



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOLEY & LARDNER LLP

Jeffrey R. Blease (CA Bar No. 134933)
Tel: (617) 226-3155; jblease@foley.com
Thomas F. Carlucci (CA Bar No. 135767)
Tel: (415) 984-9824; tcarlucchi@foley.com
Shane J. Moses (CA Bar No. 250533)
Tel: (415) 438-6404; smoses@foley.com
Emil P. Khatchatourian (CA Bar No. 265290)
Tel: (312) 832-5156; ekhatchatourian@foley.com
Ann Marie Uetz (admitted *pro hac vice*)
Tel: (313) 234-7114; auetz@foley.com
Matthew D. Lee (admitted *pro hac vice*)
Tel: (608) 258-4203; mdlee@foley.com
555 California Street, Suite 1700
San Francisco, CA 94104-1520

The following constitutes the order of the Court.
Signed: May 25, 2023

William J. Lafferty, III
U.S. Bankruptcy Judge

*Proposed Counsel for the Debtor
and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523 WJL

Chapter 11

**SECOND INTERIM ORDER
ESTABLISHING ADEQUATE ASSURANCE
PROCEDURES WITH RESPECT TO THE
DEBTOR'S UTILITY PROVIDERS**

Judge: Hon. William J. Lafferty

Date: May 23, 2023

Time: 1:30 p.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

1 Upon the *Debtor's Motion For an Order Establishing Adequate Assurance Procedures With*
2 *Respect to the Debtor's Utility Providers*, dated May 8, 2023 (the "Utilities Motion"),¹ filed by the Roman
3 Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the
4 "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case" or
5 the "Bankruptcy Case") for entry of interim and final orders (i) approving the Debtor's proposed form of
6 adequate assurance of payment for postpetition Utility Services, (ii) establishing procedures for providing
7 adequate assurance and resolving objections of Utility Providers relating to the adequacy of the proposed
8 adequate assurance, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing service
9 to, or discriminating against, the Debtor because of the commencement of this Bankruptcy Case or for a
10 debt that is owed by the Debtor for Utility Services rendered before the Petition Date; and (iv) granting
11 related relief, all as more fully set forth in the Utilities Motion; the Court having reviewed and considered
12 the Utilities Motion, the First Day Declaration, all other filings in support of any opposition to the Utilities
13 Motion, and the arguments made at the hearings on the Utilities Motion; the Court finding that it has
14 jurisdiction over this matter, that venue in this Court is proper, and that notice of the Utilities Motion and
15 the interim hearings thereon was reasonable and sufficient under the circumstances for the granting of
16 interim relief; the Court finding that there is good cause for entry of an immediate interim order pursuant
17 to Fed. R. Bankr. P. 6003, and that ample cause exists to grant a waiver of the 14-day stay imposed by
18 Bankruptcy Rule 6004(h) for the entry of an interim order granting the Utilities Motion; and the Court
19 further finding that the relief requested in the Utilities Motion is in the best interests of the Debtor, its
20 creditors, and other parties in interest; and after due deliberation and good cause appearing

21 **IT IS HEREBY ORDERED THAT:**

- 22 1. The Motion is GRANTED on an interim basis to the extent set forth herein.
- 23 2. The Adequate Assurance Deposit is hereby approved on an interim basis and is deemed
24 adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.
- 25 3. The following Adequate Assurance Procedures to be utilized in connection with the
26 Adequate Assurance Deposit are approved on an interim basis:

27 _____
28 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Utilities Motion.

- 1 (a) The Debtor will fax, e-mail, serve by overnight mail, or otherwise expeditiously
2 send a copy of the applicable order (as approved by the Court), which includes the
3 proposed Adequate Assurance Procedures, to each Utility Provider on the Utility
4 Service List within three (3) business days after entry of the applicable order by the
5 Court.
- 6 (b) To the extent any Utility Provider receives any additional assurance of payment as
7 set forth herein, the Debtor may reduce the Adequate Assurance Deposit
8 maintained in the Adequate Assurance Account by such amount.
- 9 (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider
10 shall be returned to the Debtor on the earlier of (i) the date on which the Debtor has
11 terminated the service from such provider and have satisfied in full all postpetition
12 obligations due and owing to the applicable Utility Provider and (ii) the effective
13 date of a plan of reorganization in the Bankruptcy Case, if not applied earlier.
- 14 (d) Any Utility Provider not satisfied with the Proposed Adequate Assurance must
15 serve a written request for additional assurance (an “Additional Assurance
16 Request”) on the following parties: (i) the Debtor, Attn: Paul Bongiovanni, 2121
17 Harrison Street, Suite 100, Oakland, CA 94612 (PBongiovanni@oakdiocese.org);
18 and (ii) proposed counsel for the Debtor, Foley & Lardner LLP, 500 Woodward
19 Avenue, Suite 2700, Detroit, MI 48226-3489, Attn: Ann Marie Uetz, Esq.
20 (auetz@foley.com) (collectively, the “Adequate Assurance Notice Parties”).
- 21 (e) Any Additional Assurance Request must (i) be made in writing, (ii) identify the
22 Debtor to which Utility Services are provided, (iii) include a summary of the
23 Debtor’s payment history relevant to the affected account(s), including the amounts
24 of any security deposits, and (iv) set forth an explanation of why the Utility Provider
25 believes the Proposed Adequate Assurance is not sufficient adequate assurance of
26 future payment.
- 27 (f) Any Additional Assurance Request must be made and actually received by the
28 Adequate Assurance Notice Parties by no later than twenty (20) days after entry of
an applicable order by the Court, or such greater period as may be agreed to by the
Debtor and the relevant Utility Provider. If a Utility Provider fails to timely file
and serve an Additional Assurance Request, it shall: (i) be deemed to have received
adequate assurance of payment “satisfactory” to such Utility Provider in
compliance with section 366 of the Bankruptcy Code; and (ii) be forbidden to
discontinue, alter, or refuse service to, or discriminate against, the Debtor on
account of any unpaid prepetition charges, or require additional assurance of
payment other than the Proposed Adequate Assurance.
- (g) Upon receipt by the Adequate Assurance Notice Parties of any Additional
Assurance Request as set forth above, the Debtor shall have the greater of (i)
twenty (20) days from the receipt of such Additional Assurance Request, and (ii)
thirty (30) days from entry of an order (the “Resolution Period”) to negotiate with
such Utility Provider to resolve such Utility Provider’s Additional Assurance

