

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

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In re:	)	
	)	Chapter 11
	)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-12378 (KG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Ref. Docket Nos. 6 and 34

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**FINAL ORDER, PURSUANT TO SECTIONS 105(a) AND 366 OF  
THE BANKRUPTCY CODE, (I) PROHIBITING UTILITY COMPANIES  
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES,  
(II) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE  
PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING  
ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of interim and final orders, pursuant to sections 105(a) and 366(b) of the Bankruptcy Code, (i) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of pre-petition invoices, (ii) deeming the Utility Companies adequately assured of future payment, (iii) establishing Assurance Procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide additional adequate assurance of future payment to the Utility Companies, and (iv) setting a final hearing related thereto; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

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



accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. Subject to the Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of outstanding pre-petition invoices or (b) require additional assurance of payment, other than the Utility Deposit, as a condition to the Debtors receiving such Utility Services.
3. To the extent not already deposited, the Debtors shall deposit, as adequate assurance for the Utility Companies, \$56,179.00 in the aggregate (the “**Utility Deposit**”) into a segregated account (the “**Utility Deposit Account**”) within twenty (20) days of the Petition Date to be maintained during the pendency of these chapter 11 cases as provided for herein. The Utility Deposit Account may be either interest-bearing or non-interest-bearing in the Debtors’ discretion, and shall be maintained at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware.
4. Subject to the Assurance Procedures set forth below, the Utility Deposit constitutes adequate assurance of future payment to the Utility Companies under section 366 of the Bankruptcy Code (the “**Adequate Assurance**”).
5. The following Assurance Procedures are approved in all respects:

- (a) Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “**Additional Assurance Request**”) so that it is received by the following: (i) Welded Construction, L.P., 26933 Eckel Road, Perrysburg, OH 43551 (Attn: Frank Pometti, Chief Restructuring Officer); (ii) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, DE 19801 (Attn: Betsy L. Feldman); and (iii) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases.
- (a) 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 Company; (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 Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- (b) Upon the Debtors’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have thirty (30) days from the date of receipt of such request (collectively, the “**Resolution Period**”) to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Debtors and the applicable Utility Company also may agree to extend the Resolution Period.
- (c) The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of this Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable. Without the need for any notice to, or action, order or approval of, this Court, the Debtors may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.
- (d) If the Debtors determine that an Additional Assurance Request is not reasonable or are not able to resolve such request during the Resolution Period, the Debtors, during or promptly after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the “**Determination Hearing**”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code, which Determination Hearing shall be held at the next regularly-scheduled omnibus hearing in these chapter 11 cases that is not

less than fifteen (15) days after the Resolution Period or such other date and time agreed to by the parties.

- (e) Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or any objections to the Adequate Assurance, or requiring the Debtors to furnish any additional deposit or other security for the continued provision of services.
- (f) The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that fails to make an Additional Assurance Request.

6. The Debtors are authorized, as necessary, to provide a copy of this Order to any Utility Company not listed on the Utility Service List (each, an “**Additional Utility Company**,” and collectively, the “**Additional Utility Companies**”) as such Utility Companies are identified. Promptly upon providing a copy of this Order to an Additional Utility Company, the Debtors shall increase the Utility Deposit by an amount equal to approximately two (2) weeks of the Debtors’ estimated aggregate utility expense for such Additional Utility Company subsequent to the Petition Date. Any such Additional Utility Company, upon being served with copies of the Motion, the Interim Order, and this Order, shall be subject to the terms of this Order, including the Assurance Procedures.

7. Each Utility Company 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, agrees to an alternative assurance of payment with the Utility Company; or (b) this Court enters an order, after a Determination Hearing, requiring that additional adequate assurance of payment be provided to the Utility Company.

8. If any utility account with a Utility Company becomes a Closed Account during the course of these chapter 11 cases, without the need for further order of this Court or

notice to any parties except as otherwise provided herein, the Debtors shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Utility Deposit Account the amount deposited with respect to such Closed Account provided that the Debtors (i) obtain the affected Utility Company's consent to do so or (ii) provide the affected Utility Company with seven days' prior written notice of their intent to do so and receive no response to such notice. Upon the effective date of a chapter 11 plan in these cases, the Debtors may close the Utility Deposit Account without the need for any notice to, or action, order or approval of, this Court.

9. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Utility Company, or (d) shall be construed as a promise to pay a claim.

10. Nothing in this Order is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List or is served with a copy of the interim order on the Motion previously entered by this Court, this Order or the Motion.

11. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

12. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

13. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

14. All time periods referenced in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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



KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE