

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

In re: CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-_____ () Jointly Administered
---	---

**DEBTORS’ MOTION FOR ORDER DETERMINING ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY SERVICES**

The above-captioned debtors, (the “Debtors”), as debtors and debtors in possession, file this motion (the “Motion”) seeking entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the form attached hereto, under section 366 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), determining adequate assurance of payment for future utility services. In support of the Motion, the Debtors rely upon and incorporate by reference the declaration of Charles M. Moore filed in support of the Debtors’ chapter 11 petition and various first day applications and motions (the “Moore Declaration”). In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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. The statutory predicate for the relief requested herein is Bankruptcy Code section 366.

BACKGROUND

3. On the date of this Motion (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their business and manage their properties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108.

5. No trustee, examiner or creditors’ committee has been appointed in these cases.

6. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Moore Declaration, filed concurrently herewith and fully incorporated herein by reference.²

RELIEF REQUESTED

7. By this Motion, the Debtors seek the entry of the Interim Order (i) determining that the Utility Companies (as defined herein) have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, pending the entry of the Final Order; (ii) approving the Debtors’ proposed adequate assurance and procedures whereby the Utility Companies may request additional or different adequate assurance and finding that it provides utilities with “adequate assurance of payment” under Bankruptcy Code sections 366(b) and 366(c)(1)(A) and deeming all utilities entitled to such assurance of payment

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Moore Declaration.

under Bankruptcy Code section 366 (the “Utility Companies”)³ to have received adequate assurance of payment under section 366(b); (iii) approving the Adequate Assurance Procedures (as defined herein) set forth below as the method for resolving disputes regarding adequate assurance of payment; (iv) prohibiting the Utility Companies from altering, refusing or discontinuing services on account of any unpaid prepetition amounts or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance, pending entry of the Final Order; (v) determining that the Debtors are not required to provide any additional adequate assurance, beyond what is proposed by this Motion, pending entry of a Final Order, and (vi) scheduling a final hearing (the “Final Hearing”), to be held on or before the day that is thirty (30) days after the Petition Date, on the Debtors’ proposed adequate assurance.

BASIS FOR RELIEF

8. In connection with the operation of their business and the management of their properties, the Debtors obtain water, natural gas, electricity, telephone, and similar utility products and services (collectively, the “Utility Services”) from the Utility Companies covering a number of utility accounts. Prior to the Petition Date, the Utility Companies provided Utility Services to the Debtors at various locations. The services provided by the Utility Companies are critical to the continued operations of the Debtors. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted.

³ The Utility Companies known and identified by the Debtors to date are listed on attached Exhibit A. While the Debtors have used their best efforts to list all of their Utility Companies in Exhibit A, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtors reserve the right, under the terms and conditions of this Motion and without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and to request that the relief requested herein apply to all such entities as well. In addition, the Debtors reserve the right to argue that any of the entities now or hereafter listed in Exhibit A are not “utilities” within the meaning of Bankruptcy Code section 366(a) and to argue that any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors filing for relief under Chapter 11 of the Bankruptcy Code.

9. By this Motion, the Debtors preserve the protections that Utility Companies have under the Bankruptcy Code, while affording the Debtors an opportunity to provide and negotiate adequate protection without facing the threat of imminent termination of Utility Services. In particular, the Debtors request approval of certain procedures that balance the protections afforded the Utility Companies under Bankruptcy Code section 366 and the Debtors' need for continuous and uninterrupted Utility Services.

A. The Proposed Adequate Assurance

10. The Debtors fully intend to pay all postpetition obligations owed to the Utility Companies in a timely manner.

11. Additionally, the Debtors propose to provide a deposit equal to two (2) weeks of utility service, calculated as a historical average over the past twelve (12) months, to any Utility Company that requests such a deposit in writing (the "Adequate Assurance Deposit"), provided that such requesting 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. As a condition of requesting and accepting an Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Company within the meaning of section 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 the Court.

B. The Adequate Assurance Request Procedures

12. The Debtors submit that 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 payment.” Nonetheless, the Debtors anticipate that certain Utility Companies may not find the Proposed Adequate Assurance “satisfactory” and, thus, may request additional adequate assurance of payment under Bankruptcy Code section 366(c)(2). Accordingly, the Debtors propose that such requests be addressed as follows:

- (a) Except as provided by these adequate assurance procedures (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, pending entry of the Final Order.
- (b) Any Utility Company desiring an Adequate Assurance Deposit must serve a request (an “Adequate Assurance Request”) so that it is received by the Debtors at the following addresses: (1) Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Dennis J. Drebsky); and (2) Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19899-1709 (Attn: David B. Stratton, Esq.).
- (c) The Debtors will serve this Motion and a copy of the Interim Order on the Utility Companies within three (3) business days after entry of the Interim Order granting the relief requested herein.
- (d) 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 the Adequate Assurance Request so that it is received by counsel to the Debtors no later than five (5) business days before the Final Hearing (the “Adequate Assurance Request Deadline”).
- (e) 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.
- (f) 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 acceptable⁴ or (b) contest the Utility Company's request under Bankruptcy Code section 366(c)(3) at the Final Hearing to be held on or 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.

- (g) 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).
- (h) 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.

13. The Debtors further request that 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 sections 366(b)(2) or 366(c)(3), as applicable. The Debtors also request that the Interim Order be deemed the Final Order with respect to all Utility Companies that do not serve either (i) an Adequate Assurance Request by the Adequate Assurance Request Deadline or (ii) a timely objection to this Motion.

14. To the extent that the Debtors subsequently identify additional providers of Utility Services, the Debtors seek authority, in their sole discretion, to amend Exhibit A to add or delete any Utility Company. The Debtors propose to have the terms of the Final Order apply

⁴ 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 in their business judgment.

to any such subsequently identified Utility Company. Moreover, for those Utility Companies that are subsequently added to Exhibit A, the Debtors will serve a copy of this Motion and the Order entered with respect to the Motion on such Utility Company, along with an amended Exhibit A. Such subsequently added entities would then have twenty (20) days from service of this Order to make an Adequate Assurance Request.

15. 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 section 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 and the Federal Rules of Bankruptcy Procedure, including Bankruptcy Code section 366(b).

16. All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors pending a Final Order of this Court, in accordance with Bankruptcy Code section 366(a). See, 11 U.S.C. § 366(a).

17. The Debtors maintain that the relief requested herein strikes a fair balance between the rights of Utility Companies and the rights of the Debtors under the Bankruptcy Code and the need, for the benefit of the Debtors and their estates, for the Debtors to continue to receive the Utility Services upon which their business depends. The Debtors do not believe that the Utility Companies will be prejudiced by the Proposed Adequate Assurance, the uninterrupted continuation of the Utility Services, and the approval of the Adequate Assurance Procedures.

APPLICABLE AUTHORITY

A. The Proposed Adequate Assurance Provides Utilities With Adequate Assurance Of Payment.

18. Bankruptcy Code section 366(a) provides:

Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a). Bankruptcy Code Section 366(b) goes on to provide, however, that:

Such utility may 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, in the form of a deposit or other security, for service after such date.

Id. at § 366(b).

19. The policy underlying Bankruptcy Code section 366 is to protect debtors from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the debtor will pay for postpetition services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. As set forth herein, this policy is furthered by the relief requested through the Motion.

20. Specifically, under Bankruptcy Code section 366(b), a debtor must furnish what it considers to be adequate assurance of payment within twenty (20) days after the entry of the order for relief in the form of a deposit or other security for postpetition service. Here, the Debtors will provide the Utility Companies with the Proposed Adequate Assurance, which the Debtors believe provides all Utility Companies with adequate assurance of payment. See 11 U.S.C. § 361(c)(1)(A) (defining “assurance of payment” to include a cash deposit, a letter of

credit, or “another form of security that is mutually agreed on between the utility and the debtor”).

B. The Adequate Assurance Procedures Properly Balance The Interests Of the Utility Companies And Those Of The Debtors And Their Estates.

21. As part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Congress enacted Bankruptcy Code section 366(c). Under Bankruptcy Code section 366(c)(2), a utility is permitted to alter, refuse, or discontinue utility service, if the utility does not receive “during the 30-day period beginning on the date of the filing of the petition . . . adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2) (emphasis added). Conceivably, under Bankruptcy Code section 366(c)(2), the Debtors could receive a demand from a Utility Company at the end of such thirty day period and be compelled to accede to the demand immediately or face termination of critical Utility Services. Therefore, as set forth below, in order to avoid such a drastic result, the Debtors have sought to require the Utility Companies to provide notice of their demands for assurance on or before the date that is five (5) business days before the Final Hearing on disputed requests, before expiration of the thirty (30) day period in which they must provide adequate assurance of payment or force termination of utility services.

22. Specifically, under the Adequate Assurance Procedures, a Utility Company may make an Adequate Assurance Request on or before the Adequate Assurance Request Deadline. In the event that such a request is made, the Debtors will advise the Utility Company on or before the day that is no less than three (3) business days prior to the Final Hearing that the Adequate Assurance Request is acceptable or that the Debtors intend to contest such Adequate Assurance Request under Bankruptcy Code section 366(c)(3) at the Final Hearing. Under these procedures, the Debtors will have the opportunity to seek an order from

the Court modifying any Adequate Assurance Request without having to first satisfy the demands of the Utility Company and without facing the prospect of termination of Utility Services before a hearing on the Adequate Assurance Request.

23. By establishing the Adequate Assurance Procedures, the Debtors seek to implement an orderly process to determine the amount of assurance of payment that is adequate. Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by Utility Companies in an unorganized manner at a critical period in their effort to reorganize. The orderly process contemplated by the Adequate Assurance Procedures, therefore, is necessary for a smooth transition by the Debtors into chapter 11.

24. Moreover, the Adequate Assurance Procedures will ensure that all parties act in good faith by establishing a fair process. This will protect the Debtors and their stakeholders from an attempt by a Utility Company to delay a request until the last minute in an attempt to force the Debtors to agree to its request or face cessation of essential services.

25. Based on the foregoing facts, the Debtors submit that granting the relief requested is both necessary and appropriate. The Debtors submit that, based on the facts of these cases, no deposits should be required in addition to the Proposed Adequate Assurance. Such relief will help the Debtors to successfully restructure and thus fulfill the purposes of section 105 of the Bankruptcy Code and will not prejudice the rights of the Utility Companies under section 366 of the Bankruptcy Code.

26. Courts have routinely granted to large business debtors the same or substantially similar relief to that requested in this Motion. See, e.g., In re Tweeter Home Entm't. Group, Inc., et al. Case No. 07-10787 (PJW) (Bankr. D. Del. Jun. 12, 2007); In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006); see also In re

Plastech Engineered Produces, Inc., Case No. 08-42417 (PJS) (Bankr. E.D. Mich. Feb. 15, 2008).

27. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve value for their estates. The Debtors respectfully request that the Court waive the ten-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

28. The Debtors have provided notice of this Motion by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the District of Delaware; (b) the Debtors’ twenty-five (25) largest unsecured creditors on a consolidated basis; (c) counsel to Comerica Bank; (d) counsel to Wells Fargo Foothill LLC; (e) counsel to Dymas Funding Company LLC; (f) counsel to Ableco Finance LLC; (g) counsel to A3 Funding LP; (h) counsel to Garrison Credit Investments; (i) counsel to Harris, N.A; (j) all other parties required to receive notice pursuant to Bankruptcy Rule 2002; and (k) the Utility Companies identified in Exhibit A. The Debtors submit that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

29. No prior request for the relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully request this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: September 1, 2009
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

David B. Stratton (DE No. 960)
Evelyn J. Meltzer (DE No. 4581)
John H. Schanne, II (DE No. 5260)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

NIXON PEABODY LLP
Mark N. Berman
Dennis J. Drebsky
Lee Harrington (DE No. 4046)
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

