

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

**ORIGINAL**

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In re	:	Chapter 11
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SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-12670 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket No. 9

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**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");<sup>2</sup> 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;

<sup>1</sup> 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.

<sup>2</sup> 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 as set forth herein.
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 that there are no outstanding disputes related to postpetition payments due; 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 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) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) fourteen days from receipt of such Additional Assurance Request or (ii) twenty 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.
- (d) 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.

- (e) 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.
- (f) 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. 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.

10. 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; provided, however, that the Debtors shall remove a Utility Provider from the Utility Service List only if no objection is received from such Utility Provider following two weeks prior notice of the removal to such Utility Provider. If an objection is received, the Debtor shall request a hearing at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall promptly file any amended Utility Service List.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

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

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

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

20. 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

Jan. 25, 2016, at 4:00 p.m., prevailing Eastern Time.

21. The Final Hearing to resolve any objections to the relief sought in the Motion shall be conducted on Feb 1, 2016 at 11:30 A.m., prevailing Eastern Time.

Dated: January 5, 2016  
Wilmington, Delaware

  
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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE