

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----	X	
<i>In re</i>	:	Chapter 11
	:	
TECT AEROSPACE GROUP HOLDINGS,	:	Case No. 21-10670 (KBO)
INC., <i>et al.</i> ,	:	
	:	Jointly Administered
Debtors. <sup>1</sup>	:	
	:	Re: D.I. 4, 35 & 43
-----	X	

**CERTIFICATION OF COUNSEL REGARDING FINAL ORDER PURSUANT  
TO 11 U.S.C. §§ 105(a) AND 366 AND FED. R. BANKR. P. 6003  
AND 6004 (I) APPROVING DEBTORS' PROPOSED FORM OF ADEQUATE  
ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING  
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES,  
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING,  
OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

The undersigned hereby certifies as follows:

1. On April 6, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 366 and Fed. R. Bankr. P. 6003 and 6004 for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utility Companies, (II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* [D.I. 4] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.



Attached thereto as **Exhibit B** was a proposed form of order granting the relief requested in the Motion on a final basis (the “**Proposed Final Order**”).

2. On April 7, 2021, the Court entered the *Interim Order Pursuant to 11 U.S.C. §§ 105(a) and 366 and Fed. R. Bankr. P. 6003 and 6004 (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utility Companies, (II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* [D.I. 35] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of Interim Order Pursuant to 11 U.S.C. §§ 105(a) and 366 and Fed. R. Bankr. P. 6003 and 6004 (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utility Companies, (II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief; and (B) Final Hearing Thereon* [D.I. 43], objections to the Motion were to be filed by no later than April 29, 2021 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended to May 3, 2021 at 4:00 p.m. (ET) for the Official Committee of Unsecured Creditors (the “**Committee**”) and the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”).

4. Prior to the Objection Deadline, the Debtors received certain informal comments to the relief requested in the Motion from the Committee (the “**Comments**”) and Constellation NewEnergy – Gas Division, LLC (“**Constellation**”) filed the *Objection of Constellation NewEnergy – Gas Division, LLC to the Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a) and 366 and Fed. R. Bankr. P. 6003 and 6004 for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utility Companies,*

*(II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* [D.I. 79] (the “**Objection**”). Other than the Comments and the Objection, the Debtors received no other informal responses to the Motion, and no other objection or responsive pleading to the Motion has appeared on the Court’s docket in these chapter 11 cases.

5. On April 28, 2021, Constellation withdrew the Objection [D.I. 88].

6. The Debtors have revised the Proposed Final Order (the “**Revised Final Order**”) to resolve the Comments. The Revised Final Order is attached hereto as **Exhibit 1**.

7. The Revised Final Order has been circulated to the Committee and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Final Order. For the convenience of the Court and all parties in interest, a blackline of the Revised Final Order marked against the Proposed Final Order is attached hereto as **Exhibit 2**.

WHEREFORE, the Debtors respectfully request that the Revised Final Order, substantially in the form attached hereto as **Exhibit 1**, be entered at the earliest convenience of the Court.

Dated: May 4, 2021  
Wilmington, Delaware

/s/ Garrett S. Eggen  
RICHARDS, LAYTON & FINGER, P.A.  
Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
E-mail: defranceschi@rlf.com  
heath@rlf.com  
steele@rlf.com

*Proposed Attorneys for the Debtors  
and Debtors in Possession*

**EXHIBIT 1**

**Revised Final Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<p><i>In re</i></p> <p><b>TECT AEROSPACE GROUP HOLDINGS, INC., <i>et al.</i>,</b></p> <p style="text-align: center;"><b>Debtors.<sup>1</sup></b></p>	<p>X</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>X</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 21–10670 (KBO)</b></p> <p><b>Jointly Administered</b></p> <p><b>Re: D.I. 4, 35, 43, 79</b></p>
--	--	--

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 366 AND FED. R. BANKR. P. 6003 AND 6004 (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) approving the Debtors’ proposed form of adequate assurance of payment to the Utility Companies, (ii) establishing procedures for resolving objections by the Utility Companies relating to the adequacy of the proposed adequate assurance, (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or outstanding prepetition invoices, and (iv) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

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

the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the final relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all 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 Motion is granted on a final basis to the extent set forth herein.
2. The Adequate Assurance shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
3. The Debtors shall deposit the Adequate Assurance Deposit in the amount of \$110,524.13 in a newly created, segregated account for the benefit of the Utility Companies within twenty days after the Petition Date.
4. Absent compliance with the procedures set forth in the Motion and this Final Order, all Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any

perceived inadequacy of the Debtors' Proposed Adequate Assurance, and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

5. The following Adequate Assurance Procedures are hereby approved:
  - a. The Debtors will serve a copy of the Motion and this Final Order on the Utility Companies on the Utility Services List within three business days after entry of this Final Order.
  - b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$110,524.13 in the Utility Deposit Account within twenty days after the Petition Date.
  - c. The portion of the Adequate Assurance Deposit attributable to each Utility Company will be returned to the Debtors on the earlier of (i) reconciliation and payment by Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company and (ii) the earlier of (a) the effective date of any chapter 11 plan confirmed in these cases and (b) the closure of these cases; provided that there are no outstanding disputes related to post-petition payments due to the affected Utility Companies.
  - d. Any Utility Company 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 following parties: (i) proposed counsel to the Debtors, Richards, Layton & Finger, P.A., Paul N. Heath ([heath@rlf.com](mailto:heath@rlf.com)) and Amanda R. Steele ([steele@rlf.com](mailto:steele@rlf.com)), (ii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Linda Casey ([Linda.Casey@usdoj.gov](mailto:Linda.Casey@usdoj.gov))), (iii) counsel for the official committee of unsecured creditors, Kilpatrick Townsend & Stockton LLP, David Posner ([DPosner@kilpatricktownsend.com](mailto:DPosner@kilpatricktownsend.com)) and Gianfranco Finizio ([gfinizio@kilpatricktownsend.com](mailto:gfinizio@kilpatricktownsend.com)) and Womble Bond Dickinson (US) LLP, Matthew Ward ([matthew.ward@wbd-us.com](mailto:matthew.ward@wbd-us.com)), and (iv) counsel for the DIP Agent, Perkins Coie LLP, Alan D. Smith ([ADSmith@perkinscoie.com](mailto:ADSmith@perkinscoie.com)), and Young Conaway Stargatt & Taylor, LLP, Kenneth J. Enos ([kenos@ycst.com](mailto:kenos@ycst.com)).
  - e. The Additional Assurance Request must (i) be made in writing, (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for those location(s), and the outstanding balance for each account, (iii) explain why the Utility Company believes the Adequate Assurance Deposit is not adequate assurance of payment, (iv) summarize the Debtors' payment history relevant to the affected account(s), and (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Company to the Debtors, calculated as a historical average over the twelve-month period preceding the Petition Date.

- f. An Additional Assurance Request may be made at any time. If a Utility Company does not serve an Additional Assurance Request, the Utility Company will be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
  - g. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors will, in consultation with the DIP Agent, negotiate with the Utility Company to resolve the Utility Company’s Additional Assurance Request.
  - h. The Debtors may, without further order from the Court and with the reasonable consent of the DIP Agent, resolve an Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including cash deposits, payments of any outstanding prepetition balance due to the Utility Company, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.
  - i. If the Debtors and the Utility Company are not able to reach an alternative resolution within thirty 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 assurance of payment with respect to the particular Utility Company (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, unless the Debtors and the Utility Company agree in writing to extend the period.
  - j. Pending resolution of the Additional Assurance Request and Determination Hearing, the Utility Company making the Additional Assurance Request will 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.
6. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.
7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Services List shall not be deemed 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 and defenses with respect thereto.



8. The Debtors are authorized to amend the Utility Services List to the extent the Debtors terminate the services of any Utility Company or identify additional Utility Companies and this Final Order shall apply to any Utility Company that is added to the Utility Services List only upon service of this Final Order upon the additional Utility Company. The Debtors shall serve a copy of this Final Order upon any Utility Company added to the Utility Services List.

9. The Debtors shall increase the amount of the Adequate Assurance Deposit if an additional Utility Company is added to the Utility Services List by an amount equal to two weeks of Utility Services provided by such additional Utility Company, calculated using the historical average for such payments during the twelve months prior to the Petition Date.

10. The Debtors may terminate the services of any Utility Company and amend the Utility Services List to reflect such termination. The Debtors are authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Company upon seven days' notice of such reduction and having not received a response thereto by such deadline.

11. The Debtors may terminate the Adequate Assurance Deposit account upon the effective date of a chapter 11 plan.

12. The relief granted herein is applicable to all Utility Companies providing Utility Services to the Debtors that have been served with this Final Order and is not limited to those parties or entities listed on the Utility Services List.

13. Except as provided herein with respect to Utility Companies' rights, the Debtors' creditors shall have no interest in, or lien on, the Adequate Assurance Deposit or the Utility Deposit Account; *provided, however*, that the lenders under the Debtors' debtor-in-possession credit

agreement have a reversionary interest in the Adequate Assurance Deposit as part of their collateral thereunder.

14. Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by the Interim Order or this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

15. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

16. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

17. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

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

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

**EXHIBIT 2**

**Blackline**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<i>In re</i>  <b>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,</b>  <p style="text-align: center;"><b>Debtors.<sup>1</sup></b></p>	X : : : : : : : : : : X	<b>Chapter 11</b>  <b>Case No. <del>21</del> <u>(21-10670</u></b> <b><u>(KBO)</u></b> <b>Jointly Administered</b>  <b>Re: D.I. <u>4, 35, 43, 79</u></b>
---	--	---

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 366 AND FED. R. BANKR. P. 6003 AND 6004 (I) APPROVING DEBTORS' PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) approving the Debtors’ proposed form of adequate assurance of payment to the Utility Companies, (ii) establishing procedures for resolving objections by the Utility Companies relating to the adequacy of the proposed adequate assurance, (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or outstanding prepetition invoices, and (iv) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

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

the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the final relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all 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 Motion is granted on a final basis to the extent set forth herein.
2. The Adequate Assurance shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
3. The Debtors shall deposit the Adequate Assurance Deposit in the amount of \$110,524.13 in a newly created, segregated account for the benefit of the Utility Companies within twenty days after the Petition Date.
4. Absent compliance with the procedures set forth in the Motion and this Final Order, all Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any

perceived inadequacy of the Debtors' Proposed Adequate Assurance, and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

5. The following Adequate Assurance Procedures are hereby approved:
  - a. The Debtors will serve a copy of the Motion and this Final Order on the Utility Companies on the Utility Services List within three business days after entry of this Final Order.
  - b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$110,524.13 in the Utility Deposit Account within twenty days after the Petition Date.
  - c. The portion of the Adequate Assurance Deposit attributable to each Utility Company will be returned to the Debtors on the earlier of (i) reconciliation and payment by Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company and (ii) the earlier of (a) the effective date of any chapter 11 plan confirmed in these cases and (b) the closure of these cases; provided that there are no outstanding disputes related to post-petition payments due to the affected Utility Companies.
  - d. Any Utility Company 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 following parties: (i) proposed counsel to the Debtors, Richards, Layton & Finger, P.A., Paul N. Heath (heath@rlf.com) and Amanda R. Steele (steele@rlf.com), (ii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Linda Casey (Linda.Casey@usdoj.gov)), (iii) counsel for ~~any~~the official committee of unsecured creditors ~~appointed in these chapter 11 cases,~~ Kilpatrick Townsend & Stockton LLP, David Posner (DPosner@kilpatricktownsend.com) and Gianfranco Finizio (gfinizio@kilpatricktownsend.com) and Womble Bond Dickinson (US) LLP, Matthew Ward (matthew.ward@wbd-us.com), and (iv) counsel for the DIP Agent, Perkins Coie LLP, Alan D. Smith (ADSmith@perkinscoie.com), and Young Conaway Stargatt & Taylor, LLP, Kenneth J. Enos (kenos@ycst.com).
  - e. The Additional Assurance Request must (i) be made in writing, (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for those location(s), and the outstanding balance for each account, (iii) explain why the Utility Company believes the Adequate Assurance Deposit is not adequate assurance of payment, (iv) summarize the Debtors' payment history relevant to the affected account(s), and (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Company to the Debtors, calculated as a historical average over the twelve-month period preceding the Petition Date, ~~and~~

~~(vi) certify that the Utility Company does not already hold a deposit equal to or greater than two weeks of Utility Services provided by such Utility Company.~~

- f. An Additional Assurance Request may be made at any time. If a Utility Company does not serve an Additional Assurance Request, the Utility Company will be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
  - g. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors will, in consultation with the DIP Agent, negotiate with the Utility Company to resolve the Utility Company’s Additional Assurance Request.
  - h. The Debtors may, without further order from the Court and with the reasonable consent of the DIP Agent, resolve an Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including cash deposits, payments of any outstanding prepetition balance due to the Utility Company, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.
  - i. If the Debtors and the Utility Company are not able to reach an alternative resolution within thirty 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 assurance of payment with respect to the particular Utility Company (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, unless the Debtors and the Utility Company agree in writing to extend the period.
  - j. Pending resolution of the Additional Assurance Request and Determination Hearing, the Utility Company making the Additional Assurance Request will 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.
6. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.
7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Services List shall not be deemed 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 and defenses with respect thereto.

8. The Debtors are authorized to amend the Utility Services List to the extent the Debtors terminate the services of any Utility Company or identify additional Utility Companies and this Final Order shall apply to any Utility Company that is added to the Utility Services List only upon service of this Final Order upon the additional Utility Company. The Debtors shall serve a copy of this Final Order upon any Utility Company added to the Utility Services List.

9. The Debtors shall increase the amount of the Adequate Assurance Deposit if an additional Utility Company is added to the Utility Services List by an amount equal to two weeks of Utility Services provided by such additional Utility Company, calculated using the historical average for such payments during the twelve months prior to the Petition Date.

10. The Debtors may terminate the services of any Utility Company and amend the Utility Services List to reflect such termination. The Debtors are authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Company upon seven days' notice of such reduction and having not received a response thereto by such deadline.

11. The Debtors may terminate the Adequate Assurance Deposit account upon the effective date of a chapter 11 plan.

12. ~~11.~~ The relief granted herein is applicable to all Utility Companies providing Utility Services to the Debtors that have been served with this Final Order and is not limited to those parties or entities listed on the Utility Services List.

13. Except as provided herein with respect to Utility Companies' rights, the Debtors' creditors shall have no interest in, or lien on, the Adequate Assurance Deposit or the Utility Deposit



Account; provided, however, that the lenders under the Debtors' debtor-in-possession credit agreement have a reversionary interest in the Adequate Assurance Deposit as part of their collateral thereunder.

14. ~~12.~~ Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by the Interim Order or this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

15. ~~13.~~ The requirements of Bankruptcy Rule 6003(b) have been satisfied.

16. ~~14.~~ Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

17. ~~15.~~ Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

18. ~~16.~~ The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

19. ~~17.~~ The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Final Order.