*Proposed Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

List of Utility Providers

<u>Creditor Name</u>	<u>Creditor Notice Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Phone</u>	<u>Fax</u>
AT&T WIRELESS-995010985 / CINGULAR	AT&T MOBILITY	PO BOX 6463	CAROL STREAM	IL	60197-6463		
AT&T-678 556-0081 001 1884.	AT&T	PO BOX 105262	ATLANTA	GA	30348-5262		
AT&T-832514844	AT&T MOBILITY	PO BOX 6463	CAROL STREAM	IL	60197-6463		
BAY CITY METERING CO		247 W 37TH ST 6TH FL	NEW YORK	NY	10018	(212)575-0785	212-575-9321
CON EDISON-21-1570-0177-5202-0	CON EDISON JAF STATION	PO BOX 1702	NEW YORK	NY	10116-1702		212-979-1278
CON EDISON-43-5121-5841-0003-5	CON EDISON JAF STATION	PO BOX 1702	NEW YORK	NY	10116-1702		212-979-1278
MCI-2DE18151 VERIZON	MCI d/b/a VERIZON BUSINESS SERVICES	27732 NETWORK PL	CHICAGO	IL	60673-1277		
SPRINT-0527818345-3 / 554549812	SPRINT	PO BOX 4181	CAROL STREAM	IL	60197-4181		
SPRINT-13168762	SPRINT	PO BOX 219623	KANSAS CITY	MO	64121-9623	800.676.5110	
SPRINT-702001781	SPRINT-702001781	PO BOX 4181	CAROL STREAM	IL	60197-4181		
VERIZON-000610450056 36Y	VERIZON	PO BOX 15026	ALBANY	NY	12212-5026		
VERIZON-000732140609 79Y	VERIZON	PO BOX 15026	ALBANY	NY	12212-5026		
VERIZON-000907333617 53Y	VERIZON	PO BOX 4648	TRENTON	NJ	08650-4648		
VERIZON-212 M55-3416 182	VERIZON	PO BOX 1100	ALBANY	NY	12250-0001	800-476-8372	
VERIZON-212 X02 3581 695 215 Master acc.	VERIZON	PO BOX 15124	ALBANY	NY	11212-5124		

VERIZON-718 254 2800 361 228	VERIZON	PO BOX 15124	ALBANY	NY	12212-5124		
VERIZON-718 349 2372 726 177	VERIZON	PO BOX 15124	ALBANY	NY	12212-5124	1-800-837- 4966	
VERIZON-718 797 7400 337 225	VERIZON	PO BOX 15124	ALBANY	NY	12212-5124		
VERIZON-718 956 2142 811 170	VERIZON	PO BOX 15124	ALBANY	NY	12212-5124	800-837- 4966	
VERIZON-973 285-3859 799 76Y	VERIZON	PO BOX 4833	TRENTON	NJ	08650-4833	1-800-339- 9911	
VERIZON-973 683-4295 345 77Y	VERIZON	PO BOX 4833	TRENTON	NJ	08650-4833		
VERIZON- 982516126-00001	VERIZON WIRELESS	PO BOX 408	NEWARK	NJ	07101-0408		
VERIZON- VS93240829	VERIZON BUSINESS	PO BOX 382040	PITTSBURGH	PA	15251-7392		
VERIZON- Y2202020-Internet acc. Fl	MCI	PO BOX 371392	PITTSBURGH	PA	15250-7392		
VERIZON- Y2417021	MCI	PO BOX 371322	PITTSBURGH	PA	15250-7322		

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

In re: CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-_____ () Jointly Administered
---	---

**INTERIM AND PROPOSED 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 requests and 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

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.

section 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, pending the entry of a Final Order or this order becoming a Final Order as set forth in paragraph 13 below.
 - (b) Any Utility Company desiring an Adequate Assurance Deposit must serve a request (an "Adequate Assurance Request") so that it is received by the Debtors at the following addresses: (1) Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022, (Attn: Dennis J. Drebsky); and (2) Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 131 Market Street, Wilmington, Delaware 198999-1709 (Attn: David B. Stratton, Esq.).
 - (c) The Debtors will serve this Motion and a copy of this order on the Utility Companies within three (3) business days after entry of this order.
 - (d) 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").
 - (e) 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.
 - (f) 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.

- (g) 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).
- (h) 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. Pending a Final Order of this Court or this order becoming a Final Order as set forth in paragraph 14 below, 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 attached Exhibit A 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 Final Hearing shall be conducted on _____, 2009 at _____
____.m., Eastern Time.

11. 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.

12. 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.

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

14. This order shall be deemed the Final Order with respect to any Utility Company that does not serve either (i) an Adequate Assurance Request by the Adequate Assurance Request Deadline or (ii) file a timely objection.

15. 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.

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

Dated: _____, 2009

UNITED STATES BANKRUPTCY JUDGE