

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
: Obj. Deadline: August 7, 2019 at 4:00 p.m. (ET)
: Hearing Date: August 14, 2019 at 11:00 a.m. (ET)
: :
: Re: Docket Nos. 13 & 57
: :
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NOTICE OF (A) ENTRY OF INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT; AND (B) FINAL HEARING THEREON

PLEASE TAKE NOTICE that, on July 15, 2019, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* [Docket No. 13] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). A copy of the Motion is attached hereto as Exhibit A.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



PLEASE TAKE FURTHER NOTICE that, following an initial hearing to consider the Motion on July 17, 2019, the Court entered the *Interim Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* [Docket No. 57] (the “**Interim Order**”). A copy of the Interim Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, objections or responses to the final relief requested in the Motion, if any, must be made in writing, filed with the Court on or before **August 7, 2019 at 4:00 p.m. (prevailing Eastern Time)**, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet

M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, the final hearing with respect to the Motion, if required, will be held before The Honorable Karen B. Owens at the Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **August 14, 2019 at 11:00 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 18, 2019
Wilmington, Delaware

/s/ Brett M. Haywood

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*Proposed Counsel for Debtors
and Debtors-in-Possession*

EXHIBIT A

Motion

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-_____ (____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

**DEBTORS’ MOTION FOR ENTRY OF ORDERS UNDER
11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM
ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION
INVOICES, (II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of interim and final orders substantially in the forms attached hereto as Exhibit B and Exhibit C (respectively, the “**Interim Order**” and the “**Final Order**”), under sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), (i) prohibiting the Debtors’ utility service providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utility companies, and (iii) establishing procedures for resolving any subsequent requests by the utility companies for additional adequate assurance of payment. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: EmERGE Energy Services LP (2937), EmERGE Energy Services GP LLC (4683), EmERGE Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and EmERGE Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

Pleadings, filed with the Court concurrently herewith (the “**Gaston Declaration**”).² In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. 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. The statutory predicates for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code, and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

2. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Gaston Declaration and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have yet been appointed.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Gaston Declaration.

4. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

RELIEF REQUESTED

5. By this Motion, the Debtors request entry of the Interim Order and Final Order, approving procedures that would provide adequate assurance of payment to their utility service providers (the “**Utility Companies**”) under section 366 of the Bankruptcy Code, while allowing the Debtors to avoid the threat of imminent termination of electricity, water, fuel, waste services, telecommunications, and similar utility products and services (collectively, the “**Utility Services**”)³ by the Utility Companies. Specifically, the Debtors request entry of interim and final orders (i) approving the Debtors’ deposit of \$454,750 (which is approximately fifty percent of the estimated monthly cost of the Utility Services based on historical averages over the preceding twelve months) into a segregated, non-interest-bearing account, as adequate assurance of postpetition payment to the Utility Companies pursuant to section 366(b) of the Bankruptcy Code, (ii) approving the additional adequate assurance procedures described below as the method for resolving disputes regarding adequate assurance of payment to the Utility Companies, and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors except as may be permitted by the proposed procedures.

³ Subject to Paragraph 16 below, a list of the Utility Companies that provide Utility Services to the Debtors is attached hereto as Exhibit A (the “**Utility Company List**”).

BASIS FOR RELIEF

A. The Debtors' Utility Companies

6. As of the Petition Date, approximately thirty-five Utility Companies provide Utility Services to the Debtors at various locations. The Utility Companies service the Debtors' operations and facilities related to the Debtors' mining, processing, and distribution of high-quality silica sand. Debtor Superior Silica Sands LLC pays all Utility Services on behalf of the Debtors. On average, in the twelve months prior to the Petition Date, the Debtors incurred expenses totaling approximately \$909,500 each month for utility costs and such utility costs were generally timely paid. Based on the timing of the filings of the Chapter 11 Cases in relation to the Utility Companies' billing cycles, however, there may be outstanding invoices reflecting prepetition utility costs that have been incurred by the Debtors but for which payment is not yet due, as well as prepetition utility costs for services provided to the Debtors since the end of the last billing cycle that have not yet been invoiced.

7. The success and smooth operation of the Debtors' businesses depend on the reliable delivery of electricity, water, and the other Utility Services. Specifically, the Debtors require the Utility Services to operate their headquarters, run their mines and plants, and maintain the equipment they use to service their customers. Uninterrupted Utility Services are therefore essential to the Debtors' ongoing operations and, accordingly, the success of the Chapter 11 Cases. Indeed, if the Utility Companies refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and the Debtors could be forced to temporarily cease operations, which would negatively impact recoveries for creditors of the Debtors' estates.

8. In general, the Debtors have established satisfactory payment histories with the Utility Companies and payments have been made on a regular and timely basis. To the best of

the Debtors' knowledge, there are no material defaults or arrearages with respect to invoices for prepetition Utility Services as of the Petition Date. The Debtors intend to pay any postpetition obligations to the Utility Companies in the ordinary course and in a timely fashion. The Debtors have budgeted for the payments and believe that cash on hand and cash generated through operations will be sufficient to satisfy their obligations to the Utility Companies in the ordinary course on a postpetition basis.

