

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , ¹	:	Case No. 15-_____ (____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	

**DEBTORS' MOTION FOR INTERIM AND FINAL
ORDERS ESTABLISHING ADEQUATE ASSURANCE
PROCEDURES WITH RESPECT TO DEBTORS' UTILITY PROVIDERS**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") move the Court for the entry of interim (the "Interim Order") and final orders pursuant to section 366 of the Bankruptcy Code: (i) establishing procedures for determining requests for additional assurance of payment by utility companies currently providing, or that will provide, services to the Debtors (collectively, the "Utility Providers" and each, individually, a "Utility Provider"); (ii) prohibiting the Utility Providers from altering, refusing or discontinuing services to, or discriminating against the Debtors; (iii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Providers; and (iv) granting certain related relief. In support of this motion, the Debtors respectfully represent as follows:

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.



Background

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.² The Debtors are continuing in possession of their properties and are managing their business, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors are an independent energy company engaged in the exploration, development, production and acquisition of oil and natural gas properties. The Debtors are headquartered in Houston, Texas. Their primary assets and operations are focused in the Eagle Ford trend of South Texas and, to a lesser extent, the onshore and inland waters of Louisiana. For the nine months ended September 30, 2015, the Debtors generated revenue of approximately \$195.7 million from net oil and gas production of 8.8 million barrels of oil equivalents (MMBoe). Crude oil represented 47% and natural gas represented 44% of the Debtors' oil and gas revenues for the nine months ended September 30, 2015 (22% and 66% of the volumes for crude oil and natural gas, respectively), with the remaining production and revenues coming from natural gas liquids (NGLs).

3. Additional information regarding the Debtors and these cases, including the Debtors' business, corporate structure, financial condition, and the reasons for and objectives of these cases, is set forth in the Declaration of Dean E. Swick in Support of First Day Pleadings (the "First Day Declaration"), filed contemporaneously herewith and incorporated herein by reference.

² This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

The Utility Providers

4. The Debtors currently use various types of utility services, including, but not limited to, electric, natural gas, telecommunications, water, waste management (including sewer and trash), internet and cable (collectively, the "Utility Services") provided by the Utility Providers. A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors is attached hereto as Exhibit A (the "Utility Service List").³ The Debtors' average monthly obligations, calculated on a historical average payment basis, to the Utility Providers on account of services rendered total approximately \$140,000. The Debtors estimate that their monthly costs going forward will be substantially similar.

5. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, the success of the Debtors' reorganization. The Debtors explore, develop and operate oil and natural gas properties. The Debtors' operations, and drilling in particular, require the nearly constant use of exploration and production equipment to be successful. Maintaining production and exploration activities on their properties, therefore, requires uninterrupted Utility Services, including electricity, natural gas and water. The Debtors also require Utility Services at their headquarters and field offices, which are responsible for coordinating the Debtors' operations and rely on the availability of electricity, telecommunications, internet, waste management and water services to effectively operate. The refusal of a Utility Provider to continue service would disrupt the Debtors' operations and could

³ The inclusion of any entity on, or any omission of any entity from, Exhibit A is not an admission by the Debtors that such entity is or is not a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve their rights with respect thereto. In addition, the Debtors are requesting that this motion apply to all their utility companies, whether or not any given utility company is included on the Utility Service List.

jeopardize the Debtors' efforts to successfully reorganize. Accordingly, it is essential that the Utility Services continue without interruption during these chapter 11 cases.

6. The Debtors intend to pay any postpetition obligations to the Utility Providers in a timely fashion and in the ordinary course. The Debtors have budgeted for the payments and believe that cash on hand, cash generated through operations, cash otherwise available to the Debtors and anticipated access to a debtor in possession financing facility will be sufficient to satisfy Utility Service obligations in the ordinary course on a postpetition basis in a manner consistent with the Debtors' prepetition practice.

The Adequate Assurance Deposit

7. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor adequate "assurance of payment" within thirty days of the commencement of the debtor's chapter 11 case. Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtors propose to deposit, as adequate assurance, approximately \$70,000 into a newly-created segregated account (the "Adequate Assurance Deposit") within twenty days of the Petition Date. The Adequate Assurance Deposit equals approximately two weeks of the Debtors' estimated utility expenses, net of any prepetition deposits, letters of credit, surety bonds or other similar forms of adequate assurance already provided to the Utility Providers. The Adequate Assurance Deposit will be held by the Debtors for the benefit of Utility Providers for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payments to the Utility Providers.⁴

⁴ The Debtors request that their obligation to maintain the Adequate Assurance Deposit terminate upon the effective date of any chapter 11 plan approved in these chapter 11 cases.

8. The Debtors submit that the Adequate Assurance Deposit together with the Debtors' ability to pay for future Utility Services in the ordinary course of business (the "Proposed Adequate Assurance") constitute sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code. Nonetheless, if any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

The Adequate Assurance Procedures

9. To address the right of any Utility Provider under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance satisfactory to it, the Debtors propose that the following procedures (the "Adequate Assurance Procedures") be adopted:

- (a) Any Utility Provider desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received at the following addresses: (i) Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, TX 77060 (Attn: Office of General Counsel); (ii) Jones Day, 2727 N. Harwood, Dallas, TX 75201 (Attn: Amanda M. Suzuki, Esq.); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Brendan J. Schlauch, Esq.); and (iv) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Joshua A. Sussberg, Esq and Matthew Kapitanyan, Esq.).
- (b) Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Provider; (v) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vi) explain why the requesting Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (c) If a Utility Provider fails to serve an Additional Assurance Request, it shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in

compliance with section 366 of the Bankruptcy Code; and
(ii) forbidden to discontinue, alter, refuse service to, or
discriminate against the Debtors on account of any unpaid
prepetition charges, or require additional assurance of payment.

- (d) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) twenty-one days from receipt of such Additional Assurance Request or (ii) thirty days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Provider to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider without application to or approval of the Court.
- (e) The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Provider with additional or different assurance of future payment in a form satisfactory to the Utility Provider, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- (f) If the Debtors determine that an Additional Assurance Request is not reasonable and the parties are not able to resolve such request during the Resolution Period, the Debtors will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Provider (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.⁵
- (g) Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Provider making such a request may not discontinue, alter or refuse service to the Debtors on account of unpaid charges for prepetition services or an alleged lack of adequate assurance of payment.

⁵ Section 366(c)(3)(A) of the Bankruptcy Code provides that "[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment" 11 U.S.C. § 366(c)(3)(A).

The Opt-Out Procedures

10. Section 366(c) of the Bankruptcy Code allows a Utility Provider to terminate service if the Debtors fail to provide the Utility Provider with "adequate assurance of payment for utility service that is satisfactory to the utility" within thirty days of the Petition Date. 11 U.S.C. § 366(c)(2). The Adequate Assurance Procedures, nonetheless, prevent Utility Providers that agree to participate in such procedures from terminating service prior to the resolution of an adequate assurance dispute without requiring the Debtors to provide assurances deemed "satisfactory" to the Utility Provider within the first thirty days of the case. As a result, certain Utility Providers might assert that the Adequate Assurance Procedures are not strictly in compliance with section 366 of the Bankruptcy Code.

11. To avoid any argument that the Debtors have not fully complied with section 366 of the Bankruptcy Code, the Debtors propose to allow any Utility Provider to opt out of the Adequate Assurance Procedures pursuant to the procedures set forth below (the "Opt-Out Procedures"):

- (a) A Utility Provider that desires to opt out of the Adequate Assurance Procedures must file an objection (an "Opt-Out Notice") with the Court and serve such Opt-Out Notice so that it is actually received at the following addresses: (i) Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, TX 77060 (Attn: Office of General Counsel); (ii) Jones Day, 2727 N. Harwood, Dallas, TX 75201 (Attn: Amanda M. Suzuki, Esq.); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Brendan J. Schlauch, Esq.); and (iv) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Joshua A. Sussberg, Esq and Matthew Kapitanyan, Esq.).
- (b) Any Opt-Out Notice must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the objecting Utility Provider; and (iv) identify, and explain the basis of, the Utility Provider's

proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.

- (c) The Debtors, in their discretion, may resolve any Opt-Out Notice by mutual agreement with the objecting Utility Provider and without further order of the Court, and may, in connection with any such resolution and in its discretion, provide a Utility Provider with adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, if the Debtors believe such assurance of payment is reasonable.
- (d) If the Debtors determine that an Opt-Out Notice is not reasonable and are not able to reach a prompt alternative resolution with the objecting Utility Provider, the Opt-Out Notice will be heard at the next regularly scheduled omnibus hearing upon twenty-one days' notice by the Debtors to the applicable Utility Provider. Pending the resolution of an Opt-Out Notice, the Utility Provider having filed such Opt-Out Notice will be restrained from discontinuing, altering or refusing service to the Debtors.
- (e) Any Utility Provider that does not file an Opt-Out Notice is deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

Subsequent Modifications of Utility Service List

12. The Debtors have made a good-faith effort to identify the requisite Utility Providers and include them on the Utility Service List. Nonetheless, to the extent that the Debtors subsequently identify additional Utility Providers, the Debtors seek authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Providers. The Debtors further request that the order approving the relief requested in this motion apply to any such subsequently identified Utility Provider, regardless of when any Utility Provider is added to the Utility Service List. The Debtors will serve a copy of the order approving the relief requested in this motion on any Utility Provider subsequently added to the Utility Service List. The Debtors will promptly file any amended Utility Service List.

13. Any Utility Provider subsequently added to the Utility Service List will be subject to the terms of the Interim Order and any final order granted with respect to this motion,

including the Adequate Assurance Procedures and the Opt-Out Procedures. The Debtors request that all Utility Providers, including subsequently added Utility Providers, be prohibited from altering, refusing or discontinuing Utility Services to the Debtors absent further order of this Court.

Basis for Relief Requested

14. The Debtors request that the Court: (a) establish procedures for determining requests for additional assurance of payment by the Utility Providers; (b) prohibit the Utility Providers from altering, refusing or discontinuing services to, or discriminating against the Debtors; (c) approve an Adequate Assurance Deposit as adequate assurance of postpetition payment to the Utility Providers; and (d) grant certain related relief.

15. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor or the trustee adequate "assurance of payment" within thirty days of the commencement of the debtor's chapter 11 cases.⁶ The policy underlying section 366 of the Bankruptcy Code is to protect a debtor from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate "assurance of payment" for postpetition

⁶ There is an apparent discrepancy between subsections (b) and (c) of section 366 of the Bankruptcy Code because these two subsections set forth different time periods during which a utility is prohibited from altering, refusing or discontinuing utility service. Specifically, section 366(b) of the Bankruptcy Code allows a utility to alter, refuse or discontinue service "if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment," while section 366(c)(2) of the Bankruptcy Code allows a utility in "a case filed under chapter 11" to alter, refuse or discontinue service to a chapter 11 debtor "if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service" (emphases added).

Under the statutory construction canon *lex specialis derogat legi generali* ("specific language controls over general"), the language of section 366(c)(2) controls here because the Debtors are chapter 11 debtors. See 3 *Collier on Bankruptcy* ¶ 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) ("It is unclear how the 30-day period [in section 366(c)(2) of the Bankruptcy Code] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in section 366(b), should apply.").

utility service. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Section 366(c)(1) of the Bankruptcy Code defines "assurance of payment" to mean several enumerated forms of security (e.g., cash deposits, letters of credit, prepayment for utility service) while excluding from the definition certain other forms of security (e.g., administrative expense priority for a utility's claim). In addition, section 366(c)(3)(B) of the Bankruptcy Code provides that a court may not consider certain facts (e.g., a debtor's prepetition history of making timely payments to a utility) in making a determination of adequate assurance of payment.

16. While section 366(c) of the Bankruptcy Code clarifies what does and does not constitute "assurance of payment" and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest the Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Provider. Indeed, section 366(c) of the Bankruptcy Code not only fails to establish a minimum amount of adequate "assurance of payment," but explicitly empowers the Court to determine the appropriate level of adequate assurance required in each case and permits a party in interest to request modification of the amount of adequate assurance after notice and a hearing. See 11 U.S.C. § 366(c)(3)(A) ("On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment . . .").

