

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket Nos. 4 & 43

FINAL ORDER (I) PROHIBITING THE DEBTOR’S UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE; AND (IV) GRANTING RELATED RELIEF

Upon consideration of the motion (“Motion”)² of Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), for entry of a final order (a) prohibiting the Debtor’s Utility Providers from altering, refusing or discontinuing service to the Debtor, except as set forth herein; (b) determining adequate assurance of payment for postpetition utility services; and (c) establishing procedures for determining adequate assurance of payment to the Utility Providers; and (d) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.



of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtor's estates, its creditors, and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in this Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to pay on a timely basis and in accordance with its prepetition practices, all undisputed invoices for postpetition utility services provided by the Utility Providers.
3. Subject to the Adequate Assurance Procedures set forth below, all Utility Providers are prohibited from altering, refusing, or discontinuing service to the Debtor on account of any unpaid prepetition invoices or the commencement of this chapter 11 case.
4. The Debtor is authorized to cause the Adequate Assurance Deposit, as it may be supplemented or modified in accordance with this final order, to be held in the Adequate Assurance Account, as set forth herein.
5. Subject to the Adequate Assurance Procedures, the Adequate Assurance Deposit constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code. Except as provided herein, the Utility Providers shall have no interest in, or lien on, the Adequate Assurance Deposit or the Adequate Assurance Account.

6. The following Adequate Assurance Procedures are approved:
 - a. The Debtor will serve a copy of this Motion and any order or proposed order granting the relief requested herein, which include the proposed Adequate Assurance Procedures, on each Utility Provider listed on the Utility Service List.
 - b. The Debtor will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within twenty (20) days of the Petition Date. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account (pursuant to the terms of the Adequate Assurance Procedures) in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance Deposit” on the Utility Service List; provided that to the extent any Utility Provider receives any other value from the Debtor as adequate assurance of payment, the Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
 - c. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtor, the Utility Provider must serve a request for additional assurance (an “Additional Assurance Request”) so that it is actually received by: (i) the Debtor, 700 Shoreline Court, Suite 201 South San Francisco, CA 94080, Attn: Robert McKague; (ii) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, California 77002, Attn: Julia Phillips Roth, (julia.roth@sidley.com); and (iii) counsel to any official committee appointed in the chapter 11 case (collectively, the “Additional Assurance Request Parties”) no later than fourteen (14) days after service of the Final Order.
 - d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of utility services, and identify the location(s) for which such services are provided, (iii) summarize any deposits, letters of credit, and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.
 - e. If a Utility Provider fails to serve on the Additional Assurance Request Parties an Additional Assurance Request, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtor on account of the commencement of this chapter 11 case or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
 - f. Upon the Debtor’s receipt of any Additional Assurance Request as provided herein, the Debtor shall have twenty (20) days from the receipt of the Additional Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request. The Resolution Period may

be extended by agreement of the Debtor and the applicable Utility Provider without application to or approval of this Court.

- g. The Debtor may, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtor determines that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, without further order of this Court to the extent the Debtor believes that such additional assurance is reasonable in the exercise of its business judgment and the Debtor may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by any amount allocated to such Utility Company.
- h. If the Debtor determines that the Additional Assurance Request is not reasonable and the Debtor is unable to reach an alternative resolution with the Utility Provider, the Debtor, during or immediately after the Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider.
- i. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtor on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of this chapter 11 case.
- j. Absent compliance with the Adequate Assurance Procedures and the terms of the proposed order, the Debtor’s Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of this chapter 11 case and/or any unpaid charges for prepetition services provided to the Debtor and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
- k. If any utility account with a Utility Company is closed during this chapter 11 case (a “Closed Account”), the Debtor may, in its discretion, and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each Closed Account, the amount deposited with respect to such Closed Account; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtor shall provide twenty-one (21) days’ notice of its intent to reduce the Utility Deposit and that the Debtor shall have paid such Utility Company in full for any outstanding postpetition Utility Services with respect to the Closed Account before reducing the Utility Deposit.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtor that such entity is, or is not, a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights and defenses with respect thereto.

8. The Debtor is authorized to amend the Utility Service List to the extent the Debtor identifies additional Utility Providers or if a Utility Provider begins or ceases to provide services to the Debtor during the pendency of this case. This order (including the Adequate Assurance Procedures set forth herein) shall apply to and be binding upon any subsequently-identified Utility Provider, regardless of when such Utility Provider was added to the Utility Service List; *provided, however*, that the Debtor shall serve a copy of this order on the subsequently identified Utility Provider within three (3) business days of their identification. The Debtor shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Provider is added to the Utility Service List by an amount equal to two weeks of the Debtor’s average cost of utility services from such Utility Provider, less any deposits or letters of credit already held by such Utility Provider. Subsequently added Utility Providers shall be required to make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

9. The Debtor shall file any amended version(s) of the Utility Service List with the Court.

10. Nothing contained in the Motion or this final order shall be construed to create, alter, or perfect, in favor of any person or entity, any interest in cash of the Debtor.

11. Nothing in this final order shall constitute (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor’s or any party in interest’s rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy

law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

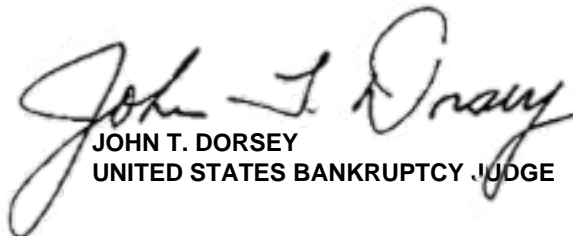
12. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are waived by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this final order are immediately effective and enforceable upon its entry.

14. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this interim order in accordance with the Motion.

15. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this final order.

Dated: February 6th, 2023
Wilmington, Delaware


JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE