

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered
Related Docket Nos. 9, 113

**FINAL ORDER DETERMINING ADEQUATE
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

Upon the motion (the "Motion")² of the Debtors for interim and final orders under Bankruptcy Code section 366 determining adequate assurance of payment for future utility services; and upon the Moore Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth in this Order.
2. The Debtors shall be and hereby are authorized to take all actions necessary to effectuate the relief granted under this Order in accordance with the Motion.
3. A Utility Company who accepts an Adequate Assurance Deposit shall be and hereby is deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Company within the meaning of section

¹ The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

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

366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtors' chapter 11 cases except upon a showing of changed circumstances and further order of this Court.

4. The Adequate Assurance Procedures are hereby approved as follows:
 - (a) Except as provided by the Adequate Assurance Procedures, the Utility Companies are forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance.
 - (b) Within five (5) business days after entry of the Interim Order, the Debtors shall furnish each Utility Company with a deposit equal to two (2) weeks of utility service, calculated as a historical average over the past twelve (12) months (the "Adequate Assurance Deposit"), provided that such Utility Company does not already hold a deposit equal to or greater than two (2) weeks of utility services, and provided further that such Utility Company is not currently paid in advance for its services (the "Proposed Adequate Assurance").
 - (c) In the event that a Utility Company maintains that the Proposed Adequate Assurance is not satisfactory adequate assurance of payment as contemplated by Bankruptcy Code section 366(c)(2), the Utility Company must serve a request (an "Adequate Assurance Request") so that it is received by the Debtors and their counsel no later than five (5) business days before the Final Hearing (the "Adequate Assurance Request Deadline").
 - (d) Any Adequate Assurance Request must: (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, (iv) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient, (v) set forth what the Utility Company would accept as satisfactory adequate assurance of payment, and (vi) set forth a fax and electronic mail address to which the Debtors may respond to the Adequate Assurance Request.
 - (e) Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors will either (a) advise the Utility Company in writing on or before a day that is no less than three (3) business days before the Final Hearing that the Adequate Assurance Request is acceptable or (b) contest the Utility Company's request under Bankruptcy Code section 366(c)(3) at the Final Hearing to be held on before the day that is thirty (30) days after the Petition Date, or such other date as the Debtors and the Utility Company may agree.

- (f) The Final Hearing will be an evidentiary hearing at which the Court will determine whether the Proposed Adequate Assurance and the additional adequate assurance of payment requested by the Utility Company should be modified under Bankruptcy Code section 366(c)(3)(A).
- (g) Pending resolution of any such Final Hearing, such particular Utility Company shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

5. The Utility Companies, including any subsequently added Utility Companies, are prohibited from altering, refusing, or discontinuing service to or discriminating against the Debtors on account of unpaid prepetition invoices or due to the commencement of these cases, or requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Adequate Assurance Procedures contained herein.

6. Any Utility Company that does not serve an Adequate Assurance Request by the Adequate Assurance Request Deadline shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of Bankruptcy Code section 366(c)(2), and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtors' chapter 11 cases, except as provided in Bankruptcy Code section 366(c)(3).

7. The Debtors are authorized, in their sole discretion, to amend Exhibit A to the Motion to add or delete any Utility Company, and this order shall apply to any such Utility Company that is subsequently added to Exhibit A to the Motion. For those Utility Companies that are subsequently added to Exhibit A, the Debtors shall serve a copy of this order on such Utility Company, along with an amended Exhibit A, and such subsequently added entities shall have twenty (20) days from service of this order to make an Adequate Assurance Request.

8. In the event that any Utility Company, including a subsequently added Utility Company, files and/or serves an Adequate Assurance Request after the Adequate Assurance Request Deadline, such request shall be treated as a request under Bankruptcy Code sections 366(b) and shall be granted, if at all, only after the Utility Company making such request schedules such request for hearing, on notice, in accordance with the provisions of the Bankruptcy Code, including section 366(b), and the Federal Rules of Bankruptcy Procedure.

9. The Debtors may, in their discretion, resolve any Adequate Assurance Request by mutual agreement with the Utility Company and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Company with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

10. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code and not entitled to any additional adequate assurance unless and until (i) the Debtors, in their discretion, agree to an Adequate Assurance Request or (ii) this Court enters an order at the Final Hearing requiring that additional adequate assurance of payment be provided.

11. Nothing herein constitutes 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 Exhibit A attached to the Motion.

12. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

13. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors.

14. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Sept. 16, 2009


UNITED STATES BANKRUPTCY JUDGE