B. The Adequate Assurance Deposit

9. The Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors propose to deposit \$454,750, which is an amount equal to approximately fifty percent of the estimated monthly cost of the Utility Services, into a segregated, non-interest-bearing account, within twenty days of the Petition Date (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be maintained during the Chapter 11 Cases with a minimum balance equal to fifty percent of the Debtors' estimated monthly cost of Utility Services, calculated based on the Debtors' average expenses for such Utility Services during the twelve full months preceding the Petition Date. The amount of the Adequate Assurance Deposit will remain \$454,750 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

10. The Debtors propose that the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a "utility" within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described below, (iii) the termination of a Utility Service by a Debtor regardless of

any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; or, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

11. The Debtors further propose that, to the extent the Debtors become delinquent with respect to a Utility Company’s account, such Utility Company shall be permitted to file a written notice of such delinquency (the “**Delinquency Notice**”) with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David

Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC (the “**DIP Agent**”), 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a “**Delinquency Notice Party**”). Such Delinquency Notice must (i) set forth the amount of the delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors’ account numbers with the Utility Company that have become delinquent.

12. The Debtors propose that the following procedures apply with respect to a Delinquency Notice (the “**Delinquency Notice Procedures**”): if a Delinquency Notice is properly provided as described above, and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of its receipt thereof, the Debtors will be required to (i) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Adequate Assurance Deposit for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, then the Debtors propose that the Court hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, the amount to be remitted.

13. 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, constitutes

sufficient adequate assurance to the Utility Companies. The Debtors shall maintain the Adequate Assurance Deposit as described herein until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

C. The Additional Adequate Assurance Procedures

14. In the event that any Utility Company requests additional adequate assurance of payment pursuant to section 366(c)(2) of the Bankruptcy Code, the Debtors propose that such request be addressed pursuant to the following procedures (the "**Additional Adequate Assurance Procedures**"):

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors' Adequate Assurance Deposit or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies (i) copies of this Motion and the Interim Order granting the relief requested herein within forty-eight hours after the entry of the Interim Order and (ii) a copy of the Final Order granting the relief requested herein within forty-eight hours after the entry of the Final Order.⁴
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must serve a written request (an "**Additional Adequate Assurance Request**") for adequate assurance in addition to or in lieu of its rights in the Adequate

⁴ Rule 9013-1(m)(iv) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") requires service of all first day motions and orders on affected parties within forty-eight hours of entry of the first day order.

Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (e) Upon the Debtors' receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the "**Determination Hearing**").
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the

filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List, will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of the Court.

15. The Debtors request a final hearing on this Motion to be held within thirty days after the Petition Date to ensure that, if a Utility Company argues that the Adequate Assurance Deposit or the Additional Adequate Assurance Procedures are not satisfactory and that the Utility Company is entitled to unilaterally alter, refuse, or discontinue Utility Services to the Debtors immediately following the thirtieth day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the proposed adequate assurance of payment in time to avoid any potential termination of Utility Services.

D. Subsequently Identified Utility Companies

16. The Debtors have made a good-faith effort to identify all of their Utility Companies and include them on the attached Exhibit A. Nevertheless, to the extent that the Debtors subsequently identify additional Utility Companies or Utility Companies that may have been inadvertently omitted from Exhibit A, the Debtors seek authority, in their sole discretion, to amend Exhibit A to add any Utility Company. The Debtors further reserve the right to assert that any of the entities now or hereafter listed on Exhibit A is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code. To the extent that the Debtors subsequently identify any additional Utility Companies that provide Utility Services to them, the Debtors propose to add

such Utility Companies to Exhibit A and to have the terms of the orders with respect to this Motion apply to any such Utility Companies. The Debtors will serve on any of the subsequently identified Utility Companies a copy of this Motion and any order entered with respect to the Motion, along with an amended Exhibit A that includes such Utility Company. Additionally, to the extent that the Debtors add any Utility Companies, the Debtors shall increase the amount of the Adequate Assurance Deposit by an amount equal to approximately fifty percent of the Debtors' estimated average monthly cost of Utility Services from such Utility Company over the preceding twelve months.

17. The Debtors respectfully request that, absent compliance with the Additional Adequate Assurance Procedures, the Utility Companies—including subsequently added Utility Companies—be forbidden from altering, refusing, or discontinuing service to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional adequate assurance of payment other than the proposed Adequate Assurance Deposit described herein. In addition, the Utility Companies should be prohibited from unilaterally applying any payments on account of postpetition services to any outstanding prepetition invoices or drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.

APPLICABLE AUTHORITY

18. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, providing utility companies or providers with adequate assurance that the debtors 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. In the context of chapter 11 cases, the statutory framework for debtor protections and adequate assurance obligations was modified by the Bankruptcy Abuse Prevention and Consumer

Protection Act of 2005 (“**BAPCPA**”) with the addition of section 366(c) of the Bankruptcy Code.

19. Under section 366(c) of the Bankruptcy Code, a utility may alter, refuse, or discontinue a utility service if a debtor has not provided satisfactory adequate assurance of payment within thirty days of its bankruptcy filing. Section 366(c) restricts the factors that a court can consider when determining whether an adequate assurance proposal is, in fact, adequate. Specifically, in determining the amount of an adequate assurance deposit, courts may not consider (i) the absence of a security deposit before the debtor’s petition date, (ii) the debtor’s history of timely payments, or (iii) the availability of an administrative expense priority. *See* 11 U.S.C. § 366(c)(3)(B). Section 366(c), however, does not limit the court’s ability to determine the amount of payment necessary, if any, to provide adequate assurance. Instead, section 366(c) gives courts the same discretion in determining the amount of payment necessary for adequate assurance as they previously had under prior section 366(b) of the Bankruptcy Code. *Compare* 11 U.S.C. § 366(b) (2004) (pre-BAPCPA) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance.”), *with* 11 U.S.C. § 366(c)(3)(A) (2005) (post-BAPCPA) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2).”).

20. By making the Adequate Assurance Deposit and establishing the Additional Adequate Assurance Procedures, the Debtors seek to provide adequate assurance of payment to the Utility Companies and to implement an orderly process to determine any challenges to the adequacy of such adequate assurance. Without the Additional Adequate Assurance Procedures,

the Debtors could be forced to address numerous requests by Utility Companies in an unorganized manner at a critical period in the Chapter 11 Cases. The orderly process contemplated by the Additional Adequate Assurance Procedures, therefore, is necessary for a smooth transition by the Debtors into chapter 11.

21. The relief requested herein does not undermine the rights of the Utility Companies under the Bankruptcy Code. The Debtors anticipate having sufficient liquidity from operations and cash on hand to honor their postpetition obligations to the Utility Companies in the ordinary course of business. In addition, the Debtors propose to make the Adequate Assurance Deposit to further bolster the Utility Companies' assurance of payment. The Adequate Assurance Deposit is one of the acceptable forms of adequate protection set forth in sections 366(b) and 366(c)(1) of the Bankruptcy Code. Accordingly, the Debtors are not seeking to bypass the limits on forms of security imposed by the Bankruptcy Code. The Debtors further propose to protect the Utility Companies by establishing the Additional Adequate Assurance Procedures. Under these procedures, the Utility Companies may exercise their rights under section 366(c)(2) in a centralized fashion that ensures that requests can be addressed in a timely manner by the Debtors and their counsel without the submission of piecemeal, varied requests to the Court. Finally, whatever rights the Utility Companies have under section 366(c)(3) would be preserved.

22. The Debtors maintain that the relief requested herein strikes a fair balance between the rights of Utility Companies and the Debtors' rights under the Bankruptcy Code and need to continue to receive the Utility Services upon which their businesses depend.

23. Similar relief to the relief requested herein has been granted by numerous courts in this district, and courts have regularly found that adequate assurance deposits calculated in the

manner described herein, together with a debtor's ability to pay for future Utility Services in the ordinary course of business, satisfies the requirements of section 366 of the Bankruptcy Code. *See, e.g., In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019); *In Re Imerys Talc Am. Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019); *In re J & M Sales Inc.*, Case No. 18-11801 (LSS) (Bankr. D. Del. Sept. 20, 2018); *In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. June 28, 2018); *In re The Rockport Co., LLC*, Case No. 18-11145 (LSS) (Bankr. D. Del. June 12, 2018); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018); *In re Rentech WP U.S. Inc.*, Case No. 17-12958 (CSS) (Bankr. D. Del. Jan. 16, 2018).

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

24. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

25. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen day stay imposed by

Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

26. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Interim Order and Final Order once entered. Nothing contained in the Interim Order or the Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

CONSENT TO JURISDICTION

27. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

28. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (v) counsel to the DIP Agent and the Prepetition Agents; (vi) counsel to Insight Equity; (vii) the Utility Companies; and (viii) all parties entitled

to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

29. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultant LLC, www.kccllc.net/EmergeEnergy.

NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made to this Court or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Interim and Final Orders substantially in the forms attached hereto as Exhibit B and Exhibit C, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: July 16, 2019
Wilmington, Delaware

/s/ Brett M. Haywood

RICHARDS, LAYTON & FINGER, P.A.

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- and -

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liza.burton@lw.com

Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, 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 set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit A to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit A is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
Apache Disposal	Waste Services	PO Box 470 Marion, TX 78124	\$500	\$250
AT&T	Telecommunications Services	PO Box 5014 Carol Stream, IL 60197	\$2,000	\$1000
AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250
AT&T Long Distance	Telecommunications Services	PO Box 5017 Carol Stream, IL 60191	\$500	\$250
Barron County Finance	Waste Services	335 E Monroe Avenue Barron, WI 54812	\$500	\$250
Barron Electric	Electricity	PO Box 40 Barron, WI 54812	\$75,000	\$37,500
Barron Light & Water	Electricity	PO Box 156 Barron, WI 54812	\$1,000	\$500
Bloomer Telephone	Telecommunications Services	1120 15th Avenue Bloomer, WI 54724	\$500	\$250
Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
Chippewa Valley Energy	Fuel	PO Box 837 Eau Claire, WI 54702	\$25,000	\$12,500
Cimarron Electric Cooperative Inc.	Electricity	19306 US Hwy 81N Kingfisher, OK 73750	\$15,000	\$7,500
Citizens Connected	Telecommunications Services	PO Box 127 New Auburn, WI 54757	\$1,500	\$750
City Public Service	Electricity/Water	PO Box 2678 San Antonio, TX 78289	\$90,000	\$45,000
Entergy	Electricity	PO Box 8104 Baton Rouge, LA 70891	\$30,000	\$15,000
Jackson Electric	Electricity	N6868 County Road F Black River Falls, WI 54615	\$500	\$250
Marabou Energy Management, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$410,000	\$205,000
Marabou Superior Pipeline, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$85,000	\$42,500
Mosaic	Telecommunications Services	PO Box 664 Cameron, WI 54822	\$5,000	\$2,500
New Auburn Utilities	Public Fire Charge	PO Box 100 New Auburn, WI 54757	\$500	\$250
Pioneer Telephone Cooperative, Inc.	Telecommunications Services	PO Box 539 Kingfisher, OK 73750	\$500	\$250
Red Gap Communications, Inc.	Telecommunications Services	504 Main Street Fort Worth, 76102	\$5,000	\$2,500
Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Synergy Community Cooperative Inc. (2877370)	Fuel	229 Railroad Avenue Ridgeland, WI 54763	\$5,000	\$2,500
Synergy Community Cooperative Inc. (587956)	Fuel	PO Box 155 Ridgeland, WI 54763	\$500	\$250
Synergy Community Cooperative Inc. (880764)	Fuel	PO Box 155 Ridgeland, WI 54763	\$10,000	\$5,000
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$909,500	\$454,750

EXHIBIT B

Proposed Interim Order

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

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-_____ (_____)
 :
 Debtors. : (Joint Administration Requested)
 :
 ----- X

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) AND 366
 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR
 DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,
 (II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
 AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
 BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Upon the motion (the “Motion”)² of the Debtors for entry of an Interim Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

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

pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to notice of the final hearing; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, and from 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 Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.
3. The Debtors shall cause an amount equal to \$454,750 to be deposited into a segregated, non-interest-bearing account (the “**Adequate Assurance Deposit**”) within twenty days of the Petition Date. The account will be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the

pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain \$454,750 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

4. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, with notice to the DIP Agent and without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 6 and 7 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; and, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

5. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court’s entry of an order authorizing the return of the Adequate Assurance Deposit to the

Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

6. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC, 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a "**Delinquency Notice Party**"). Such Delinquency Notice must (i) set forth the amount of the delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors' account numbers with the Utility Company that have become delinquent.

7. If a Delinquency Notice is properly provided as described above, and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (i) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (ii) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

8. The following procedures (the “**Additional Adequate Assurance Procedures**”) are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies copies of the Motion and this Interim Order within forty-eight hours after the entry of this Interim Order.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must serve a written request (an “**Additional Adequate Assurance Request**”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.
- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility

Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.

- (e) Upon the Debtors' receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the "**Determination Hearing**").
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.
- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance

of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.

- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List (as defined below), will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

9. The Debtors are authorized, in their sole discretion, to amend Exhibit 1 hereto (the “**Utility Company List**”) to add any Utility Company, and this Interim Order shall apply in all respects to any such Utility Company that is subsequently added to the Utility Company List; provided that, the Debtors shall give prior notice to the DIP Agent of any such additions to the Utility Company List. For those Utility Companies that are subsequently added to the Utility Company List, the Debtors shall, within two business days of filing a supplement to the Utility Company List identifying any such additional Utility Company, serve a copy of the Motion and this Interim Order on such Utility Company, along with an amended Utility Company List that includes such Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months.

10. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days’ advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company

List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

11. The Debtors are authorized, but not directed, 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. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

12. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

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

14. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

17. The Debtors shall administer the Adequate Assurance Deposit in accordance with the terms of this Interim Order, pending entry of a Final Order.

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

19. The final hearing (the “**Final Hearing**”) on the Motion shall be held on [_____, 2019, at ____:_____.m], prevailing Eastern Time. On or before [__:___ .m.], prevailing Eastern Time, on [_____, 2019], any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

20. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is identified on the Utility Company List.

21. Nothing in the Motion or this Interim Order, or the Debtors’ payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, 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 set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit 1 to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit 1 is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
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AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250
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Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
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Marabou Energy Management, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$410,000	\$205,000
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Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Synergy Community Cooperative Inc. (2877370)	Fuel	229 Railroad Avenue Ridgeland, WI 54763	\$5,000	\$2,500
Synergy Community Cooperative Inc. (587956)	Fuel	PO Box 155 Ridgeland, WI 54763	\$500	\$250
Synergy Community Cooperative Inc. (880764)	Fuel	PO Box 155 Ridgeland, WI 54763	\$10,000	\$5,000
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$909,500	\$454,750

EXHIBIT C

Proposed Final Order

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a) AND 366
(I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR
DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,
(II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a Final Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion, the Gaston Declaration, and the Interim Order entered on [_____], 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

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

the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, and from 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 Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.
4. To the extent not already deposited pursuant to the Interim Order, the Debtors shall cause an amount equal to \$454,750 to be deposited into a segregated, non-interest-bearing account (the “**Adequate Assurance Deposit**”) upon entry of this Final Order. The account will

be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain \$454,750 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

5. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, with notice to the DIP Agent without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 7 and 8 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; and, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of

such Utility Company's final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

6. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

7. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC, 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of

Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a “**Delinquency Notice Party**”). Such Delinquency Notice must (i) set forth the amount of the delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors’ account numbers with the Utility Company that have become delinquent.

8. If a Delinquency Notice is properly provided as described above and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (a) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (b) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

9. The following procedures (the “**Additional Adequate Assurance Procedures**”) are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies copies of the Motion and this Final Order within forty-eight hours after the entry of this Final Order.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must

serve a written request (an “**Additional Adequate Assurance Request**”) for adequate assurance in addition to or in lieu of its rights in the Adequate Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (e) Upon the Debtors’ receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the “**Determination Hearing**”).
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors,

or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List (as defined below), will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

10. The Debtors are authorized, in their sole discretion, to amend Exhibit 1 attached hereto (the "Utility Company List") to add any Utility Company, and this Final Order shall apply in all respects to any such Utility Company that is subsequently added to the Utility Company List; provided that, the Debtors shall give prior notice to the DIP Agent of any such additions to the Utility Company List. For those Utility Companies that are subsequently added to the Utility Company List, the Debtors shall, within two business days of filing a supplement to the Utility Company List identifying any such additional Utility Company, serve a copy of the Motion and this Final Order on such Utility Company, along with an amended the Utility Company List that includes such Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months.

11. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the

next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

12. The Debtors are authorized, but not directed, 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. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

13. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

16. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

18. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Company List.

19. Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

20. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, 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 set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit 1 to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit 1 is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
Apache Disposal	Waste Services	PO Box 470 Marion, TX 78124	\$500	\$250
AT&T	Telecommunications Services	PO Box 5014 Carol Stream, IL 60197	\$2,000	\$1000
AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250
AT&T Long Distance	Telecommunications Services	PO Box 5017 Carol Stream, IL 60191	\$500	\$250
Barron County Finance	Waste Services	335 E Monroe Avenue Barron, WI 54812	\$500	\$250
Barron Electric	Electricity	PO Box 40 Barron, WI 54812	\$75,000	\$37,500
Barron Light & Water	Electricity	PO Box 156 Barron, WI 54812	\$1,000	\$500
Bloomer Telephone	Telecommunications Services	1120 15th Avenue Bloomer, WI 54724	\$500	\$250
Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
Chippewa Valley Energy	Fuel	PO Box 837 Eau Claire, WI 54702	\$25,000	\$12,500
Cimarron Electric Cooperative Inc.	Electricity	19306 US Hwy 81N Kingfisher, OK 73750	\$15,000	\$7,500
Citizens Connected	Telecommunications Services	PO Box 127 New Auburn, WI 54757	\$1,500	\$750
City Public Service	Electricity/Water	PO Box 2678 San Antonio, TX 78289	\$90,000	\$45,000
Entergy	Electricity	PO Box 8104 Baton Rouge, LA 70891	\$30,000	\$15,000
Jackson Electric	Electricity	N6868 County Road F Black River Falls, WI 54615	\$500	\$250
Marabou Energy Management, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$410,000	\$205,000
Marabou Superior Pipeline, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$85,000	\$42,500
Mosaic	Telecommunications Services	PO Box 664 Cameron, WI 54822	\$5,000	\$2,500
New Auburn Utilities	Public Fire Charge	PO Box 100 New Auburn, WI 54757	\$500	\$250
Pioneer Telephone Cooperative, Inc.	Telecommunications Services	PO Box 539 Kingfisher, OK 73750	\$500	\$250
Red Gap Communications, Inc.	Telecommunications Services	504 Main Street Fort Worth, 76102	\$5,000	\$2,500
Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Synergy Community Cooperative Inc. (2877370)	Fuel	229 Railroad Avenue Ridgeland, WI 54763	\$5,000	\$2,500
Synergy Community Cooperative Inc. (587956)	Fuel	PO Box 155 Ridgeland, WI 54763	\$500	\$250
Synergy Community Cooperative Inc. (880764)	Fuel	PO Box 155 Ridgeland, WI 54763	\$10,000	\$5,000
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$909,500	\$454,750

File a First Day Motion:[19-11563 Emerge Energy Services LP](#)

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Case Flag: VerifDue, PlnDue,
DsclsDue**U.S. Bankruptcy Court****District of Delaware**

Notice of Electronic Filing

The following transaction was received from Brett Michael Haywood entered on 7/16/2019 at 2:17 AM EDT and filed on 7/16/2019

Case Name: Emerge Energy Services LP**Case Number:** [19-11563](#)**Document Number:** [13](#)**Docket Text:**

Motion Prohibiting Utilities from Discontinuing Service (*Debtors' Motion for Entry of Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment*) Filed By Emerge Energy Services LP (Haywood, Brett)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**W:\BJW\Emerge - Utilities Motion - FILING VERSION.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=7/16/2019] [FileNumber=15878371-0]
][7aacf511f98569c18f8eabadf24a188b339054bc6a068e962935a56954369e8bb4c
3907fefe6c765ce6359dc37d8c0299401f4093f194bd603bfd09bb6a03a6b]]

19-11563 Notice will be electronically mailed to:

Travis James Cuomo on behalf of Debtor Emerge Energy Services LP
cuomo@rlf.com, rbgroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

Brett Michael Haywood on behalf of Debtor Emerge Energy Services LP
haywood@rlf.com, rbgroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

Paul Noble Heath on behalf of Debtor Emerge Energy Services LP
heath@rlf.com, RBGroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

John Henry Knight on behalf of Debtor Emerge Energy Services LP
knight@rlf.com, RBGroup@RLF.com;ann-jerominski-2390@ecf.pacerpro.com

EXHIBIT B

Interim Order

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

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
 :
 Debtors. : Jointly Administered
 :
 ----- X Re: Docket No. 13

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) AND 366
 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR
 DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES,
 (II) APPROVING DEPOSIT AS ADEQUATE ASSURANCE OF PAYMENT,
 AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an Interim Order under sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the Utility Companies, and (iii) establishing procedures for resolving any subsequent requests by the Utility Companies for additional adequate assurance of payment; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

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

of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to notice of the final hearing; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are hereby prohibited from altering, refusing, discontinuing service to, or discriminating against, the Debtors on account of unpaid prepetition invoices or due to the commencement of the Chapter 11 Cases, and from 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 Additional Adequate Assurance Procedures contained herein. The Utility Companies are also prohibited from drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for Utility Services.
3. The Debtors shall cause an amount equal to \$454,750 to be deposited into a segregated, non-interest-bearing account (the “**Adequate Assurance Deposit**”) within twenty days of the Petition Date. The account will be held at a bank that has executed the approved Uniform Depository Agreement with the United States Trustee for the District of Delaware. The Adequate Assurance Deposit shall serve as a cash security deposit to provide adequate assurance

of payment for Utility Services provided to the Debtors after the Petition Date and through the pendency of the Chapter 11 Cases. The amount of the Adequate Assurance Deposit will remain \$454,750 throughout the Chapter 11 Cases (*i.e.*, the amount will not be recalculated), unless otherwise adjusted as provided for herein.

4. The balance of the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, with notice to the DIP Agent and without further order, to account for any of the following: (i) to the extent that the Adequate Assurance Deposit includes any amount on account of a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) an adjustment or payment made in accordance with the Delinquency Notice Procedures described in Paragraphs 6 and 7 below, (iii) the termination of a Utility Service by a Debtor regardless of any Additional Adequate Assurance Request (as defined below), (iv) the closure of a utility account with a Utility Company for which funds have been contributed for the Adequate Assurance Deposit, or (v) any other arrangements with respect to adequate assurance of payment reached by a Debtor with individual Utility Companies; *provided*, that, (a) with respect to a company that the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon fourteen days’ advance notice to such company; and, (b) with respect to the Debtors’ termination of a Utility Service or closure of a utility account with a Utility Company, the Debtors may adjust and/or amend the balance of the Adequate Assurance Deposit upon reconciliation and payment by the Debtors of such Utility Company’s final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

5. The Debtors shall maintain the Adequate Assurance Deposit until the earlier of the Court's entry of an order authorizing the return of the Adequate Assurance Deposit to the Debtors and the effective date of a plan of reorganization for the Debtors (at which time the funds comprising the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the Debtors or reorganized Debtors, as applicable).

6. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall be permitted to file a written notice of such delinquency (the "**Delinquency Notice**") with the Court and serve such Delinquency Notice on: (i) Emerge Energy Services LP, 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Hugh K. Murtagh Esq., Liza L. Burton, Esq. and Sean McGrath, Esq. (emails: hugh.murtagh@lw.com, liza.burton@lw.com and sean.mcgrath@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq. and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com and candace.arthur@weil.com)); (v) HPS Investment Partners, LLC, 40 West 57th Street, 33rd Floor, New York, New York 10019 (Attn: Jeffrey Fitts, Brett Pertuz and Piero Russo (emails: jeffrey.fitts@hpspartners.com, brett.pertuz@hpspartners.com and piero.russo@hpspartners.com)); (vi) counsel to any statutory committee appointed in these cases, if any; and (vii) the United States Trustee for the District of Delaware (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)) (each, a "**Delinquency Notice Party**"). Such Delinquency Notice must (i) set forth the amount of the

delinquency, (ii) set forth the location for which Utility Services are provided, and (iii) provide each of the Debtors' account numbers with the Utility Company that have become delinquent.

7. If a Delinquency Notice is properly provided as described above, and such delinquency is not cured and no Delinquency Notice Party has objected to the Delinquency Notice within ten days of the receipt thereof, the Debtors shall (i) remit to such Utility Company from the Adequate Assurance Deposit the amount of postpetition charges claimed as delinquent in the Delinquency Notice and (ii) cause the Adequate Assurance Deposit to be replenished for the amount remitted to such Utility Company. If a Delinquency Notice Party objects to the Delinquency Notice, the Court shall hold a hearing to resolve the dispute and determine whether a payment should be remitted from the Adequate Assurance Deposit and, if such payment is warranted, how much shall be remitted.

8. The following procedures (the "**Additional Adequate Assurance Procedures**") are hereby approved with respect to all Utility Companies, including all subsequently added Utility Companies:

- (a) Except as provided by the Additional Adequate Assurance Procedures, the Utility Companies are forbidden to (i) alter, refuse, or discontinue services to, or discriminate against, the Debtors on account of unpaid prepetition invoices or any objections to the Debtors' Adequate Assurance Deposit, or due to the commencement of the Chapter 11 Cases or (ii) require the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.
- (b) The Debtors will serve on the Utility Companies copies of the Motion and this Interim Order within forty-eight hours after the entry of this Interim Order.
- (c) In the event that a Utility Company asserts that the Adequate Assurance Deposit is not satisfactory adequate assurance of payment as contemplated by section 366(c)(2) of the Bankruptcy Code, that Utility Company must serve a written request (an "**Additional Adequate Assurance Request**") for adequate assurance in addition to or in lieu of its rights in the Adequate

Assurance Deposit. All Additional Adequate Assurance Requests shall be delivered by mail and email to the Delinquency Notice Parties.

- (d) Any Additional Adequate Assurance Request must (i) set forth the location(s) for which Utility Services are provided and the type of Utility Services provided, (ii) set forth the account number(s) for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit(s) or other security currently held by the requesting Utility Company, (iv) set forth why the Utility Company believes the proposed adequate assurance is not sufficient adequate assurance of future payment, (v) set forth the amount and nature of the adequate assurance of payment that would be satisfactory to the Utility Company, and (vi) provide an email address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (e) Upon the Debtors' receipt of an Additional Adequate Assurance Request, the Debtors will promptly negotiate with the Utility Company to resolve the Additional Adequate Assurance Request.
- (f) Without further order of the Court, the Debtors may resolve an Additional Adequate Assurance Request by entering into agreements granting additional adequate assurance to the requesting Utility Company if the Debtors, in their sole discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternative consensual provisions; provided that, the Debtors shall give prior notice to the DIP Agent of such agreement for additional adequate assurance and shall not provide such additional adequate assurance if the DIP Agent objects within three days of receiving such notice.
- (g) If the Debtors determine that the Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company within 30 days after the Additional Adequate Assurance Request is made, the Debtors will request a hearing before this Court at the next omnibus hearing date, or such other date as the Debtors and the requesting Utility Company may agree (the "**Determination Hearing**").
- (h) The Determination Hearing will be an evidentiary hearing at which the Court will determine whether the Adequate Assurance Deposit and any additional adequate assurance of payment requested by the Utility Company should be modified pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any Additional Adequate Assurance Request, the Utility Company making such request shall be prohibited from altering, refusing, or discontinuing service to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, on account of unpaid charges for prepetition services, the

filing of the Chapter 11 Cases, or any objection to the adequacy of the Additional Adequate Assurance Procedures.

- (i) Unless and until a Utility Company serves an Additional Adequate Assurance Request, it will be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.
- (j) All Utility Companies, including Utility Companies subsequently added to the Utility Company List (as defined below), will be prohibited from altering, refusing or discontinuing Utility Services to the Debtors, or from discriminating against the Debtors with respect to the provision of Utility Services, absent further order of this Court.

9. The Debtors are authorized, in their sole discretion, to amend Exhibit 1 hereto (the “**Utility Company List**”) to add any Utility Company, and this Interim Order shall apply in all respects to any such Utility Company that is subsequently added to the Utility Company List; provided that, the Debtors shall give prior notice to the DIP Agent of any such additions to the Utility Company List. For those Utility Companies that are subsequently added to the Utility Company List, the Debtors shall, within two business days of filing a supplement to the Utility Company List identifying any such additional Utility Company, serve a copy of the Motion and this Interim Order on such Utility Company, along with an amended Utility Company List that includes such Utility Company. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Company is added to the Utility Company List by an amount equal to fifty percent of the estimated average monthly cost of such Utility Services based on historical averages over the preceding twelve months.

10. The Debtors may amend the Utility Company List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days’ advance notice to such Utility Company, and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may

agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Company List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

11. The Debtors are authorized, but not directed, 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. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, without limitation, any penalties or interest.

12. The Additional Adequate Assurance Procedures, the Adequate Assurance Deposit, and the Debtors' ability to pay for future Utility Services in the ordinary course of business constitute adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

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

14. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

17. The Debtors shall administer the Adequate Assurance Deposit in accordance with the terms of this Interim Order, pending entry of a Final Order.

18. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, or any other order of this Court, including any orders approving the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, the interests of any pre-petition lender or of any entity providing post-petition debtor-in-possession financing facilities in the Adequate Assurance Deposit shall be subordinate to each Utility Company's interest in the Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to paragraph 5 of this Interim Order or as otherwise ordered by the Court.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

20. The final hearing (the "**Final Hearing**") on the Motion shall be held on August 14, 2019, at 11:00 a.m., prevailing Eastern Time. On or before 4:00 p.m., prevailing Eastern Time, on August 7, 2019, any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and

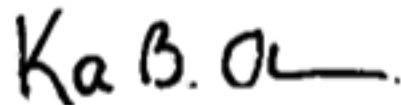
Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

21. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or a “utility” under section 366 of the Bankruptcy Code, whether or not such entity is identified on the Utility Company List.

22. Nothing in the Motion or this Interim Order, or the Debtors’ payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors’ properties; (ii) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

23. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: July 17th, 2019
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Utility Company List

Utility Companies

The Utility Companies known and identified by the Debtors to date are listed below.

While the Debtors have used their best efforts to list all of their Utility Companies below, 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 set forth in the Motion, and the Interim and Final Orders, and without further order of the Court, to amend this Exhibit 1 to add any Utility Companies that were omitted therefrom and to apply the relief requested to all such entities.

In addition, the Debtors reserve the right to argue that any entity now or hereafter listed on this Exhibit 1 is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit ¹
Anchored Oak, LLC	Waste Services	PO Box 508 Chetek, WI 54728	\$500	\$250
Anderson Sanitation	Waste Services	E5502 County Road V Ridgeland, WI 54763	\$1,000	\$500
Apache Disposal	Waste Services	PO Box 470 Marion, TX 78124	\$500	\$250
AT&T	Telecommunications Services	PO Box 5014 Carol Stream, IL 60197	\$2,000	\$1000
AT&T Dallas	Electricity	PO Box 105414 Atlanta, Georgia 30348	\$500	\$250
AT&T Long Distance	Telecommunications Services	PO Box 5017 Carol Stream, IL 60191	\$500	\$250
Barron County Finance	Waste Services	335 E Monroe Avenue Barron, WI 54812	\$500	\$250
Barron Electric	Electricity	PO Box 40 Barron, WI 54812	\$75,000	\$37,500
Barron Light & Water	Electricity	PO Box 156 Barron, WI 54812	\$1,000	\$500
Bloomer Telephone	Telecommunications Services	1120 15th Avenue Bloomer, WI 54724	\$500	\$250
Century Link	Telecommunications Services	PO Box 2961 Phoenix, AZ 85062	\$1,000	\$500

¹ Adequate assurance reflects fifty percent of average monthly spend per Utility Company in preceding twelve months.

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Charter Communications Operating, LLC	Telecommunications Services	PO Box 3019 Milwaukee, WI 53201	\$500	\$250
Chippewa Valley Energy	Fuel	PO Box 837 Eau Claire, WI 54702	\$25,000	\$12,500
Cimarron Electric Cooperative Inc.	Electricity	19306 US Hwy 81N Kingfisher, OK 73750	\$15,000	\$7,500
Citizens Connected	Telecommunications Services	PO Box 127 New Auburn, WI 54757	\$1,500	\$750
City Public Service	Electricity/Water	PO Box 2678 San Antonio, TX 78289	\$90,000	\$45,000
Entergy	Electricity	PO Box 8104 Baton Rouge, LA 70891	\$30,000	\$15,000
Jackson Electric	Electricity	N6868 County Road F Black River Falls, WI 54615	\$500	\$250
Marabou Energy Management, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$410,000	\$205,000
Marabou Superior Pipeline, LLC	Fuel	450 Gears Road, Ste 850 Houston, TX 77067	\$85,000	\$42,500
Mosaic	Telecommunications Services	PO Box 664 Cameron, WI 54822	\$5,000	\$2,500
New Auburn Utilities	Public Fire Charge	PO Box 100 New Auburn, WI 54757	\$500	\$250
Pioneer Telephone Cooperative, Inc.	Telecommunications Services	PO Box 539 Kingfisher, OK 73750	\$500	\$250
Red Gap Communications, Inc.	Telecommunications Services	504 Main Street Fort Worth, 76102	\$5,000	\$2,500
Republic Services, Inc.	Waste Services	PO Box 9001099 Louisville, KY 40290	\$5,000	\$2,500
Suburban Propane	Fuel	PO Box 290 Whippany, NJ 07981	\$500	\$250
Streetwater Sanitation	Waste Services	PO Box 171 Chetek, WI 54728	\$5,000	\$2,500

Utility Company	Type of Service Provided	Mailing Address	Approximate Monthly Average	Adequate Assurance Deposit¹
Synergy Community Cooperative Inc. (2877370)	Fuel	229 Railroad Avenue Ridgeland, WI 54763	\$5,000	\$2,500
Synergy Community Cooperative Inc. (587956)	Fuel	PO Box 155 Ridgeland, WI 54763	\$500	\$250
Synergy Community Cooperative Inc. (880764)	Fuel	PO Box 155 Ridgeland, WI 54763	\$10,000	\$5,000
Verizon Wireless	Telecommunications Services	PO Box 25505 Lehigh Valley, PA 18002	\$5,000	\$2,500
Waste Connections Management Services, Inc.	Waste Services	PO Box 742695 Cincinnati, OH 45274	\$500	\$250
Waste Management of WI-MN	Waste Services	PO Box 4648 Carol Stream, IL 60197	\$1,000	\$500
WE Energies	Electricity	PO Box 90001 Milwaukee, WI 53290	\$500	\$250
Xcel Energy	Electricity	PO Box 8 Eau Claire, WI 54702	\$125,000	\$62,500
Total			\$909,500	\$454,750