

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

19107021904160000000000012

Debtors employ in the ordinary course of business. This Motion is supported by the *Declaration of Michael B. Howe in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* (D.I. 2) (the “**Howe Declaration**”)² filed on April 1, 2019. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105, 327, 328, and 330 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors seek entry of an order (the “**Proposed Order**” and, if entered, the “**Order**”) approving procedures for the retention and compensation of certain professionals that the Debtors employ in the ordinary course of business (collectively, the “**Ordinary Course Professionals**”), *nunc pro tunc* to the Petition Date, without the submission of separate retention applications or the entry of separate retention orders for each such Ordinary Course Professional.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Howe Declaration.

of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

7. Additional information about the Debtors’ businesses and affairs, capital structure and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the Howe Declaration, which is incorporated herein by reference.

8. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 48] entered by the Court on April 2, 2019 in each of the Chapter 11 Cases

The Ordinary Course Professionals

9. The Debtors employ various Ordinary Course Professionals to provide services in matters unrelated to the Chapter 11 Cases. A non-exclusive list of Ordinary Course Professionals that the Debtors employ as of the Petition Date is attached hereto as Exhibit A (the “**Ordinary Course Professionals List**”).³ The Debtors seek to continue employing such

³ The Debtors believe that the Ordinary Course Professional List is a complete list of the Debtors’ Ordinary Course Professionals as of the Petition Date. Due to the breadth of issues confronting the Debtors in the

Ordinary Course Professionals in the same manner and for the same purposes as the Ordinary Course Professionals were retained before the Petition Date. In the past, the Ordinary Course Professionals have rendered services relating to such diverse subjects as litigation, regulatory (including Federal Energy Regulatory Commission and Securities and Exchange Commission matters), environmental, corporate governance, real estate and land consulting, general corporate matters, auditing, accounting, tax, and transactional work, as well as other services for the Debtors in relation to issues that have a direct and significant impact on the Debtors' day-to-day operations.

10. The Debtors submit that the proposed employment of the Ordinary Course Professionals and the payment of monthly compensation on the basis set forth below are in the best interests of their estates and their stakeholders. The Ordinary Course Professionals have a great deal of background knowledge, expertise, and familiarity with the Debtors and their operations. Thus, the Debtors believe that the continued employment of the Ordinary Course Professionals, many of whom are already familiar with the Debtors' businesses and affairs, is necessary to avoid disruption of the Debtors' normal business operations.

11. Furthermore, the relief requested will save the Debtors' estates the substantial expense associated with applying for separate court approval for the employment of each Ordinary Course Professional. The requested relief also will avoid the incurrence of substantial additional fees relating to the preparation and prosecution of interim and final fee applications. Likewise, the procedures outlined below will relieve the Court and the Office of the United

normal operation of their businesses, this list may not be comprehensive. Further, the Debtors may require the services of additional Ordinary Course Professionals while the Chapter 11 Cases are active. As the Debtors retain additional Ordinary Course Professionals during the Chapter 11 Cases, such professionals will comply with the practices and requirements set forth herein and the Debtors shall file a Supplemental Notice of Ordinary Course Professionals (as defined herein).

States Trustee for the District of Delaware (the “**U.S. Trustee**”) of the burden of reviewing numerous fee applications involving relatively small amounts of fees and expenses.

The Proposed Procedures for Retention and Compensation of Ordinary Course Professionals

12. By this Motion, the Debtors request that the Court approve the following procedures for retention and payment of the Ordinary Course Professionals:

(a) Within 15 days of the later of the entry of an order granting the relief requested in this Motion or the date on which the retained Ordinary Course Professional commences services for the Debtors, each Ordinary Course Professional shall provide the Debtors’ attorneys with a declaration (the “**Ordinary Course Professional Declaration**”), substantially in the form attached hereto as Exhibit B, certifying that the Ordinary Course Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the Ordinary Course Professional is to be employed. In addition, each Ordinary Course Professional shall periodically update its Ordinary Course Professional Declaration to the extent necessary to reflect new facts or circumstances relevant to their retention.

(b) The Debtors’ attorneys shall promptly file each Ordinary Course Professional Declaration with the Court and serve such documents on the following parties (collectively, the “**Reviewing Parties**”):

- (i) the U.S. Trustee, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Richard L. Schepacarter, Richard.Schepacarter@usdoj.gov);
- (ii) Southcross Energy Partners, L.P., 1717 Main Street, Suite 5300, Dallas, TX 75201 (Attn: Kelly Jameson);
- (iii) proposed counsel to the Debtors (a) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Darren S. Klein, darren.klein@davispolk.com; Steven Z. Szanzer, steven.szanzer@davispolk.com; and Benjamin M. Schak, benjamin.schak@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19801 (Attn: Robert J. Dehney, rdehney@mnat.com; Andrew R. Remming, aremming@mnat.com; and Joseph C. Barsalona II, jbarsalona@mnat.com);
- (iv) co-counsel to the post-petition lenders and an ad hoc group of prepetition lenders (a) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099 (Attn: Paul V. Shalhoub, pshalhoub@willkie.com; Joseph G. Minias, jminias@willkie.com; and James H. Burbage, jburbage@willkie.com) and (b) Young

Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Matthew B. Lunn, mlunn@ycst.com);

- (v) counsel to Wells Fargo Bank, N.A. as administrative agent, Vinson & Elkins LLP, 2001 Ross Avenue, suite 3900, Dallas, TX 75201 (Attn: William Wallander, bwallander@velaw.com; Bradley Foxman, bfoxman@velaw.com); and
- (vi) counsel to any official committees appointed in the Chapter 11 Cases.

(c) The Reviewing Parties shall then have 14 days following such service (the “**Objection Deadline**”) to notify the Debtors, the other Reviewing Parties, and the applicable Ordinary Course Professional in writing of any objection to the retention stemming from the contents of the Ordinary Course Professional Declaration. The Debtors may extend the Objection Deadline as to any Reviewing Party without further order of the Court.

(d) If no objections are received by the Debtors by the Objection Deadline in accordance with paragraph (b)(i) above, retention of the Ordinary Course Professional shall be deemed approved and effective as of the later of the Petition Date or the date the Ordinary Course Professional commenced work (the “**Retention Date**”).

(e) If an objection is asserted by a Reviewing Party in accordance with paragraph (b)(i) above and such objection is not resolved within ten days of the Objection Deadline (the “**Resolution Deadline**”), the Debtors shall schedule the matter for a hearing before the Court to be held on the next regularly scheduled hearing date that is at least 14 days from the Resolution Deadline (unless otherwise agreed to by the Debtors and the objecting Reviewing Party). No Ordinary Course Professional shall be paid any amounts for invoiced fees or expense reimbursement until the Ordinary Course Professional Declaration has been filed with the Court and (i) the Objection Deadline has passed with no objection asserted in accordance with paragraph (b)(i) above or (ii) if an objection is asserted in accordance with paragraph (b)(i) above, until such objection is resolved or upon order of the Court.

(f) Provided that the Ordinary Course Professional’s retention has been approved in accordance with the above procedures, the Debtors are authorized, but not directed to pay each Ordinary Course Professional, without further application to the Court and upon the submission to, and approval by, the Debtors of appropriate invoices setting forth in reasonable detail the nature of the services rendered and disbursements incurred, 100% of the post-petition fees and disbursements incurred, up to \$50,000 per month, on average, over a rolling three-month period per Ordinary Course Professional (the “**Monthly Cap**”).

(g) If an Ordinary Course Professional seeks payment of an amount that is more than the Monthly Cap in a single month, such professional will be required to, on or

after the 20th day of the month following the month for which the additional fees and disbursements are being sought, serve a monthly statement in compliance with sections 330 and 331 of the Bankruptcy Code and any applicable provisions of the Bankruptcy Rules, the Local Rules, and any other procedures and orders of the Court (“**Monthly Statement**”) for the full amount of fees and disbursements sought in such month on the Reviewing Parties; *provided, however*, that if an Ordinary Course Professional does not in the ordinary course of business maintain time records in tenth-of-an-hour increments, and indicates that to be the case in its Ordinary Course Professional Declaration, the requirements of Local Rule 2016-2 shall be waived to permit said Ordinary Course Professional to submit time records in whatever time increments such professional ordinarily maintains their time, and setting forth a description of the services rendered and the professionals rendering such services on behalf of the Debtors.

(i) If any Reviewing Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, such party shall, within 14 calendar days following the service of the relevant Monthly Statement (the “**Monthly Statement Objection Deadline**”), serve upon the Debtors, the Ordinary Course Professional whose Monthly Statement is objected to, and the other Reviewing Parties, a written “**Notice of Objection to Fee Statement**” setting forth the nature of the objection and the amount of fees or expenses at issue. The Debtors may extend the Monthly Statement Objection Deadline as to any Reviewing Party without further order of the Court.

(ii) If the Debtors do not receive an objection to a particular Monthly Statement on or prior to the Monthly Statement Objection Deadline, the Debtors shall promptly thereafter pay all fees and expenses identified in such Monthly Statement to which no objection has been served in accordance with paragraph (g)(i) above.

(iii) If the Debtors receive an objection to a particular Monthly Statement served in accordance with paragraph (g)(i) above on or prior to the Monthly Statement Objection Deadline, they shall withhold payment of that portion of the Monthly Statement to which the objection is directed and promptly thereafter pay the remainder of the fees and disbursements unless the Court, upon notice and a hearing, directs payment to be made.

(iv) If the parties to an objection are able to resolve their dispute, and if the Ordinary Course Professional whose Monthly Statement was objected to serves upon the Reviewing Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly thereafter pay that portion of the Monthly Statement no longer subject to an objection.

(v) All objections served in accordance with these procedures and not resolved by the relevant parties shall be preserved and presented to the Court on notice.

(h) At three-month intervals during the pendency of the Chapter 11 Cases (each, a “**Quarter**”), beginning with the three-month interval which commences on the Petition Date and ending on June 30, 2019, the Debtors shall file with the Court and serve on the Reviewing Parties, no later than 30 days after the end of such Quarter, a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter; and (iii) all post-petition payments made to that Ordinary Course Professional through the reported Quarter.

(i) The Debtors reserve the right to retain additional Ordinary Course Professionals from time to time during the Chapter 11 Cases, *provided* that the Debtors and such Ordinary Course Professionals comply with these procedures.

(j) If the Debtors seek to retain an Ordinary Course Professional not already listed on the Ordinary Course Professional List during the Chapter 11 Cases, the Debtors shall file with the Court and serve upon the Reviewing Parties a notice listing those Ordinary Course Professionals to be added to the list of Ordinary Course Professionals (the “**Supplemental Notice of Ordinary Course Professionals**”), along with the attendant Ordinary Course Professional Declarations.

(k) If no objection to the Supplemental Notice of Ordinary Course Professionals is filed with the Court and served upon the Debtors’ counsel as set forth above, so as to be actually received within 14 days after the service thereof, the list set forth in the Supplemental Notice of Ordinary Course Professionals will be deemed approved by the Court and without the need for a hearing or further Court order. Any Ordinary Course Professionals retained pursuant to the Supplemental Notice of Ordinary Course Professionals will be paid in accordance with the terms and conditions set forth in the paragraphs above.

Basis for Relief

13. Section 327 of the Bankruptcy Code requires court approval for the employment of “professional persons,” retained to represent or perform services of the estate.

11 U.S.C. § 327. In determining whether an entity is a “professional” within the meaning of section 327 of the Bankruptcy Code and, therefore, whether the entity must be retained by express approval of the Court, courts generally consider whether such entity is involved in the debtor’s actual restructuring effort, rather than the debtor’s ongoing business operations. *See, e.g., In re The Dairy Dozen-Milnor, LLP*, 441 B.R. 918, 922 (Bankr. D.N.D. 2010); *In re Bartley Lindsay Co.*, 137 B.R. 305, 308 (Bankr. D. Minn. 1991); *Comm. of Asbestos-Related Litigants v.*

Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (“[T]he phrase ‘professional persons,’ as used in § 327(a), is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor’s estate.”); *In re SageCrest II, LLC*, Case No. 08-50754, 2010 Bankr. LEXIS 1645, at *23 (Bankr. D. Conn. May 18, 2010), *aff’d*, 2011 U.S. Dist. LEXIS 3517 (D. Conn. Jan. 14, 2011); *In re Cyrus II P’ship*, Case No. 05-39857, 2008 WL 3003824, at *2-3 (Bankr. S.D. Tex. July 31, 2008); *see also* 11 U.S.C. § 363(c) (permitting the debtors to “enter into transactions . . . in the ordinary course of business, without notice or a hearing.”). In making this determination, courts often consider the following factors:

- (a) whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor’s reorganization;
- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations;
- (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate;
- (e) the extent of the entity’s involvement in the administration of the debtor’s estate; and
- (f) whether the entity’s services involve some degree of special knowledge or skill, such that it can be considered a “professional” within the ordinary meaning of the term.

See, e.g., In re First Merchs. Acceptance Corp., Case No. 97-1500, 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (listing factors); *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981) (“For the purposes of section 327(a), ‘professional person’ is limited to persons in those occupations which play a central role in the administration of the debtor proceeding.”); *In re Fretheim*, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (finding that only those professionals

involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under section 327).

14. The foregoing factors must be considered in the totality when determining whether an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code. *See First Merchs.*, Case No. 97-1500, 1997 WL 873551, at *3 ("In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered *in toto*.").

15. The Debtors submit that the Ordinary Course Professionals' employment relates only indirectly to the Debtors' restructuring efforts. In light of the fact that the Ordinary Course Professionals are only granted marginal discretion in performing their work, and that they will not be involved in administering the Chapter 11 Cases, the Debtors believe that the Ordinary Course Professionals are not "professionals" whose retention must be approved by the Court under section 327 of the Bankruptcy Code. Specifically, the Ordinary Course Professionals will provide services in connection with the Debtors' ongoing business operations, such services that are ordinarily provided by non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested herein to establish clear mechanisms for the retention and payment of the Ordinary Course Professionals and thereby avoid any subsequent controversy with respect thereto.

16. The Debtors represent that (a) the retention of the Ordinary Course Professionals is necessary for the day-to-day operations of the Debtors' businesses, (b) the expenses for the Ordinary Course Professionals will be monitored, and (c) the Ordinary Course Professionals will not perform substantial bankruptcy related services without filing an application with the Court for separate retention as a non-Ordinary Course Professional.

17. Moreover, the Debtors submit that, in light of the additional cost associated with the preparation of retention applications for professionals who will receive relatively small fees, it is impractical and inefficient for the Debtors to submit individual applications and proposed retention orders for each Ordinary Course Professional. Accordingly, the Debtors request that the Court dispense with any requirement of individual employment applications and retention orders for each Ordinary Course Professional.

18. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors for prepetition services rendered to the Debtors, the Debtors do not believe that any Ordinary Course Professional has an interest adverse to the Debtors or their estates with respect to the matters for which they are to be employed, and thus, all of the Ordinary Course Professionals that the Debtors propose to retain meet the applicable retention requirements under section 327(e) of the Bankruptcy Code. By this Motion, the Debtors are not requesting authority to pay prepetition amounts owed to Ordinary Course Professionals.

19. Other than the Ordinary Course Professionals, all attorneys employed by the Debtors during the Chapter 11 Cases will be retained by the Debtors pursuant to separate retention applications. Such professionals shall be compensated in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and other orders of the Court.

20. Finally, relief similar to that requested herein has been granted in other large chapter 11 cases by courts in this jurisdiction. *See, e.g., In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Mar. 22, 2019); *In re Terravia Holdings, Inc.*, Case No. 17-11655 (CSS) (Bankr. D. Del. Sept. 1, 2017); *In re Bonanza Creek Energy, Inc.*, Case No. 17-10015 (KJC) (Bankr. D. Del. Jan. 26, 2017); *In re Key Energy Servs., Inc.*, Case No. 16-12306 (BLS)

(Bankr. D. Del. Dec. 1, 2016); *In re Basic Energy Servs., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Nov. 17, 2016); *In re Halcón Res. Corp.*, Case No. 16-11724 (BLS) (Bankr. D. Del. Aug. 19, 2016); *In re Paragon Offshore plc*, Case No. 16-10386 (CSS) (Bankr. D. Del. Apr. 6, 2016); *In re Offshore Grp. Investment Ltd.*, Case No. 15-12422 (BLS) (Bankr. D. Del. Jan. 6, 2016); *In re Hercules Offshore, Inc.*, Case No. 15-11685 (KJC) (Bankr. D. Del. Sept. 8, 2015); *In re Molycorp, Inc.*, Case No. 15-11357 (CSS) (Bankr. D. Del. July 17, 2015).

Debtors' Reservation of Rights

21. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to any Ordinary Course Professional under applicable bankruptcy and non-bankruptcy law. Likewise, 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 claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Waiver of Stay Under Bankruptcy Rule 6004(h)

22. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day

stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

23. Notice of this Application will be provided to the following parties or, in lieu thereof, their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware, (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis, (c) Vinson & Elkins LLP, as counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, (d) (x) Arnold & Porter Kaye Scholer LLP and (y) Duane Morris LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility, (e) (x) Willkie Farr & Gallagher LLP and (y) Young Conaway Stargatt & Taylor, LLP, as counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (f) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP, and (g) any party that has requested to be provided notice under Bankruptcy Rule 2002. A copy of this Application and any order approving it will also be made available on the Debtors' Case Information Website located at <http://www.kccllc.net/southcrossenergy>. Based on the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

No Prior Request

24. The Debtors have not previously sought the relief requested herein from the Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit C, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 16, 2019
Wilmington, Delaware

Respectfully submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Eric W. Moats

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Proposed Counsel to the Debtors and Debtors in Possession

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

In re:

SOUTHCROSS ENERGY PARTNERS, L.P.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-10702 (MFW)

Jointly Administered

Hearing Date: May 7, 2019 at 11:00 a.m. (ET)

Objection Deadline: April 30, 2019 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER APPROVING
PROCEDURES FOR THE RETENTION AND COMPENSATION OF ORDINARY
COURSE PROFESSIONALS *NUNC PRO TUNC* TO THE PETITION DATE**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the **Motion of Debtors for Entry of an Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals *Nunc Pro Tunc* to the Petition Date** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to approval of the relief sought in the Motion must be (a) in writing and served on or before **April 30, 2019 at 4:00 p.m. (ET)** (the “Objection Deadline”); (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before the Objection Deadline by the undersigned counsel.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **MAY 7, 2019 AT 11:00 A.M. (ET)** BEFORE THE HONORABLE

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

MARY F. WALRATH, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 16, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Eric W. Moats

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Ordinary Course Professionals List

ORDINARY COURSE PROFESSIONAL	SERVICES PROVIDED FOR THE DEBTORS
Akin Gump Strauss Hauer & Feld LLP	Counsel to the Board of Directors Conflicts Committee for Southcross Energy Partners, L.P.
Baker Moran Doggett Ma & Dobbs LLP	Real estate and property counsel
BKD, LLP	Benefit plan audit services
Duff & Phelps, LLC	Property tax services
Foley & Lardner LLP	Environmental compliance and SEC filings counsel
Hunton Andrews Kurth LLP	FERC pipeline rates counsel
KPMG LLP	Indirect tax audit defense
Locke Lord LLP	SEC compliance, tax, and general corporate counsel

Exhibit B

Ordinary Course Professional Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-10702 (MFW)
<i>et al.</i> ,)	
)	Jointly Administered
Debtors. ¹)	
)	

DECLARATION AND DISCLOSURE STATEMENT OF

ON BEHALF OF

_____, declares and says:

1. I am a [_____] of _____, located at _____ (the “**Firm**”).

2. Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

cases (the “**Chapter 11 Cases**”), have requested that the Firm provide services to the Debtors, and the Firm has consented to provide those services.

3. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to the Chapter 11 Cases, for persons that are claimants or other parties in interest in the Chapter 11 Cases. The Firm does not perform services for any such person in connection with the Chapter 11 Cases.

4. Neither I nor any partner or associate of the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matters on which the Firm is to be employed.

5. Neither I nor any partner or associate of the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any person other than partners and associates of the Firm.

6. The Debtors owe the Firm \$_____ for prepetition services.

7. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matter described herein, the Firm will supplement the information contained in this Declaration.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on _____, 2019.

[Name]

Exhibit C

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-10702 (MFW)
<i>et al.</i> ,)	
)	Jointly Administered
Debtors. ¹)	
)	

**ORDER APPROVING PROCEDURES FOR THE RETENTION AND
COMPENSATION OF ORDINARY COURSE PROFESSIONALS
NUNC PRO TUNCTO TO THE PETITION DATE**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), for entry of an order pursuant to sections 105, 327, 328 and 330 of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 approving procedures for the retention and compensation of Ordinary Course Professionals, as more fully described in the Motion; and the Court having jurisdiction to

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and the Court having venue pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having the opportunity to hold a hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted as set forth herein.
2. To the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized, but not directed, to employ, in their sole discretion, the Ordinary Course Professionals *nunc pro tunc* to the Petition Date, and to compensate such Ordinary Course Professionals pursuant to the following procedures:

