



ENTERED  
07/13/2020

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re: : Chapter 11  
: :  
HI-CRUSH INC., *et al.*,<sup>1</sup> : Case No. 20-33495 (DRJ)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**ORDER (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**

**[Relates to Motion at Docket No. 15 ]**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an 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 jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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



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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 all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; 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 the Order, it is hereby

**ORDERED THAT:**

1. 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.

2. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account during the pendency of these Chapter 11 Cases, subject to and consistent with the terms of any DIP Order (as defined herein). For the purposes of this Order, the Adequate Assurance Deposit shall be the sum of the individual adequate assurance amounts for the Utility Companies. As to each Utility Company, the amount will be equal to the lesser of (A)(i) 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, minus (ii) the amount of any bond or deposit held by such Utility Company, plus (iii) the amount owed to such Utility Company for prepetition Utility Services, whether or not such amount has been billed; and (B) 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.

3. The Debtors shall deposit the Adequate Assurance Deposit in an amount equal to that listed on Exhibit 1 attached to the Motion for each Utility Company listed therein within twenty (20) days after the Petition Date, consistent with the terms and conditions of any DIP Order.

4. The balance of the Adequate Assurance Deposit may be adjusted or reduced by the Debtors 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) Hi-Crush Inc., 1330 Post Oak Blvd, Suite 600 Houston, Texas 77056 (Attn: Mark C. Skolos (email: mskolos@hicrushinc.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Annemarie V. Reilly, Esq. (email: annemarie.reilly@lw.com)) and 330 North Wabash Ave., Suite 2800, Chicago, Illinois 60611 (Attn: Asif Attarwala, Esq. (email: asif.attarwala@lw.com)); (iii) Hunton Andrews Kurth LLP, 600 Travis Street, Suite 4200 (Attn: Timothy A. Davidson II, Esq. and Ashley L. Harper, Esq. (emails: TadDavidson@HuntonAK.com, and AshleyHarper@HuntonAK.com)); (iv) Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn: Brian S. Hermann, Esq. and Elizabeth R. McColm, Esq. (emails: bhermann@paulweiss.com, and emccolm@paulweiss.com)); (v) Porter Hedges LLP, 1000 Main St, 36<sup>th</sup> Floor, Houston, Texas 77002 (Attn: John Higgins (email: jhiggins@porterhedges.com)); (vi) counsel to any statutory

committee appointed in these cases, if any; and (vii) the United States Trustee for the Southern District of Texas (Attn: Stephen Statham and Hector Duran (emails: stephen.statham@usdoj.gov and hector.duranjr@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 (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.

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 a copy of the Motion and this Order granting the relief requested herein on each Utility Company within seven (7) business days after entry of this Order by the Court.
- (c) The funds in the Adequate Assurance Account shall constitute adequate assurance for each Utility Company in the amounts set forth for such Utility Company in the column labeled “Adequate Assurance Deposit” on the Utility Company List.
- (d) 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.
- (e) 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.
- (f) Unless a Utility Company serves an Additional Adequate Assurance Request, such Utility Company shall be: (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code; and (ii) subject to (j) below, forbidden from discontinuing, altering, or refusing Utility Services 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.
- (g) 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.
- (h) Without further order of the Court, the Debtors, in consultation with the Ad Hoc Group, 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.

- (i) 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 fourteen (14) 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**”).
- (j) Pending resolution at any such Determination Hearing, the Utility Company filing such Additional Adequate Assurance Request shall 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, 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.
- (k) 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.
- (l) 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 this Court.

9. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures, provided, however, that nothing herein shall prejudice the right of a Utility Company to propose alternative procedures by filing a motion and after notice and hearing.

10. The Debtors are authorized, in their sole discretion, to amend the Utility Company List to add any Utility Company, and this Order shall apply in all respects to any such Utility Company that is subsequently added 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 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-day 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. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Order.

15. 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.

16. Nothing in the Motion or this Order, or the Debtors’ payment of any claims pursuant to this Order, shall 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 this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

17. Notwithstanding anything to the contrary contained herein, (i) any payment made, or to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the “**DIP Orders**”), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control.

For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

18. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

19. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

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

21. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

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

**Signed: July 13, 2020.**

  
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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**