17. Thus, for instance, there is nothing within section 366 of the Bankruptcy Code that prevents a court from ruling that, on the facts of the case before it, the amount required to adequately assure future payment to a utility company is nominal, or even zero. Prior to the enactment of section 366(c) of the Bankruptcy Code, courts enjoyed precisely the same discretion to make such rulings pursuant to section 366(b) of the Bankruptcy Code and frequently did. See Virginia Elec. & Power Co. v. Caldor, Inc.– NY, 117 F.3d 646, 650 (2d Cir.

1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under § 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'").

18. Moreover, the requirement under the Bankruptcy Code is only that the assurance of payment be "adequate." Courts construing section 366(b) of the Bankruptcy Code have long recognized that "adequate" assurance of payment does not constitute an absolute guarantee of the debtor's ability to pay. See, e.g., In re Caldor, Inc.– NY, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guarantee of payment.'") (citation omitted), *aff'd sub nom. Virginia Elec. & Power Co. v. Caldor, Inc – NY*, 117 F.3d 646 (2d Cir. 1997); In re Adelphia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (same); In re Great Atl. & Pac. Tea Co., Case No. 10-24549 (RDD), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) ("Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full."); Steinebach v. Tucson Elec. Power Co. (In re Steinebach), 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance . . . all § 366(b) requires is that a utility be protected from an unreasonable risk of non-payment."); In re Penn Jersey Corp., 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that section 366(b) of Bankruptcy Code "contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor's financial circumstances").

19. Therefore, despite its language allowing a utility to take adverse action against the debtor should the debtor fail to provide adequate assurance of future payment "satisfactory to the utility," section 366 of the Bankruptcy Code does not require that the assurance provided be "satisfactory" once a debtor seeks to have a court determine the appropriate amount of adequate assurance. Moreover, courts have recognized that "[i]n deciding what constitutes 'adequate assurance' in a given case, a bankruptcy court must 'focus upon the need of the utility for assurance, and to require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.'" Caldor, 117 F.3d at 650 (emphasis in original) (quoting Penn Jersey, 72 B.R. at 985).

20. The Debtors submit that entry of the interim and final orders is consistent with, and fully satisfies, the requirements of section 366 of the Bankruptcy Code. First, far from offering the Utility Providers nominal (or even no) additional assurance of payment, the Debtors propose to continue to satisfy obligations to Utility Providers in the ordinary course and place a cash deposit into an account for the Utility Providers' benefit. Additionally, the Debtors propose procedures that will permit the Utility Providers to seek greater or different security.⁷ The Debtors respectfully submit that the proposed Adequate Assurance Deposit should significantly alleviate, if not eliminate, any concern of non-payment on the part of the Utility Providers, and is thus clearly "adequate." To the extent that a Utility Provider disagrees, the Adequate Assurance Procedures provide a reasonable process for addressing the Utility Provider's concerns.

⁷ Courts are permitted, pursuant to section 105 of the Bankruptcy Code, to fashion reasonable procedures to implement the protections afforded under section 366 of the Bankruptcy Code. See, e.g., In re Circuit City Stores, Inc., No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) ("The plain language of section 366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order.").

21. Similar relief to that requested herein has been granted in other cases in this district. See, e.g., In re American Apparel, Inc., Case No. 15-12055 (BLS) (Bankr. D. Del. Nov. 2, 2015); In re Molycorp, Inc., Case No. 15-11357 (CSS) (Bankr. D. Del. July 17, 2015); In re RadioShack Corp., Case No. 15-10197 (BLS) (Bankr. D. Del. Feb. 9, 2015); In re Old FENM, Inc., Case No. 13-12569 (KJC) (Bankr. D. Del. Oct. 23, 2013).

Requests for Immediate Relief and Waiver of Stay

22. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek immediate entry of an interim order that, inter alia, prohibits the Utility Providers from altering, refusing or discontinuing services to, or discriminating against the Debtors, and approves an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Providers.

23. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) 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."

24. It is imperative that the Utility Providers continue to provide Utility Services in the ordinary course of business. Failure to do so would likely result in immediate and irreparable harm to the Debtors' operations as described herein and disrupt a smooth transition into these chapter 11 cases. The Adequate Assurance Deposit is necessary to assure

continued utility service and prevent immediate and irreparable damage to the Debtors' operations. Accordingly, the Debtors submit that ample cause exists to justify: (a) the immediate entry of the Interim Order granting the relief sought herein on an interim basis pursuant to Bankruptcy Rule 6003(b); and (b) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

Consent to Jurisdiction

25. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

26. Notice of this motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) Kirkland & Ellis LLP, as counsel to the ad hoc committee of a majority of holders of the Debtors' prepetition unsecured notes; (d) counsel to JP Morgan Chase Bank, N.A., in its capacity as administrative agent for the senior secured lenders; (e) counsel to the indenture trustee under the respective prepetition indentures governing the unsecured notes; (f) counsel to Cantor Fitzgerald Securities LLC in its capacity as administrative agent under the proposed debtor in possession financing; and (g) all parties entitled to notice pursuant to Local Rule 9013-1(m). As this motion is seeking "first day" relief, this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this motion is necessary.

No Prior Request

27. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form attached hereto as Exhibit B, and a final order, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: December 31, 2015
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro
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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

UTILITY PROVIDER	UTILITY PROVIDER ADDRESS	TYPE OF SERVICE	ACCOUNT NUMBER (IF KNOWN)	AVERAGE MONTHLY SPEND	ADEQUATE ASSURANCE (=AVERAGE MONTHLY SPEND/2)
A T & T	208 S. Akard St. Dallas, TX 75202	Communications	171-792-3528 108; 281 876 0027 845 4; 281 876-0027 362 0; 831 000 1411 949; 141766361-7; 281 874-2700 899 3; 281 874-2700 363 0; 50456423724550467; 50456424210920461; 8310003484440; 95694850895323; 2818769409 899 0	\$ 29,295	\$ 14,647
A T & T Long Distance	208 S. Akard St. Dallas, TX 75202	Communications	853888891-6	\$ 40	\$ 20
A T & T Mobility	208 S. Akard St. Dallas, TX 75202	Communications	820137411; 287019395874; 830863546; 879304111	\$ 22,613	\$ 11,306
Beauregard Electric Co-Op	1010 East First Street P.O. Box 970 DeRidder, LA 70634	Electricity	68317000	\$ 2,621	\$ 1,311
Centurytel Inc. Db a Centurylinc	100 CenturyLink Drive P.O. Box 4065 Monroe, LA 71203	Communications	404819458	\$ 70	\$ 35
Cirro Energy	5909 West Loop S # 650 Bellaire, TX 77401	Electricity	115934325	\$ 21,506	\$ 10,753
Comcast	One Comcast Center Philadelphia, PA 19103-2838	Communications	8777 70 315 1032664; 8777 70 315 1025742; 8777 70 315 1025767; 8777 70 315 1027573; 8777 70 315 1027748; 8777 70 315 1028720	\$ 873	\$ 437
CPL Retail Energy	2 Greenway Plaza Houston, TX 77046	Electricity	653481796	\$ 553	\$ 277
DIRECTV	2260 E. Imperial Highway El Segundo, CA 9024	Communications	056143990; 036337953	\$ 382	\$ 191
Dish Network	9601 S. Meridian Blvd. Englewood, CO 80112	Communications		\$ 576	\$ 288
Elizabeth Telephone Co	Cameron Communications 153 West Dave Dugas Road Sulphur, LA 70665	Communications	352000893	\$ 510	\$ 255
Entergy	4809 Jefferson Highway Jefferson, Louisiana 70121	Electricity	58244047	\$ 2,411	\$ 1,205
Infrastructure Networks Inc.	1718 Fry Road Ste 116 Houston, TX 77084	Communications		\$ 2,635	\$ 1,317
ITC Global Networking Solutions	Accounts Payable 5901 Earhart Expressway Harahan, LA 70123	Communications	1022885	\$ 387	\$ 193
Karnes Electric Cooperative Inc.	1007 N. Highway 123 Karnes City, Texas 78118	Electricity	29428; 53477	\$ 25,124	\$ 12,562
Pedernales Electric	201 South Avenue F Johnson City, TX 78636	Electricity	200002058663; 3000202520	\$ 1,575	\$ 788

UTILITY PROVIDER	UTILITY PROVIDER ADDRESS	TYPE OF SERVICE	ACCOUNT NUMBER (IF KNOWN)	AVERAGE MONTHLY SPEND	ADEQUATE ASSURANCE (=AVERAGE MONTHLY SPEND/2)
Phonoscope Lightwave Inc.	5959 Corporate Drive Suite 3300 Houston, TX 77036	Communications	02-SWIFT	\$ 4,131	\$ 2,065
Pitkin Water System Inc.	12863 LA Highway 10 Pitkin, LA 70656	Water	1024300	\$ 20	\$ 10
Plaquemines Parish Water Dept.	203 Main Street Belle Chasse, LA 70037	Water/Sewer	20509900; 20510000	\$ 532	\$ 266
Progressive Waste Solutions of LA Inc.	2301 Eagle Parkway Suite 200 Fort Worth TX 76177	Waste	C41003967	\$ 328	\$ 164
San Patricio Electric Coop Inc.	402 E. Sinton Street Sinton, TX 78387	Electricity	178900; 3270100	\$ 6,884	\$ 3,442
Sprint Corporation	6200 Sprint Parkway Overland Park, KS 66251	Communications	953411415	\$ 2,508	\$ 1,254
Time Warner Cable	60 Columbus Circle New York, NY 10023	Communications	8260 16 052 0025701	\$ 1,895	\$ 948
Valley Telephone Cooperative Inc.	881 E. Hidalgo Avenue Raymondville, TX 78580	Communications	97004500; 00022625; 37005113; 97004503; 97004925; 97005113;	\$ 4,258	\$ 2,129
Verizon	1095 Avenue of The Americas New York, NY 10036	Communications	U0137568	\$ 444	\$ 222
Verizon Southwest	701 Brazos Street Suite 600 Austin, TX 78701	Communications	10 5120 2877032338 09 10 5120 2897172062 08	\$ 664	\$ 332
Verizon Wireless	3120 Hwy 2035 Lehigh Valley, PA 41858	Communications	610281313-00001 61028131300005	\$ 7,371	\$ 3,686
Waterworks District 2	Parish of Beauregard 9080 Hwy 27 Singer, LA 70660	Water/Sewer	60009600	\$ 12	\$ 6

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , ¹	:	Case No. 15-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	

**INTERIM ORDER ESTABLISHING ADEQUATE ASSURANCE
PROCEDURES WITH RESPECT TO THE DEBTORS' UTILITY PROVIDERS**

This matter coming before the Court on the Debtors' Motion for Interim and Final Orders Establishing Adequate Assurance Procedures With Respect to Debtors' Utility Providers (the "Motion");² the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; the Court having determined that the deposits and procedures described in the Motion provide adequate assurance of future payment to the Utility Providers; the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Subject to the procedures described below, no Utility Provider, including a Utility Provider subsequently added to the Utility Service List, may (a) alter, refuse, terminate or discontinue Utility Services to, and/or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving such Utility Services.
3. The Debtors shall deposit \$70,000 into a newly created segregated account (the "Adequate Assurance Deposit") within twenty days of the Petition Date.
4. The Adequate Assurance Deposit shall be held by the Debtors for the benefit of Utility Providers for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payments to the Utility Providers; provided, however, that the Debtors may terminate the services of a Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider; provided, further, however, that the Debtors' obligation to maintain the Adequate Assurance Deposit shall terminate upon the effective date of any chapter 11 plan approved in these chapter 11 cases.
5. Subject to the entry of the final order and the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit and the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "Proposed Adequate Assurance") constitute sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code.

6. The following Adequate Assurance Procedures are approved in all respects:

- (a) Any Utility Provider desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received at the following addresses: (i) Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, TX 77060 (Attn: Office of General Counsel); (ii) Jones Day, 2727 N. Harwood, Dallas, TX 75201 (Attn: Amanda M. Suzuki, Esq.); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Brendan J. Schlauch, Esq.); and (iv) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Joshua A. Sussberg, Esq and Matthew Kapitanyan, Esq.) (the "Notice Parties").
- (b) Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Provider; (v) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vi) explain why the requesting Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (c) If a Utility Provider fails to serve an Additional Assurance Request, it shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, refuse service to, or discriminate against the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment.
- (d) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) twenty-one days from receipt of such Additional Assurance Request or (ii) thirty days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Provider to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider without application to or approval of the Court.