(a) Within 15 days of the later of the entry of an order granting the relief requested in this Motion or the date on which the retained Ordinary Course Professional commences services for the Debtors, each Ordinary Course Professional shall provide the Debtors' attorneys with (i) a declaration (the "**Ordinary Course Professional Declaration**"), substantially in the form attached hereto as Exhibit B, certifying that the

Ordinary Course Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the Ordinary Course Professional is to be employed. In addition, each Ordinary Course Professional shall periodically update its Ordinary Course Professional Declaration to the extent necessary to reflect new facts or circumstances relevant to their retention.

(b) The Debtors' attorneys shall promptly file each Ordinary Course Professional Declaration with the Court and serve such documents on the following parties (collectively, the "**Reviewing Parties**");

- (i) the U.S. Trustee, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Richard L. Schepacarter, Richard.Schepacarter@usdoj.gov);
- (ii) Southcross Energy Partners, L.P., 1717 Main Street, Suite 5300, Dallas, TX 75201 (Attn: Kelly Jameson);
- (iii) proposed counsel to the Debtors (a) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Darren S. Klein, darren.klein@davispolk.com; Steven Z. Szanzer, steven.szanzer@davispolk.com; and Benjamin M. Schak, benjamin.schak@davispolk.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19801 (Attn: Robert J. Dehney, rdehney@mnat.com; Andrew R. Remming, aremming@mnat.com; and Joseph C. Barsalona II, jbarsalona@mnat.com);
- (iv) co-counsel to the post-petition lenders and an ad hoc group of prepetition lenders (a) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099, Attn: Paul V. Shalhoub, pshalhoub@willkie.com; Joseph G. Minias, jminias@willkie.com; and James H. Burbage, jburbage@wilkie.com and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Matthew B. Lunn, mlunn@ycst.com;
- (v) counsel to Wells Fargo Bank, N.A. as administrative agent, Vinson & Elkins LLP, 2001 Ross Avenue, suite 3900, Dallas, TX 75201, Attn: William Wallander, bwallander@velaw.com; Bradley Foxman, bfoxman@velaw.com; and
- (vi) counsel to any official committees appointed in the Chapter 11 Cases.

(c) The Reviewing Parties shall then have 14 days following such service (the "**Objection Deadline**") to notify the Debtors, the other Reviewing Parties, and the

applicable Ordinary Course Professional in writing of any objection to the retention stemming from the contents of the Ordinary Course Professional Declaration. The Debtors may extend the Objection Deadline as to any Reviewing Party without further order of the Court.

(d) If no objections are received by the Debtors by the Objection Deadline in accordance with paragraph 1(b)(i) above, retention of the Ordinary Course Professional shall be deemed approved and effective as of the later of the Petition Date or the date the Ordinary Course Professional commenced work (the “**Retention Date**”).

(e) If an objection is asserted by a Reviewing Party in accordance with paragraph 1(b)(i) above and such objection is not resolved within ten days of the Objection Deadline (the “**Resolution Deadline**”), the Debtors shall schedule the matter for a hearing before the Court to be held on the next regularly scheduled hearing date that is at least 14 days from the Resolution Deadline (unless otherwise agreed to by the Debtors and the objecting Reviewing Party). No Ordinary Course Professional shall be paid any amounts for invoiced fees or expense reimbursement until the Ordinary Course Professional Declaration has been filed with the Court and (i) the Objection Deadline has passed with no objection asserted in accordance with paragraph 1(b)(i) above or (ii) if an objection is asserted in accordance with paragraph 1(b)(i) above, until such objection is resolved or upon order of the Court.

(f) Provided that the Ordinary Course Professional’s retention has been approved in accordance with the above procedures, the Debtors are authorized, but not directed to pay each Ordinary Course Professional, without further application to the Court and upon the submission to, and approval by, the Debtors of appropriate invoices setting forth in reasonable detail the nature of the services rendered and disbursements incurred, 100% of the post-petition fees and disbursements incurred, up to \$50,000 per month, on average, over a rolling three-month period per Ordinary Course Professional (the “**Monthly Cap**”).

(g) If an Ordinary Course Professional seeks payment of an amount that is more than the Monthly Cap in a single month, such professional will be required to, on or after the 20th day of the month following the month for which the additional fees and disbursements are being sought, serve a monthly statement in compliance with sections 330 and 331 of the Bankruptcy Code and any applicable provisions of the Bankruptcy Rules, the Local Rules, and any other procedures and orders of the Court (“**Monthly Statement**”) for the full amount of fees and disbursements sought in such month on the Reviewing Parties; *provided, however*, that if an Ordinary Course Professional does not in the ordinary course of business maintain time records in tenth-of-an-hour increments, and indicates that to be the case in its Ordinary Course Professional Declaration, the requirements of Local Rule 2016-2 shall be waived to permit said Ordinary Course Professional to submit time records in whatever time increments such professional ordinarily maintains their time, and setting forth a description of the services rendered and the professionals rendering such services on behalf of the Debtors.

(i) If any Reviewing Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, such party shall, within 14 calendar days following the service of the relevant Monthly Statement (the “**Monthly Statement Objection Deadline**”), serve upon the Debtors, the Ordinary Course Professional whose Monthly Statement is objected to, and the other Reviewing Parties, a written “**Notice of Objection to Fee Statement**” setting forth the nature of the objection and the amount of fees or expenses at issue. The Debtors may extend the Monthly Statement Objection Deadline as to any Reviewing Party without further order of the Court.

(ii) If the Debtors do not receive an objection to a particular Monthly Statement on or prior to the Monthly Statement Objection Deadline, the Debtors shall promptly thereafter pay all fees and expenses identified in such Monthly Statement to which no objection has been served in accordance with paragraph (g)(i) above.

(iii) If the Debtors receive an objection to a particular Monthly Statement served in accordance with paragraph (g)(i) above on or prior to the Monthly Statement Objection Deadline, they shall withhold payment of that portion of the Monthly Statement to which the objection is directed and promptly thereafter pay the remainder of the fees and disbursements unless the Court, upon notice and a hearing, directs payment to be made.

(iv) If the parties to an objection are able to resolve their dispute, and if the Ordinary Course Professional whose Monthly Statement was objected to serves upon the Reviewing Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly thereafter pay that portion of the Monthly Statement no longer subject to an objection.

(v) All objections served in accordance with these procedures and not resolved by the relevant parties shall be preserved and presented to the Court on notice.

(h) At three-month intervals during the pendency of the Chapter 11 Cases (each, a “**Quarter**”), beginning with the three-month interval which commences on the Petition Date and ending on June 30, 2019, the Debtors shall file with the Court and serve on the Reviewing Parties, no later than 30 days after the end of such Quarter, a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter; and (iii) all post-petition payments made to that Ordinary Course Professional through the reported Quarter.

(i) The Debtors reserve the right to retain additional Ordinary Course Professionals from time to time during the Chapter 11 Cases, *provided* that the Debtors and such Ordinary Course Professionals comply with these procedures.

(j) If the Debtors seek to retain an Ordinary Course Professional not already listed on the Ordinary Course Professional List during the Chapter 11 Cases, the Debtors shall file with the Court and serve upon the Reviewing Parties a notice listing those Ordinary Course Professionals to be added to the list of Ordinary Course Professionals (the “**Supplemental Notice of Ordinary Course Professionals**”), along with the attendant Ordinary Course Professional Declarations.

(k) If no objection to the Supplemental Notice of Ordinary Course Professionals is filed with the Court and served upon the Debtors’ counsel as set forth above, so as to be actually received within 14 days after the service thereof, the list set forth in the Supplemental Notice of Ordinary Course Professionals will be deemed approved by the Court and without the need for a hearing or further Court order. Any Ordinary Course Professionals retained pursuant to the Supplemental Notice of Ordinary Course Professionals will be paid in accordance with the terms and conditions set forth in the paragraphs above.

3. The Debtors’ right to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order.

4. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

5. This Order is without prejudice to the Debtors’ right to request modification of the Monthly Fee Cap.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors’ instructions.

7. The Debtors are authorized, but not required to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the compensation of the Ordinary Course Professionals to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse the Ordinary Course Professionals or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

8. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

10. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

11. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any order of this Court approving

the debtor-in-possession financing facility and use of cash collateral (the “**DIP Order**”), including, without limitation, any budget in connection therewith, the terms of the DIP Order shall govern.

12. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

13. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

14. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion or the entry of this Order shall be required.

15. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: April ____, 2019
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE