

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
ENDURO RESOURCE PARTNERS LLC, <i>et al.</i> ,	)	Case No. 18-11174 (KG)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	Ref. Docket Nos. 5 & 60

**FINAL ORDER**  
**(A) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (B) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Upon the motion (the "*Motion*")<sup>2</sup> of the Debtors for entry of a final order, under (a) prohibiting the Debtors' Utility Companies from altering, refusing, discontinuing service or discriminating against the Debtors, (b) approving the Adequate Assurance Deposit as adequate assurance of postpetition payment to the Utility Companies, and (c) establishing procedures for resolving any subsequent requests by the Utility Companies for additional assurance of payment (the "*Final Order*"); and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C.

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's United States federal tax identification number, if applicable, or other applicable identification number, are: Enduro Resource Partners LLC (6288); Enduro Resource Holdings LLC (5571); Enduro Operating LLC (7513); Enduro Management Company LLC (5932); Washakie Midstream Services LLC (7562); and Washakie Pipeline Company LLC (7798). The debtors' mailing address is 777 Main Street, Suite 800, Fort Worth, Texas 76102.

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



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§§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that it 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 it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having entered that certain *Interim Order (A) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (B) Approving Deposit as Adequate Assurance of Payment, and (C) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance Payment* [D.I. 60] and upon the record herein and upon all of the proceedings had before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently-added Utility Companies, are hereby prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, or 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 Assurance Procedures contained herein.
3. The Debtors shall deposit a total of \$187,000 (the “*Adequate Assurance Deposit*”) into a newly created, segregated, interest-bearing account within twenty (20) days after the Petition Date. 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 these cases and shall not be subject to any liens in favor of the Debtors' secured lenders, except as to any remainder interest that the Debtors may have therein. The balance of the Adequate Assurance Deposit may be reduced by the Debtors, without further order, to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with a Utility Company, *provided however*, that such Utility Company has received notice of the Debtors' intent to reduce funds from the Adequate Assurance Deposit account and such Utility Company did not object within ten (10) days of receiving such notice. The obligation to maintain the Adequate Assurance Deposit shall terminate upon the effective date of a confirmed plan of reorganization or such other time as these cases may be closed.

4. Any amounts in the Adequate Assurance Deposit account and/or provided as a deposit to a Utility Company to resolve any Additional Assurance Request shall be returned to the Debtors' estates within ten (10) business days of the earlier of (a) the effective date of any confirmed chapter 11 plan in these Chapter 11 Cases, (b) the discontinuance of the Utility Services provided by the Utility Company, and (c) the closing of a sale of substantially all of the Debtors' assets, unless one or more Utility Companies have asserted a claim against the Adequate Assurance Deposit or otherwise applied such deposit, in which case, such claim or claims, if not consensually resolved, will be resolved by the Court; *provided however*, that any Utility Company has received notice of the Debtors' intent to reduce funds from the Adequate Assurance Deposit account and such Utility Company did not object within ten (10) days of receiving such notice.

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

- (a) Except as provided by the Additional Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the establishment of the Adequate Assurance Deposit.
- (b) The Debtors shall serve on the Utility Companies copies of this Final Order within forty-eight (48) hours after the entry hereof.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company shall serve a written request (an “***Additional Assurance Request***”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Assurance Requests shall be delivered by mail and email (where available) to each Utility Notice Party.<sup>3</sup>
- (d) Any Additional Assurance Request must (i) set forth the location(s) for which Utility Services are provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s), (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of payment and (v) provide a facsimile number and an email address to which the Debtors may respond to the Additional Assurance Request.

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<sup>3</sup> The “***Utility Notice Parties***” are: (a) the Debtors, Enduro Resource Partners LLC, 777 Main Street, Suite 800, Fort Worth, Texas 76102, Attn: Kim Weimer (email: kweimer@endurores.com); (b) proposed counsel to the Debtors, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Matthew Warren, and Jason Gott (email: caroline.reckler@lw.com, matthew.warren@lw.com and jason.gott@lw.com); (c) proposed co-counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Elizabeth S. Justison and Betsy L. Feldman (email: ejustison@ycst.com and bfeldman@ycst.com); and (d) counsel to the First Lien Agent, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Damian S. Schaible and Aryeh Ethan Falk (email: damian.schaible@davispolk.com and aryeh.falk@davispolk.com), and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Flr., Wilmington, Delaware 19899, Attn: Robert J. Dehney (email: rdehney@mnat.com).

- (e) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Company to resolve the Additional Assurance Request.
- (f) Without further order of the Court or notice to the Court or any other party in interest, the Debtors may resolve an Additional Assurance Request by entering into agreements granting additional assurance to the requesting Utility Company if the Debtors, in their sole discretion, agree to alternative provisions with the Utility Company.
- (g) If the Debtors are not able to reach a resolution with the Utility Company within ten (10) days of the Debtors' receipt of an Additional Assurance Request, the Debtors shall request a hearing (the "***Determination Hearing***") before this Court at the next omnibus hearing date.
- (h) The Determination Hearing shall be an evidentiary hearing at which the Court shall determine whether the Adequate Assurance Deposit and the additional assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3)(A) of the Bankruptcy Code. Nothing set forth herein is intended to, nor shall it, modify or alter the burdens of proof in connection with the Determination Hearing or any such separate hearing.
- (i) Any Utility Company that does not serve an Additional Assurance Request in accordance with the Additional Assurance Procedures shall be deemed to have received adequate assurance of payment that is satisfactory to the Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) If the Debtors fail to timely replenish the Adequate Assurance Deposit as required by this Order, then a Utility Company may discontinue providing Utility Services within ten (10) days of the Debtors' and the Utility Notice Parties' receipt of a notice of termination from the Utility Company; *provided, however*, that if the Debtors replenish the Adequate Assurance Deposit within ten (10) days of receipt of the notice of termination, or if the Debtors request a Determination Hearing before this Court, such Utility Company may not discontinue providing Utility Services absent further order of this Court.
- (k) All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing or discontinuing Utility Services to the Debtors except as provided by the Additional Assurance Procedures, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

6. The Debtors are authorized, in their sole discretion, to amend Exhibit C attached to the Motion to add or delete any Utility Company, and this Final Order shall apply in all respects to any Utility Company that is subsequently added to Exhibit C to the Motion. For those Utility Companies that are subsequently added to Exhibit C, the Debtors shall serve a copy of the Motion and this Final Order on the Utility Company, along with an amended Exhibit C that includes the Utility Company. Any such subsequently-added Utility Company shall be subject in all respects to this Final Order from and after the service of this Final Order on such Utility Company. Any subsequently-terminated Utility Company shall receive notice of the Debtors' intent to reduce funds from the Adequate Assurance Deposit in connection with such Utility Company's termination, and such Utility Company shall have ten (10) days from receiving such notice of termination to object to the Debtors' Adequate Assurance Deposit reduction.

7. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors.

8. The objection and Additional Assurance Request of McKenzie Electric Cooperative, Inc. ("*McKenzie Electric*") are resolved pursuant to a separate agreement (the "*Agreement*") between the Debtors and McKenzie Electric. In the event of any inconsistency between the Interim Order, the Final Order, and the Agreement, the terms of the Agreement shall govern.

9. Notwithstanding anything to the contrary in this Final Order, any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the

Debtors under any cash collateral order. In the event of any inconsistency between the terms of this Final Order and any cash collateral order, the terms of the cash collateral order shall govern.

10. 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) are satisfied by such notice.

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

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

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: June 11, 2018  
Wilmington, Delaware

  
Kevin Gross  
United States Bankruptcy Judge