- (e) The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Provider with additional or different assurance of future payment in a form satisfactory to the Utility Provider, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- (f) If the Debtors determine that an Additional Assurance Request is not reasonable and the parties are not able to resolve such request during the Resolution Period, the Debtors will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Provider (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- (g) Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Provider making such a request may not discontinue, alter or refuse service to the Debtors on account of unpaid charges for prepetition services or an alleged lack of adequate assurance of payment.

7. The following Opt-Out Procedures are approved in all respects:

- (a) A Utility Provider that desires to opt out of the Adequate Assurance Procedures shall file an objection (an "Opt-Out Notice") with the Court and serve such Opt-Out Notice so that it is actually received by the Debtors at the following addresses: (i) Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, TX 77060 (Attn: Office of General Counsel); (ii) Jones Day, 2727 N. Harwood, Dallas, TX 75201 (Attn: Amanda M. Suzuki, Esq.); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Brendan J. Schlauch, Esq.); and (iv) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Joshua A. Sussberg, Esq and Matthew Kapitanyan, Esq.).
- (b) Any Opt-Out Notice shall: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the objecting Utility Provider; and (iv) identify, and explain the basis of, the Utility Provider's proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.

- (c) The Debtors, in their discretion, may resolve any Opt-Out Notice by mutual agreement with the objecting Utility Provider and without further order of the Court, and may, in connection with any such resolution and in its discretion, provide a Utility Provider with adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, if the Debtors believe such assurance of payment is reasonable.
- (d) If the Debtors determine that an Opt-Out Notice is not reasonable and are not able to reach a prompt alternative resolution with the objecting Utility Provider, the Opt-Out Notice shall be heard at the next regularly scheduled omnibus hearing upon twenty-one days' notice by the Debtors to the applicable Utility Provider. Pending the resolution of an Opt-Out Notice, the Utility Provider having filed such Opt-Out Notice shall be restrained from discontinuing, altering or refusing service to the Debtors.
- (e) Any Utility Provider that does not file an Opt-Out Notice shall be deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

8. All Utility Providers shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors, in their discretion, agree to (i) an Additional Assurance Request or (ii) an alternative assurance of payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

9. To the extent that the procedures set forth herein are not in technical compliance with certain time periods set forth in section 366 of the Bankruptcy Code, the Debtors have demonstrated good cause for the extension of the 30-day and 20-day protective time periods under sections 366(c)(2) and 366(b) of the Bankruptcy Code, respectively.

10. Nothing herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

11. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and this order shall apply to any such Utility Provider that is subsequently added to the Utility Service List. The Debtors shall promptly file any amended Utility Service List.

12. The Debtors shall serve a copy of this order on each Utility Provider listed on the Utility Service List within two business days after the date this order is entered, and shall promptly serve this order on each Utility Provider that may be subsequently added by the Debtors to the Utility Service List.

13. Any Utility Provider subsequently added to the Utility Service List shall be subject to the terms of this Interim Order and any final order (if and when entered), including the Adequate Assurance Procedures and the Opt-Out Procedures.

14. Nothing contained in the Motion or this order is intended or should be construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; or (d) a request to assume or reject any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

15. Nothing contained in the Motion or this order is intended or should be construed to create an administrative priority claim on account of any claim.

16. Notwithstanding anything to the contrary contained herein, the relief granted in this Interim Order and any payment to be made hereunder shall be subject to the terms of any orders authorizing debtor-in-possession financing and/or granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms

of such financing and/or cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such financing and/or cash collateral orders shall control.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order shall be effective and enforceable immediately upon its entry.

18. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this order.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.

20. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this order.

21. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on the Notice Parties no later than _____, 2016, at 4:00 p.m., prevailing Eastern Time.

22. The Final Hearing to resolve any objections to the relief sought in the Motion shall be conducted on _____, 2016 at _____ .m., prevailing Eastern Time.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis.
2. Subject to the procedures described below, no Utility Provider, including a Utility Provider subsequently added to the Utility Service List, may (a) alter, refuse, terminate or discontinue Utility Services to, and/or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving such Utility Services.
3. To the extent not already deposited pursuant to the Interim Order, the Debtors shall deposit \$70,000 into a newly created, segregated account (the "Adequate Assurance Deposit") within twenty days of the Petition Date.
4. The Adequate Assurance Deposit shall be held by the Debtors for the benefit of Utility Providers for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payments to the Utility Providers; provided, however, that the Debtors may terminate the services of a Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider; provided, further, however, that the Debtors' obligation to maintain the Adequate Assurance Deposit shall terminate upon the effective date of any chapter 11 plan approved in these chapter 11 cases.
5. Subject to the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"),

constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code.

6. The following Adequate Assurance Procedures are approved in all respects:

- (a) Any Utility Provider desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received at the following addresses: (i) Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, TX 77060 (Attn: Office of General Counsel); (ii) Jones Day, 2727 N. Harwood, Dallas, TX 75201 (Attn: Amanda M. Suzuki, Esq.); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Brendan J. Schlauch, Esq.); and (iv) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Joshua A. Sussberg, Esq and Matthew Kapitanyan, Esq.).
- (b) Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Provider; (v) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vi) explain why the requesting Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (c) If a Utility Provider fails to serve an Additional Assurance Request, it shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, refuse service to, or discriminate against the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment.
- (d) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) twenty-one days from receipt of such Additional Assurance Request or (ii) thirty days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Provider to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors

and the applicable Utility Provider without application to or approval of the Court.

- (e) The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Provider with additional or different assurance of future payment in a form satisfactory to the Utility Provider, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- (f) If the Debtors determine that an Additional Assurance Request is not reasonable and the parties are not able to resolve such request during the Resolution Period, the Debtors will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Provider (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- (g) Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Provider making such a request may not discontinue, alter or refuse service to the Debtors on account of unpaid charges for prepetition services or an alleged lack of adequate assurance of payment.

7. The following Opt-Out Procedures are approved in all respects:

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- (b) Any Opt-Out Notice shall: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the objecting Utility Provider; and (iv) identify, and explain the basis of, the Utility Provider's

proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.

- (c) The Debtors, in their discretion, may resolve any Opt-Out Notice by mutual agreement with the objecting Utility Provider and without further order of the Court, and may, in connection with any such resolution and in its discretion, provide a Utility Provider with adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, if the Debtors believe such assurance of payment is reasonable.
- (d) If the Debtors determine that an Opt-Out Notice is not reasonable and are not able to reach a prompt alternative resolution with the objecting Utility Provider, the Opt-Out Notice shall be heard at the next regularly scheduled omnibus hearing upon twenty-one days' notice by the Debtors to the applicable Utility Provider. Pending the resolution of an Opt-Out Notice, the Utility Provider having filed such Opt-Out Notice shall be restrained from discontinuing, altering or refusing service to the Debtors.
- (e) Any Utility Provider that does not file an Opt-Out Notice shall be deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

8. All Utility Providers shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors, in their discretion, agree to (i) an Additional Assurance Request or (ii) an alternative assurance of payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

9. To the extent that the procedures set forth herein are not in technical compliance with certain time periods set forth in section 366 of the Bankruptcy Code, the Debtors have demonstrated good cause for the extension of the 30-day and 20-day protective time periods under sections 366(c)(2) and 366(b) of the Bankruptcy Code, respectively.

10. Nothing herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

11. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and this order shall apply to any such Utility Provider that is subsequently added to the Utility Service List. The Debtors shall promptly file any amended Utility Service List.

12. The Debtors shall promptly serve this order on each Utility Provider that may be subsequently added by the Debtors to the Utility Service List.

13. Any Utility Provider subsequently added to the Utility Service List shall be subject to the terms of the Interim Order and this Final Order (if and when entered), including the Adequate Assurance Procedures and the Opt-Out Procedures.

14. Nothing contained in the Motion or this order is intended or should be construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; or (d) a request to assume or reject any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

15. Nothing contained in the Motion or this order is intended or should be construed to create an administrative priority claim on account of any claim.

16. Notwithstanding anything to the contrary contained herein, the relief granted in this Final Order and any payment to be made hereunder shall be subject to the terms of any orders authorizing debtor-in-possession financing and/or granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms

of such financing and/or cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such financing and/or cash collateral orders shall control.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order shall be effective and enforceable immediately upon its entry.

18. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this order.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.

20. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this order.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE