate an amount equal to approximately one half of the Debtors’ average monthly cost over the last 12 months to the Adequate Assurance Deposit for each subsequently added Utility Provider as soon as practicable. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Service List unless and until the two week notice period has passed and the Debtors have not received any objection to termination or deletion of such Utility Provider from the Utility Service List, or until any such objection has been resolved consensually or by order of this Court. For Utility Providers

that are added to the Utility Service List, the Debtors will cause of copy of this Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Provider, within two business days. Any Utility Provider subsequently added to the Utility Service List shall be bound by the Adequate Assurance Procedures.

11. The Adequate Protection Procedures set forth herein are for all Utility Providers providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

12. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the existence or validity of any claim, interest, or lien against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim, interest, or lien on any grounds; (c) a promise or requirement to pay claims; (d) a waiver of the obligation of any party in interest to file a proof of claim; (e) an implication or admission that any particular claim, interest, or lien is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid (and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens).

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized

to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

14. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

15. Notwithstanding anything to the contrary herein, all disbursements made hereunder shall be subject to the requirements imposed on the Debtors under the cash collateral order (whether interim or final, the "Cash Collateral Order") and the Budget (as defined therein) as approved from time to time in accordance with the terms thereof. In the event of any inconsistency between the terms of this Order and the Cash Collateral Order or the Budget, the terms of the Cash Collateral Order and the Budget shall govern. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order to, or on behalf of, a non-debtor affiliate except as permitted by the Budget.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

17. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas  
Dated: \_\_\_\_\_, 2020

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MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1****Utility Services List**

<b>Provider</b>	<b>Provider's Address</b>	<b>Service(s) Provided</b>	<b>Account Number(s)</b>	<b>Half of Average Monthly Expenditure</b>	<b>Prepetition Deposit</b>	<b>Proposed Adequate Assurance</b>
<b>AT&amp;T</b>	208 S AKARD ST DALLAS, TX 75202	Telephone/Data Communications	281 419-1851 859 8	\$2,068	-	\$2,068
<b>CENTERPOINT ENERGY ENTEX</b>	1111 LOUISIANA HOUSTON, TX 77002	Gas	6402132975-6	\$31	-	\$31
<b>CYRUSONE, LLC</b>	2101 CEDAR SPRINGS RD., SUITE 900 DALLAS, TX 75201	Telephone/Data Communications	C0001186	\$1,831	-	\$1,831
<b>LEVEL 3 COMMUNICATIONS</b>	1025 ELDORADO BLVD BROOMFIELD, CO 80021	Internet/Telephone	5-GKDLKHFQ	\$2,849	-	\$2,849
<b>VERIZON</b>	140 WEST ST NEW YORK, NY 10007	Telephone/Data Communications	609615260-00002	\$2,942	-	\$2,942
<b>WAVEMEDIA, INC.</b>	4747 RESEARCH FOREST DR., SUITE 180-216 THE WOODLANDS, TX 77381	Internet	ARE11-2G-2103-WLE	\$1,122	-	\$1,122