1 Request, or such greater period as may be agreed to by the Debtor and the relevant
2 Utility Provider in writing.

3 (h) If the Debtor determines that an Additional Assurance Request or any consensual
4 agreement reached in connection therewith is reasonable, the Debtor may resolve
5 any Additional Assurance Request without further order of the Court, and may, in
6 connection with any such agreement, provide a Utility Provider with additional
adequate assurance of future payment, including but not limited to cash deposits,
prepayments, or other forms of security.

7 (i) If the Debtor determines that the Additional Assurance Request is not reasonable
8 and is not able to reach a resolution with the Utility Provider during the Resolution
9 Period, the Debtor, during or immediately after the Resolution Period, will schedule
10 a hearing before this Court to determine the adequacy of assurances of payment
with respect to such Utility Provider (the "Determination Hearing") pursuant to
section 366(c)(3) of the Bankruptcy Code.

11 (j) Pending resolution of a disputed Additional Assurance Request at the
12 Determination Hearing, the relevant Utility Provider shall be prohibited from
13 discontinuing, altering, or refusing service to the Debtor on account of unpaid
charges for prepetition services or on account of any objections to the Proposed
Adequate Assurance.

14 4. Absent compliance with the procedures set forth in the Motion and this Order, the Utility
15 Providers are prohibited from altering, refusing, or discontinuing service on account of any unpaid
16 prepetition charges and are deemed to have received adequate assurance of payment in compliance with
17 section 366 of the Bankruptcy Code.

18 5. The Debtor is authorized, in its sole discretion, to amend the Utility Service List to add or
19 delete any Utility Provider, and this Order shall apply to any Utility Provider that is subsequently added
20 to the Utility Service List. In addition, the Debtor may terminate the services of any Utility Provider and
21 are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of
22 such terminated Utility Provider.

23 6. The Debtor shall serve a copy of this Order on any Utility Provider that is subsequently
24 added to the Utility Services List and deposit two (2) weeks' worth of estimated utility costs in the
25 Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with
26 any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such
27

1 subsequently added Utility Providers shall have twenty (20) days from the date of service of this Order to
2 make an Additional Assurance Request.

3 7. Any Utility Provider that fails to timely provide the Debtor with an Additional Assurance
4 Request in accordance with the procedures set forth here shall be deemed to have consented to the
5 Adequate Assurance Procedures and shall be bound by this Order.

6 8. Nothing in this Order shall be construed as: (a) an admission regarding the validity of any
7 prepetition claim against the Debtor; (b) a promise or requirement to pay any prepetition claim; (c) a
8 request or authorization to assume any prepetition executory contract; (d) a waiver of the Debtor's, or any
9 estate representative's, right to dispute any claim on any grounds; or (e) otherwise a waiver of the Debtor's
10 rights under the Bankruptcy Code or other applicable law.

11 9. This Order shall be immediately effective and enforceable upon entry.

12 10. A final hearing on the Utilities Motion shall be held on June 6, 2023, at 2:30 p.m.
13 (Prevailing Pacific Time). Any written objections to the granting of the relief requested in the Utilities
14 Motion on a final basis shall be filed not later than June 2, 2023, and any replies to such objections shall
15 be filed not later than 12:00 p.m. (Prevailing Pacific Time) on June 5, 2023. Oral objections may be made
16 at the hearing.

17 11. The Debtor is authorized to take all actions necessary or appropriate to effectuate the relief
18 granted in this Order.

19 12. This Court shall retain jurisdiction with respect to all matters arising from or related to the
20 implementation of or interpretation of this Order.

21 **APPROVED AS TO FORM:**

22 OFFICE OF THE UNITED STATES TRUSTEE

23
24 By: /s/ Jason Blumberg
25 Jason Blumberg
26 Trial Attorney

27
28
END OF ORDER

COURT SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

All ECF Recipients.