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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	Chapter 11
ENVIVA INC., <i>et al.</i> ,	)	Case No. 24-10453 (BFK)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF  
 INTERIM AND FINAL ORDERS (I) APPROVING  
 DEBTORS’ PROPOSED ADEQUATE ASSURANCE  
 OF PAYMENT FOR FUTURE UTILITY SERVICES,  
 (II) PROHIBITING UTILITY COMPANIES FROM ALTERING,  
 REFUSING, OR DISCONTINUING SERVICES, (III) APPROVING  
 DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL  
 ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”), file this *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed*

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



*Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures for Resolving Additional Adequate Assurance Requests, and (IV) Granting Related Relief* (the "**Motion**") and in support respectfully submit the following:

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the Eastern District of Virginia (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code (the "**Bankruptcy Code**"), Bankruptcy Rules 6003 and 6004, and rules 2002-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "**Local Rules**").

### **BACKGROUND**

4. Enviva Inc. and its Debtor and non-Debtor subsidiaries (collectively, the "**Company**") are the world's largest producer of industrial wood pellets, a renewable and sustainable energy source produced by aggregating a natural resource—wood fiber—and

processing it into a transportable form. The Company owns and operates ten industrial-scale wood pellet production plants located in Virginia, North Carolina, South Carolina, Georgia, Florida, and Mississippi. The Company exports its wood pellets through owned and leased deep-water marine terminals to customers in the United Kingdom, the European Union, and Japan who purchase the wood pellets through long-term, take-or-pay offtake contracts with the Company.

5. On the date hereof (the “*Petition Date*”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). As of the Petition Date, no request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed in these chapter 11 cases.

6. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* (the “*Nunziata Declaration*”) and the *Declaration of Mark Rajceвич in Support of Chapter 11 Petitions and First-Day Motions* (the “*Rajceвич Declaration*,” and together with the Nunziata Declaration, the “*First Day Declarations*”), filed contemporaneously herewith and incorporated herein by reference.<sup>2</sup>

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declarations.

7. As set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with the ad hoc group of creditors (the “*Ad Hoc Group*”) party thereto, which represent approximately (a) 72% of the aggregate outstanding principal amount of loans arising under the Senior Secured Credit Facility (including both term loans and revolving credit loans), (b) 95% of the aggregate outstanding principal amount of the 2026 Notes, (c) 78% of the aggregate outstanding principal amount of the Epes Green Bonds, and (d) 45% of the aggregate outstanding principal amount of Bond Green Bonds. As further set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with creditors holding approximately 92% of the aggregate outstanding principal amount of the Bond Green Bonds.

**RELIEF REQUESTED**

8. By this Motion, the Debtors seek entry of an interim order (the “*Interim Order*”), substantially in the form attached hereto as **Exhibit A**, and subsequently a final order (the “*Final Order*”), substantially in the form attached hereto as **Exhibit B**, (i) approving the Debtors’ proposed adequate assurance of payment for future utility services, (ii) prohibiting utility companies from altering, refusing, or discontinuing services, (iii) approving the Debtors’ proposed procedures for resolving additional adequate assurance requests, and (iv) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

**THE UTILITY SERVICES AND PROPOSED ADEQUATE ASSURANCE**

**A. Utility Services**

9. Certain companies (each, a “*Utility Company*” and collectively, the “*Utility Companies*”) provide the Debtors with traditional utility services (the “*Utility Services*”), such as electricity, water, natural gas, propane, telecommunications, internet, waste management, and other similar services that the Debtors utilize in the ordinary course of business and are necessary for the continued operation of the Debtors’ day-to-day businesses. A non-exclusive list of the Utility Companies that provide Utility Services to the Debtors as of the Petition Date is attached hereto as **Exhibit C** (the “*Utility Services List*”).<sup>3</sup> The relief requested herein is with respect to all Utility Companies supplying Utility Services to the Debtors and is not limited to those on the Utility Services List.

10. Uninterrupted Utility Services are critical to the Debtors’ ability to operate and maintain the value of their businesses while maximizing value for the benefit of their estates. The Debtors could not operate their businesses without the Utility Services. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the Debtors’ business operations could be significantly disrupted, which could immediately and irreparably harm and jeopardize the Debtors’ operations and strategic objectives. Accordingly, it is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

11. To the best of the Debtors’ knowledge, there are no material defaults or arrearages with respect to the Debtors’ undisputed invoices for prepetition Utility Services. On average, the

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<sup>3</sup> The Debtors have made a good-faith effort to identify all Utility Companies and list them on the Utility Services List and believe that the Utility Services List includes all of the Utility Companies. However, the Debtors reserve the right to supplement the Utility Services List if they inadvertently omitted any Utility Company. Furthermore, the inclusion of any entity on the Utility Services List is not an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect to such characterization.

Debtors pay approximately \$8,155,000 each month for Utility Services in the aggregate, which is calculated as the aggregate historical average for the 12-month payment period ended December 31, 2023, (for each Utility Company, the “*Average Monthly Utility Company Cost*”). As of the Petition Date, five Utility Companies (Duke Energy, Gas South LLC, Georgia Power, Mississippi Power, and Texican Holdings, Inc.) each hold deposits from the Debtors which, in the aggregate, total approximately \$6,729,804.

**B. The Proposed Adequate Assurance**

12. Section 366(b) of the Bankruptcy Code provides that a utility may alter, refuse, or discontinue a chapter 11 debtor’s utility service if the utility does not receive from the debtor adequate “assurance of payment” within 30 days after the petition date. 11 U.S.C. § 366(c)(2). Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase “adequate assurance of payment” to mean, inter alia, “a cash deposit.” 11 U.S.C. § 366(c)(1)(A).

13. The Debtors intend to pay postpetition obligations owed to the Utility Companies in the ordinary course of business and in a timely manner. Cash held by the Debtors, cash generated in the ordinary course of business, cash from the Debtors’ proposed debtor-in-possession financing, and cash otherwise available to the Debtors will provide sufficient liquidity to pay obligations related to the Utility Services in accordance with prepetition practices.

14. To provide the Utility Companies with adequate assurance of payment, the Debtors propose to deposit \$1,944,000 (the “*Adequate Assurance Deposit*”) into a segregated account (the “*Adequate Assurance Account*”). The amount of the Adequate Assurance Deposit is, for each Utility Company, (a) approximately half of the Average Monthly Utility Company Cost for such Utility Company, minus (b) any deposit held by such Utility Company. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the duration of these

chapter 11 cases and may be applied to any postpetition defaults in payment to the Utility Companies.

15. The Debtors propose that the Adequate Assurance Deposit may be adjusted by the Debtors downward upon reconciliation and payment by the Debtors of a Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company or adjusted upward if the Debtors identify additional Utility Companies within the meaning of section 366 of the Bankruptcy Code.

16. The Debtors submit that the availability of the Adequate Assurance Deposit, together with their demonstrated ability to pay for future Utility Services in the ordinary course of business (collectively, the "*Proposed Adequate Assurance*"), constitutes sufficient adequate assurance of future payment to satisfy the requirements imposed by section 366 of the Bankruptcy Code. Accordingly, the Debtors request that the Court find that any Utility Company that fails to object to this Motion or serve an Additional Assurance Request (as defined below) be deemed to have been provided adequate assurance of payment pursuant to section 366 of the Bankruptcy Code and prohibited from discontinuing, altering, or refusing to provide Utility Services, including as a result of unpaid charges for prepetition Utility Services.

**C. The Adequate Assurance Procedures**

17. To address the right of any requesting Utility Company under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance other than the Proposed Adequate Assurance, the Debtors propose the following procedures (the "*Adequate Assurance Procedures*") be adopted:

- a. the Debtors will serve a copy of this Motion, the Interim Order, and the Final Order to each Utility Company on the Utility Services List within three business days after entry of the respective order by the Court granting this Motion;

- b. subject to paragraphs (c) – (f) herein, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$1,944,000, in the Adequate Assurance Account within 10 business days after entry of the Interim Order granting this Motion or as soon thereafter as is reasonably practicable;
- c. subject to the Adequate Assurance Procedures, each Utility Company shall be entitled to disbursement of the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List, as may be amended or modified in accordance with the Interim and Final Orders granting this Motion, and such funds shall constitute adequate assurance for each Utility Company;
- d. if an amount relating to Utility Services provided postpetition by a Utility Company is unpaid and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing a notice with the Court demanding payment and giving notice to: (a) the Debtors, 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814, Attn: Jason E. Paral; (b) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219-4071, Attn: Peter J. Barrett and Jeremy S. Williams; (c) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036-7708, Attn: David S. Meyer and Jessica C. Peet, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Matthew J. Pyeatt and Trevor G. Spears; (d) counsel to an ad hoc group of holders of certain of the Debtors’ funded indebtedness, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: David Schiff and Hailey W. Klabo; (e) the Office of the United States Trustee for the Eastern District of Virginia; and (f) the official committee of unsecured creditors (if any) appointed in these chapter 11 cases and their counsel (collectively, the “*Notice Parties*”). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed;
- e. the portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Company; (ii) the confirmation of a chapter 11 plan in these chapter 11 cases; and (iii) the conclusion of these chapter 11 cases, if not applied earlier;
- f. any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must file and serve a request for additional assurance (an “*Additional Assurance Request*”) on the Notice Parties;



- g. any Additional Assurance Request must: (i) be filed with the Court and served on the Notice Parties; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable;
- h. any Utility Company that does not timely file with the Court and serve an Additional Assurance Request will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to or discriminating against the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance);
- i. the Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable;
- j. pending resolution at the Determination Hearing (as defined below), the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or on account of any objections to the Proposed Adequate Assurance; and
- k. if the Debtors and the Utility Company are not able to reach an alternative resolution within fourteen (14) days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "***Determination Hearing***") pursuant to section 366(c)(3) of the Bankruptcy Code.

**D. Modifications to the Utility Services List**

18. The Debtors have made a good-faith effort to identify all Utility Companies and list them on the Utility Services List and believe that the Utility Services List includes all of the Utility Companies. To the extent the Debtors identify any additional Utility Company or discontinue any Utility Services, the Debtors request that the relief requested in this Motion,

including the proposed Adequate Assurance Procedures and the Interim and Final Orders granting this Motion, shall apply to any subsequently identified Utility Company, provided that the Debtors add such Utility Company to the Utility Services List and serve such Utility Company with a copy of the Interim and Final Orders regarding Utility Services, including the Adequate Assurance Procedures, with sufficient time for such Utility Company to object in advance of the Determination Hearing, allocate additional amounts to the Adequate Assurance Deposit in accordance with this Motion, and provide notice to the subsequently identified Utility Company of its proposed Adequate Assurance. As a result of any reconciliation and payment by the Debtors of a Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company to the Utility Services List, the Debtors will add to or subtract from the Adequate Assurance Deposit an amount equal to (a) approximately half of the Average Monthly Utility Company Cost for such Utility Company minus (b) any deposit held by such Utility Company.

#### **BASIS FOR RELIEF REQUESTED**

##### **A. The Utility Companies are Adequately Assured of Payment of Future Services.**

19. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires a debtor to provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility company within 30 days of the Petition Date or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples of what constitutes "assurance of payment." Although assurance of payment must be "adequate," which means that it needs to be in an amount that is sufficient to insure against unreasonable risk of nonpayment but not necessarily an absolute guarantee of the debtors' ability

to pay. *See In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (recognizing that “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.—NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366[] requires . . . ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.—NY*, 117 F.3d 646 (2d Cir. 1997); *see also In re Tekoil & Gas Corp.*, No. 08-80270G3-11, 2008 WL 2928555, at \*2 n.1 (Bankr. S.D. Tex. July 21, 2008) (“A debtor may continue to pay a utility, and a utility may continue to provide service, in the absence of an injunction preventing the utility from terminating service.”) (citing *In re Viking Offshore (USA) Inc.*, No. 08-31219-H3-11, 2008 WL 782449, at \*3 n.3 (Bankr. S.D. Tex. Mar. 20, 2008)).

20. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to make an informed decision as to whether the utility will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002). In determining the level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where

such deposits likely would “jeopardize the continuing operation of the debtor merely to give further security to suppliers who already are reasonably protected”).

21. Here, the Utility Companies are adequately assured against any risk of nonpayment for future services, particularly in light of the Debtors’ general history of paying utility bills on time and in the ordinary course. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course as a result of the Debtors’ proposed budget provides assurance of the Debtors’ payment of their future obligations. Moreover, termination of Utility Services could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *See In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at \*2 (Bankr. N.D. Tex. Jan. 4, 2009) (“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”); *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

22. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “[t]he plain language of [section] 366 of the Bankruptcy Code allows the [c]ourt to adopt the [p]rocedures set forth in the [u]tility [o]rder”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Companies believe they

have under sections 366(b) and (c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See, e.g., id.* at \*5–6.

23. The Utility Companies still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See, e.g., id.* at \*6. The Adequate Assurance Procedures give the Utility Companies the opportunity to request modification of the Proposed Adequate Assurance while avoiding a haphazard and chaotic process whereby each Utility Company could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. Because the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein. Indeed, similar procedures have been approved by courts in this district. *See, e.g., In re Paper Source Inc.*, No. 21-30660 (KLP) (Bankr. E.D. Va. Apr. 1, 2021) (approving adequate assurance deposit equal to one half of debtor's monthly utility expenses); *In re Le Tote, Inc.*, No. 20-33332 (KLP) (Bankr. E.D. Va. Aug. 27, 2020) (same); *In re Ascena Retail Group, Inc.*, No. 20-33113 (KRH) (Bankr. E.D. Va. Aug 27, 2020) (same); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Mar. 19, 2020) (same); *In re Gymboree Group, Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va. Feb. 21, 2019) (same).

24. Further, the Court has the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court should exercise its powers under sections 105(a) and

366 of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

**REQUEST FOR IMMEDIATE RELIEF**

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed herein and in the First Day Declarations, (a) approving the Debtors’ proposed adequate assurance of payment for future utility services, (b) prohibiting utility companies from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving additional adequate assurance requests, as well as granting the other relief requested herein, is critical to enabling the Debtors to effectively transition to operating as chapter 11 debtors. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations and significantly impact the Debtors’ ability to reorganize swiftly and efficiently. As such, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)**

26. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**RESERVATION OF RIGHTS**

27. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing in this Motion is intended to be, nor should it be construed as (a) an implication or admission as to the validity or priority of any claim or lien against the Debtors, (b) an impairment or waiver of the Debtors' or any other party in interest's rights to contest or dispute any such claim or lien, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any proposed order, or (e) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

**NOTICE**

28. Notice of this Motion has been provided by delivery to the following parties or their counsel, as applicable: (a) the Assistant United States Trustee for the Eastern District of Virginia; (b) the Debtors' 30 largest unsecured creditors (on a consolidated basis); (c) Davis Polk & Wardwell LLP as co-counsel to the Ad Hoc Group; (d) McGuireWoods LLP as co-counsel to the Ad Hoc Group; (e) McDermott Will & Emery LLP as counsel to the agent under the DIP Facility; (f) Cahill Gordon & Reindel LLP as counsel to the agent under the Senior Secured Credit Facility; (g) Kilpatrick Townsend & Stockton LLP as counsel to the indenture trustee under the 2026 Notes; (h) Kramer Levin Naftalis & Frankel LLP as counsel to the indenture trustees under the Bond Green Bonds and the Epes Green Bonds; (i) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (j) the United States Attorney's Office for the Eastern District of Virginia; (k) the Securities and Exchange Commission; (l) the Internal Revenue Service; (m) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local

Rules; and (n) the Utility Companies. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

**NO PRIOR REQUEST**

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



The Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibits A and B**, respectively, and grant them such other and further relief to which the Debtors may be justly entitled.

Richmond, Virginia  
Dated: March 12, 2024

/s/ Jeremy S. Williams

**KUTAK ROCK LLP**

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

**EXHIBIT A**

**Proposed Interim Order**

David S. Meyer (*pro hac vice* pending)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

In re:	)	
	)	Chapter 11
ENVIVA INC., <i>et al.</i> ,	)	Case No. 24-10453 (BFK)
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**INTERIM ORDER (I) APPROVING  
DEBTORS' PROPOSED ADEQUATE ASSURANCE  
OF PAYMENT FOR FUTURE UTILITY SERVICES,  
(II) PROHIBITING UTILITY COMPANIES FROM ALTERING,  
REFUSING, OR DISCONTINUING SERVICES, (III) APPROVING  
DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL  
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Interim Order*”) (i) approving the Debtors’ proposed adequate assurance of payment for future Utility Services, (ii) prohibiting utility companies from altering, refusing, or discontinuing services, and (iii) approving the Debtors’ proposed procedures for resolving adequate assurance requests, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the 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 the Court having reviewed the Motion and the First Day Declarations; and the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

1. The final hearing (the “*Final Hearing*”) on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2024, and shall be served on the Notice Parties.

2. The Debtors shall deposit \$1,944,000 (the “*Adequate Assurance Deposit*”) into a segregated Account (the “*Adequate Assurance Account*”) within 20 days of the Petition Date as required by section 366 of the Bankruptcy Code; *provided that* to the extent any Utility Company receives any other value from the Debtors on account of adequate assurance, upon agreement with the Utility Company, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.

3. The Adequate Assurance Deposit, together with the Debtors’ ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of payment as required by section 366 of the Bankruptcy Code.

4. Absent compliance with the procedures set forth in the Motion and this Interim Order, the Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

5. The following Adequate Assurance Procedures are hereby approved:

- a the Debtors will serve a copy of the Motion and this Interim Order to each Utility Company on the Utility Services List within three business days after entry of the respective order by the Court granting this Motion;
- b subject to paragraphs (c) – (f) herein, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$1,944,000 in the Adequate Assurance Account within 10 business days after entry of the Interim Order granting this Motion or as soon thereafter as is reasonably practicable;

- c subject to the Adequate Assurance Procedures, each Utility Company shall be entitled to disbursement of the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List, as may be amended or modified in accordance with this Interim Order and the Final Order granting the Motion, and such funds shall constitute adequate assurance for each Utility Company;
- d if an amount relating to Utility Services provided postpetition by a Utility Company is unpaid and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing a notice with the Court demanding payment and giving notice to: (a) the Debtors, 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814, Attn: Jason E. Paral; b) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219-4071, Attn: Peter J. Barrett and Jeremy S. Williams; (c) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036-7708, Attn: David S. Meyer and Jessica C. Peet, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Matthew J. Pyeatt and Trevor G. Spears; (d) counsel to an ad hoc group of holders of certain of the Debtors’ funded indebtedness, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: David Schiff and Hailey W. Klabo; (e) the Office of the United States Trustee for the Eastern District of Virginia; and (f) the official committee of unsecured creditors (if any) appointed in these chapter 11 cases and their counsel (collectively, the “*Notice Parties*”). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed;
- e the portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Company; (ii) the confirmation of a chapter 11 plan in these chapter 11 cases; and (iii) the conclusion of these chapter 11 cases, if not applied earlier;
- f any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise is required to file and serve a request for additional assurance (an “*Additional Assurance Request*”) on the Notice Parties;

- g any Additional Assurance Request is required to: (i) be filed with the Court and served on the Notice Parties; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable;
- h any Utility Company that does not timely file with the Court and serve an Additional Assurance Request is (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance);
- i the Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable;
- j pending resolution at the Determination Hearing (as defined below), the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or on account of any objections to the Proposed Adequate Assurance; and
- k if the Debtors and the Utility Company are not able to reach an alternative resolution within fourteen (14) days of receipt of the Additional Adequate Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "***Determination Hearing***") pursuant to section 366(c)(3) of the Bankruptcy Code.

6. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. All Utility Companies who do not file and serve an Adequate Assurance Request in accordance with the procedures set forth herein shall be: (a) deemed to have received adequate

assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

8. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

9. The Debtors are authorized, in their discretion, to amend the Utility Services List to add or delete any Utility Company and to change the amount of the Adequate Assurance Deposit in connection therewith, consistent with the terms of the Motion and this Interim Order. Any such amended Utility Services List shall be filed with the Court.

10. The Debtors will cause a copy of this Interim Order to be served on any Utility Company subsequently added to the Utility Services List. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

11. The Debtors’ service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

12. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Interim Order is intended nor should it be construed to impair the Debtors’ rights to contest the characterization of any entity as a “utility” within the meaning of section 366 of the Bankruptcy Code or to contest the assessment or the



amount, basis, or validity of any Utility Services that may be alleged to be due, and the Debtors expressly reserve all rights with respect thereto.

13. Nothing in this Interim Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by sections 362 and 365 of the Bankruptcy Code or other applicable law.

14. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

15. Notwithstanding the relief granted in this Interim Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed contemporaneously herewith (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP

Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

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

17. The requirements of Bankruptcy Rule 6004(a) are waived.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon entry of this Interim Order.

19. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

20. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: \_\_\_\_\_  
Alexandria, Virginia

---

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

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- and -

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Trevor G. Spears (*pro hac vice* pending)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/

**EXHIBIT B**

**Proposed Final Order**

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Jessica C. Peet (*pro hac vice* pending)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
ENVIVA INC., *et al.*, ) Case No. 24-10453 (BFK)  
)  
Debtors.<sup>1</sup> ) (Joint Administration Requested)  
)  
\_\_\_\_\_)

**FINAL ORDER (I) APPROVING  
DEBTORS' PROPOSED ADEQUATE ASSURANCE  
OF PAYMENT FOR FUTURE UTILITY SERVICES,  
(II) PROHIBITING UTILITY COMPANIES FROM ALTERING,  
REFUSING, OR DISCONTINUING SERVICES, (III) APPROVING  
DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL  
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Final Order*”) (i) approving the Debtors’ proposed adequate assurance of payment for future Utility Services, (ii) prohibiting utility companies from altering, refusing, or discontinuing services, and (iii) approving the Debtors’ proposed procedures for resolving adequate assurance requests, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the 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 the Court having entered the Interim Order; and the Court having reviewed the Motion and the First Day Declarations; and the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

1. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of payment as required by section 366 of the Bankruptcy Code.

2. Absent compliance with the procedures set forth in the Motion and this Final Order, the Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

3. The following Adequate Assurance Procedures are hereby approved:

- a the Debtors will serve a copy of the Motion, the Interim Order, and this Final Order to each Utility Company on the Utility Services List within three business days after entry of the respective order by the Court granting this Motion;
- b subject to paragraphs (c) – (f) herein, to the extent the Debtors have not already made such deposit following entry of the Interim Order, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$1,944,000 in the Adequate Assurance Account as soon after entry of this Final Order as is reasonably practicable;
- c subject to the Adequate Assurance Procedures, each Utility Company shall be entitled to disbursement of the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled "Proposed Adequate Assurance" on the Utility Services List, as may be amended or modified in accordance with the Interim and Final Orders granting this Motion, and such funds shall constitute adequate assurance for each Utility Company;

- d if an amount relating to Utility Services provided postpetition by a Utility Company is unpaid and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing a notice with the Court demanding payment and giving notice to: (a) the Debtors, 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814, Attn: Jason E. Paral; b) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219-4071, Attn: Peter J. Barrett and Jeremy S. Williams; (c) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036-7708, Attn: David S. Meyer and Jessica C. Peet, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Matthew J. Pyeatt and Trevor G. Spears; (d) counsel to an ad hoc group of holders of certain of the Debtors' funded indebtedness, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: David Schiff and Hailey W. Klabo; (e) the Office of the United States Trustee for the Eastern District of Virginia; and (f) the official committee of unsecured creditors (if any) appointed in these chapter 11 cases and their counsel (collectively, the "**Notice Parties**"). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed;
- e the portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company; (ii) the confirmation of a chapter 11 plan in these chapter 11 cases; and (iii) the conclusion of these chapter 11 cases, if not applied earlier;
- f any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise is required to file and serve a request for additional assurance (an "**Additional Assurance Request**") on the Notice Parties;



- g any Additional Assurance Request is required to: (i) be filed with the Court and served on the Notice Parties; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable;
- h any Utility Company that does not timely file with the Court and serve an Additional Assurance Request is (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance);
- i the Debtors may, without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable;
- j pending resolution at the Determination Hearing (as defined below), the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or on account of any objections to the Proposed Adequate Assurance; and
- k if the Debtors and the Utility Company are not able to reach an alternative resolution within fourteen (14) days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "***Determination Hearing***") pursuant to section 366(c)(3) of the Bankruptcy Code.

4. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

5. All Utility Companies who do not file and serve an Adequate Assurance Request in accordance with the procedures set forth herein shall be: (a) deemed to have received adequate

assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

6. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

7. The Debtors are authorized, in their discretion, to amend the Utility Services List to add or delete any Utility Company and to change the amount of the Adequate Assurance Deposit in connection therewith, consistent with the terms of the Motion and this Final Order. Any such amended Utility Services List shall be filed with the Court.

8. The Debtors will cause a copy of this Final Order to be served on any Utility Company subsequently added to the Utility Services List. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

9. The Debtors’ service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

10. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order is intended nor should it be construed to impair the Debtors’ rights to contest the characterization of any entity as a “utility” within the meaning of section 366 of the Bankruptcy Code or to contest the assessment or the

amount, basis, or validity of any Utility Services that may be alleged to be due, and the Debtors expressly reserve all rights with respect thereto.

11. Nothing in this Final Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by sections 362 and 365 of the Bankruptcy Code or other applicable law.

12. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

13. Notwithstanding the relief granted in this Final Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed contemporaneously herewith (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP

Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Final Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

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

15. The requirements of Bankruptcy Rule 6004(a) are waived.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

17. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

18. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: \_\_\_\_\_  
Alexandria, Virginia

---

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

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- and -

Matthew J. Pyeatt (*pro hac vice* pending)

Trevor G. Spears (*pro hac vice* pending)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/

**EXHIBIT B**

**Utility Services List**

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
8X8 Inc	Telecommunications	675 CREEKSIDE WAY CAMPBELL, CA 95008 UNITED STATES	\$ 10,491.33			\$ 5,245.67
Alabama Power Company	Energy	600 18TH STREET NORTH BIRMINGHAM, AL 35303 UNITED STATES	\$ 53,824.34			\$ 26,912.17
Amory Water and Electric	Energy	129 MAIN STREET NORTH AMORY, MS 38821 UNITED STATES	\$ 49,988.47			\$ 24,994.23
AT&T	Telecommunications	AT&T BANKRUPTCY CENTER 2270 LAKESIDE BLVD, 7TH FLOOR RICHARDSON, TX 75082 UNITED STATES	\$ 1,708.02			\$ 854.01
AT&T Corp	Telecommunications	AT&T BANKRUPTCY CENTER 2270 LAKESIDE BLVD, 7TH FLOOR RICHARDSON, TX 75082 UNITED STATES	\$ 7,804.81			\$ 3,902.41
AT&T U-verse	Telecommunications	AT&T BANKRUPTCY CENTER 2270 LAKESIDE BLVD, 7TH FLOOR RICHARDSON, TX 75082 UNITED STATES	\$ 119.88			\$ 59.94
ATC Alma Telephone Co Inc	Telecommunications	405 W. 11TH STREET ALMA, GA 31510 UNITED STATES	\$ 1,513.50			\$ 756.75

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Atlantech Online Inc	Telecommunications	1010 WAYNE AVENUE SUITE 360 SILVER SPRING, MD 20910 UNITED STATES	\$ 1,203.00			\$ 601.50
Atmos Energy Corporation	Energy	1800 THREE LINCOLN CENTRE 5430 LBJ FREEWAY DALLAS, TX 75240 UNITED STATES	\$ 15,190.32			\$ 7,595.16
BCC Waste Solutions LLC	Waste	13040 UNDERWOOD ROAD SUMMERDALE, AL 36580 UNITED STATES	\$ 12,995.00			\$ 6,497.50
Blue Sky Network LLC	Telecommunications	16559 N. 92ND STREET SUITE 101 SCOTTSDALE, AZ 85260 UNITED STATES	\$ 509.13			\$ 254.57
Carroll EMC	Energy	155 N HWY 113 CARROLLTON, GA 30117 UNITED STATES	\$ 1,474.13			\$ 737.07
CenterPoint Energy Resources Corp	Energy	1111 LOUISIANA STREET HOUSTON, TX 77002 UNITED STATES	\$ 62,500.00			\$ 31,250.00
Century Link	Telecommunications	100 CENTURYLINK DRIVE MONROE, LA 71203 UNITED STATES	\$ 1,458.60			\$ 729.30
Charter Communications	Telecommunications	400 WASHINGTON BLVD STAMFORD, CT 06902 UNITED STATES	\$ 7,618.89			\$ 3,809.44



Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Charter Communications Holding	Telecommunications	400 WASHINGTON BLVD STAMFORD, CT 06902 UNITED STATES	\$ 168.98			\$ 84.49
City of Waycross	Water / Waste	417 PENDLETON ST. WAYCROSS, GA 31501 UNITED STATES	\$ 4,063.51			\$ 2,031.76
Columbia Gas of Virginia Inc	Energy	REVENUE RECOVERY P.O. BOX 117 COLUMBUS, OH 43216 UNITED STATES	\$ 17,216.90			\$ 8,608.45
Comcast Corporation	Telecommunications	COMCAST CENTER 1701 JFK BOULEVARD PHILADELPHIA, PA 19103 UNITED STATES	\$ 115.30			\$ 57.65
Comcast of Maryland	Telecommunications	COMCAST CENTER 1701 JFK BOULEVARD PHILADELPHIA, PA 19103 UNITED STATES	\$ 422.49			\$ 211.24
Commissioners Of Public Works	Energy	121 COURT AVE W GREENWOOD, SC 29646 UNITED STATES	\$ 78,815.84			\$ 39,407.92
Cox Business	Telecommunications	6205 PEACHTREE DUNWOODY ROAD NE ATLANTA , GA 30328 UNITED STATES	\$ 1,204.36			\$ 602.18
Data2Go Wireless	Telecommunications	4171 W. HILLSBORO BLVD. SUITE 3 COCONUT CREEK, FL 33073 UNITED STATES	\$ 2,029.73			\$ 1,014.86
Dialpad Inc	Telecommunications	3001 BISHOP DRIVE SUITE 400A, CA 94583 UNITED STATES	\$ 6,237.39			\$ 3,118.69

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Dominion North Carolina Power	Energy	120 TREDEGAR ST RICHMOND, VA 23219 UNITED STATES	\$ 1,377,890.86			\$ 688,945.43
Dominion Virginia Power	Energy	120 TREDEGAR ST RICHMOND, VA 23219-4306 UNITED STATES	\$ 651,072.62			\$ 325,536.31
Duke Energy	Energy	526 S. CHURCH STREET CHARLOTTE, NC 28202 UNITED STATES	\$ 2,360,781.52	\$ 3,444,032.00		\$ -
eFax Corporate	Telecommunications	700 S. FLOWER STREET 15TH FLOOR LOS ANGELES, CA 90017 UNITED STATES	\$ 262.23			\$ 131.11
Energy Systems Southeast LLC	Energy	3235 VETERANS CIRCLE BIRMINGHAM, AL 35235 UNITED STATES	\$ 648.66			\$ 324.33
Enspire Energy LLC	Energy	350 W. 22ND STREET SUITE 101 NORFOLK, VA 23517 UNITED STATES	\$ 183,970.60			\$ 91,985.30
Florida Gas Transmission Co LLC	Energy	1300 MAIN STREET HOUSTON, TX 77002 UNITED STATES	\$ 2,328.98			\$ 1,164.49
FPL NW FL	Energy	700 UNIVERSE BLVD. NORTH PALM BEACH, FL 33408 UNITED STATES	\$ 12,625.41			\$ 6,312.71
Fuze Inc	Telecommunications	675 CREEKSIDE WAY CAMPBELL, CA 95008 UNITED STATES	\$ 640.26			\$ 320.13

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Gas South LLC	Energy	3625 CUMBERLAND BLVD ATLANTA, GA 30339 UNITED STATES	\$ 163,406.71	\$ 255,000.00		\$ -
Georgia Petroleum Inc	Energy	1620 JAMES P. RODGERS DRIVE VALDOSTA, GA 31601 UNITED STATES	\$ 29,141.86			\$ 14,570.93
Georgia Power	Energy	241 RALPH MCGILL BLVD NE ATLANTA, GA 30308 UNITED STATES	\$ 728,479.68	\$ 1,283,590.00		\$ -
Hampton Roads Utility Billing Service	Water	1434 AIR RAIL AVENUE VIRGINIA BEACH, VA 23455 UNITED STATES	\$ 298.39			\$ 149.19
Jackson County Utilities	Water / Waste	3530 WILEY DRIVE MARIANNA, FL 32446 UNITED STATES	\$ 31,740.37			\$ 15,870.18
Mansfield Power & Gas LLC	Energy	1025 AIRPORT PARKWAY SW GAINESVILLE, GA 30501 UNITED STATES	\$ 139,273.49			\$ 69,636.75
Masergy Communications Inc	Telecommunications	ONE COMCAST CENTER 32ND FLOOR PHILADELPHIA, PA 19103 UNITED STATES	\$ 4,177.34			\$ 2,088.67
Mississippi Power	Energy	2992 WEST BEACH BOULEVRD GULFPORT, MS 39501 UNITED STATES	\$ 764,195.34	\$ 1,368,660.00	\$ 1,806,709.00	\$ -

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Mobile Communications America Inc	Telecommunications	100 DUNBAR STREET SUITE 304 SPARTANBURG, SC 29306 UNITED STATES	\$ 9,473.24			\$ 4,736.62
Multi Mart Water Association	Water	113 GEORGE BENNETT RD LUCEDALE, MS 39452 UNITED STATES	\$ 14,406.62			\$ 7,203.31
NC State Ports Authority	Water / Waste	2202 BURNETT BLVD WILMINGTON, NC 28401 UNITED STATES	\$ 100.00			\$ 50.00
Northampton County Public Works Dept	Water	669 WASHINGTON STREET EASTON, PA 18042 UNITED STATES	\$ 39,171.64			\$ 19,585.82
Piedmont Natural Gas	Energy	4720 PIEDMONT ROW DRIVE CHARLOTTE, NC 28210 UNITED STATES	\$ 48,994.52			\$ 24,497.26
Republic Services Inc	Waste	18500 N. ALLIED WAY PHOENIX, AZ 85054-6164 UNITED STATES	\$ 1,741.66			\$ 870.83
Sampson County Public Works	Water	827 SOUTHEAST BLVD. CLINTON, NC 28328 UNITED STATES	\$ 24,638.04			\$ 12,319.02
Sapphire Gas Solutions LLC	Energy	100 I-45 NORTH SUITE 152A CONROE, TX 77301 UNITED STATES	\$ 32,725.42			\$ 16,362.71
Segra	Telecommunications	11215 N COMMUNITY HOUSE RD 10TH FLOOR CHARLOTTE, NC 28277 UNITED STATES	\$ 2,747.34			\$ 1,373.67

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Southampton County Dept of Utilities	Water / Waste	24307 CHEROENHAKA ROAD COURTLAND, VA 23837 UNITED STATES	\$ 13,805.77			\$ 6,902.89
Southern Light LLC dba Uniti Fiber	Telecommunications	2101 RIVERFRONT DRIVE LITTLE ROCK, AR 72202 UNITED STATES	\$ 475.00			\$ 237.50
Sumter County Water Authority	Water	400 AL-28 LIVINGSTON, AL 35470 UNITED STATES	\$ 3,480.80			\$ 1,740.40
TECO Peoples Gas	Energy	702 N. FRANKLIN STREET TAMPA, FL 33602 UNITED STATES	\$ 14,990.53			\$ 7,495.27
Texican Holdings Inc	Energy	500 DALLAS STREET SUITE 2600 HOUSTON, TX 77002 UNITED STATES	\$ 252,446.72	\$ 378,522.00		\$ -
Time Warner Cable Enterprises LLC	Telecommunications	60 COLUMBUS CIRCLE NEW YORK, NY 10023 UNITED STATES	\$ 1,493.18			\$ 746.59
Town of Ahoskie	Water	500 SOUTH CATHERINE STREET AHOSKIE, NC 27910 UNITED STATES	\$ 10,254.39			\$ 5,127.20
Verizon Communications Inc	Telecommunications	500 TECHNOLOGY DRIVE SUITE 550 WELDON SPRING, MO 63304 UNITED STATES	\$ 190.94			\$ 95.47

Utility Provider Name	Types of Services Provided	Mailing Address	Average Monthly Spend	Deposit	Surety Bond	Adequate Assurance Deposit
Verizon Wireless	Telecommunications	500 TECHNOLOGY DRIVE SUITE 550 WELDON SPRING, MO 63304 UNITED STATES	\$ 30,870.64			\$ 15,435.32
Warrior Waste LLC	Waste	1513 US-80 DEMOPOLIS, AL 36732 UNITED STATES	\$ 1,129.06			\$ 564.53
Waste Industries LLC a GFL Environmental Co	Waste	3301 BENSON DRIVE SUITE 601 RALEIGH, NC 27609 UNITED STATES	\$ 12,991.03			\$ 6,495.51
Waste Management of Mississippi Inc	Waste	382 GALLERIA PARKWAY SUITE 107 MADISON, MS 39110 UNITED STATES	\$ 22,793.40			\$ 11,396.70
Waste Management of Panama City	Waste	6319 E HWY 22 PANAMA CITY, FL 32404 UNITED STATES	\$ 8,298.71			\$ 4,149.35
Waste Management of Virginia Inc	Waste	9371 NC-305 JACKSON, NC 27845 UNITED STATES	\$ 42,920.02			\$ 21,460.01
Waste Pro of Mississippi Inc	Waste	2101 W SR 434 3RD FLOOR LONGWOOD, FL 32779 UNITED STATES	\$ 4,984.16			\$ 2,492.08
West Florida Electric	Energy	5282 PEANUT ROAD GRACEVILLE, FL 32440 UNITED STATES	\$ 767,967.92			\$ 383,983.96
Wireless Watchdogs LLC	Telecommunications	317 ISIS AVENUE SUITE 201 INGLEWOOD, CA 90301 UNITED STATES	\$ 3,057.08			\$ 1,528.54