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The following constitutes the order of the Court.
Signed: June 9, 2023

William J. Lafferty, III
U.S. Bankruptcy Judge

9 *Proposed Counsel for the Debtor*
10 *and Debtor in Possession*

11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 In re:
15 THE ROMAN CATHOLIC BISHOP OF
16 OAKLAND, a California corporation sole,
17 Debtor.

Case No. 23-40523 WJL

Chapter 11

**FINAL ORDER ESTABLISHING
ADEQUATE ASSURANCE PROCEDURES
WITH RESPECT TO THE DEBTOR'S
UTILITY PROVIDERS**

Judge: Hon. William J. Lafferty

Date: June 6, 2023

Time: 2:30 p.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

1 Upon the *Debtor's Motion For an Order Establishing Adequate Assurance Procedures With*
2 *Respect to the Debtor's Utility Providers*, dated May 8, 2023 (the "Utilities Motion"),¹ filed by the Roman
3 Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the
4 "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case" or
5 the "Bankruptcy Case") for entry of interim and final orders (i) approving the Debtor's proposed form of
6 adequate assurance of payment for postpetition Utility Services, (ii) establishing procedures for providing
7 adequate assurance and resolving objections of Utility Providers relating to the adequacy of the proposed
8 adequate assurance, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing service
9 to, or discriminating against, the Debtor because of the commencement of this Bankruptcy Case or for a
10 debt that is owed by the Debtor for Utility Services rendered before the Petition Date; and (iv) granting
11 related relief, all as more fully set forth in the Utilities Motion; the Court having reviewed and considered
12 the Utilities Motion, the First Day Declaration, all other filings in support of any opposition to the Utilities
13 Motion, and the arguments made at the interim and final hearings on the Utilities Motion; the Court finding
14 that it has jurisdiction over this matter, that venue in this Court is proper, and that notice of the Utilities
15 Motion and the interim and final hearings thereon was reasonable and sufficient under the circumstances
16 for the granting of interim and final relief; the Court finding that ample cause exists to grant a waiver of
17 the 14-day stay imposed by Bankruptcy Rule 6004(h) for the entry of a final order granting the Utilities
18 Motion; and the Court further finding that the relief requested in the Utilities Motion is in the best interests
19 of the Debtor, its creditors, and other parties in interest; and after due deliberation and good cause
20 appearing

21 **IT IS HEREBY ORDERED THAT:**

- 22 1. The Utilities Motion is GRANTED on a final basis.
- 23 2. The Adequate Assurance Deposit is hereby approved on a final basis and is deemed
24 adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.
- 25
- 26
- 27

28 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Utilities Motion.

1 3. For the avoidance of doubt, any Utility Providers that received an Adequate Assurance
2 Deposit pursuant to the Interim Order will be bound by the time limits set forth in the Interim Order and
3 not in this Final Order.

4 4. The following Adequate Assurance Procedures to be utilized in connection with the
5 Adequate Assurance Deposit are approved on a final basis:

- 6 (a) The Debtor will fax, e-mail, serve by mail, or otherwise expeditiously send a copy
7 of this Final Order (once entered by the Court), which includes the Adequate
8 Assurance Procedures, to each Utility Provider on the Utility Service List within
9 three (3) business days after entry of this Final Order by the Court.
- 10 (b) For any Adequate Assurance Deposit not previously deposited in the Adequate
11 Assurance Deposit after entry of the Interim Order, the Debtor will deposit the
12 Adequate Assurance Deposit in the Adequate Assurance Account within five (5)
13 business days of entry of the Final Order; provided, that to the extent any Utility
14 Provider receives any additional assurance of payment as set forth herein, the
15 Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate
16 Assurance Account by such amount.
- 17 (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider
18 shall be returned to the Debtor on the earlier of (i) the date on which the Debtor has
19 terminated the service from such provider and have satisfied in full all postpetition
20 obligations due and owing to the applicable Utility Provider and (ii) the effective
21 date of a plan of reorganization in the Bankruptcy Case, if not applied earlier.
- 22 (d) Any Utility Provider that was not included in the relief obtained in the Interim
23 Order (a “New Utility Provider”) and that is not satisfied with the Adequate
24 Assurance Deposit must serve a written request for additional assurance (a “New
25 Utility Provider Additional Assurance Request”) on the following parties: (i) the
26 Debtor, Attn: Paul Bongiovanni, 2121 Harrison Street, Suite 100, Oakland, CA
27 94612 (PBongiovanni@oakdiocese.org); and (ii) proposed counsel for the Debtor,
28 Foley & Lardner LLP, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226-
3489, Attn: Ann Marie Uetz, Esq. (auetz@foley.com) (collectively, the “Adequate
Assurance Notice Parties”).
- (e) Any New Utility Provider Additional Assurance Request must (i) be made in
writing, (ii) identify the Debtor to which Utility Services are provided, (iii) include
a summary of the Debtor’s payment history relevant to the affected account(s),
including the amounts of any security deposits, and (iv) set forth an explanation of
why the Utility Provider believes the Adequate Assurance Deposit is not sufficient
adequate assurance of future payment.
- (f) Any New Utility Provider Additional Assurance Request must be made and
actually received by the Adequate Assurance Notice Parties by no later than twenty
(20) days after entry of this Final Order by the Court, or such greater period as may

1 be agreed to by the Debtor and the relevant New Utility Provider. If a New Utility
2 Provider fails to timely file and serve an Additional Assurance Request, it shall: (i)
3 be deemed to have received adequate assurance of payment “satisfactory” to such
4 New Utility Provider in compliance with section 366 of the Bankruptcy Code; and
5 (ii) be forbidden to discontinue, alter, or refuse service to, or discriminate against,
6 the Debtor on account of any unpaid prepetition charges, or require additional
7 assurance of payment other than the Adequate Assurance Deposit.

8 (g) Upon receipt by the Adequate Assurance Notice Parties of any New Party
9 Additional Assurance Request as set forth above, the Debtor shall have the greater
10 of (i) twenty (20) days from the receipt of such Additional Assurance Request, and
11 (ii) thirty (30) days from entry of an order (the “Resolution Period”) to negotiate
12 with such New Utility Provider to resolve such New Utility Provider’s Additional
13 Assurance Request, or such greater period as may be agreed to by the Debtor and
14 the relevant New Utility Provider in writing.

15 (h) If the Debtor determines that a New Utility Provider Additional Assurance Request
16 or any consensual agreement reached in connection therewith is reasonable, the
17 Debtor may resolve any New Utility Provider Additional Assurance Request
18 without further order of the Court, and may, in connection with any such agreement,
19 provide a New Utility Provider with additional adequate assurance of future
20 payment, including but not limited to cash deposits, prepayments, or other forms of
21 security.

22 (i) If the Debtor determines that the New Utility Provider Additional Assurance
23 Request is not reasonable and is not able to reach a resolution with the New Utility
24 Provider during the Resolution Period, the Debtor, during or immediately after the
25 Resolution Period, will schedule a hearing before this Court to determine the
26 adequacy of assurances of payment with respect to such New Utility Provider (the
27 “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.

28 (j) Pending resolution of a disputed New Utility Provider Additional Assurance
Request at the Determination Hearing, the relevant New Utility Provider shall be
prohibited from discontinuing, altering, or refusing service to the Debtor on account
of unpaid charges for prepetition services or on account of any objections to the
Adequate Assurance Deposit.

5. Absent compliance with the procedures set forth in the Motion and this Order, the Utility
Providers are prohibited from altering, refusing, or discontinuing service on account of any unpaid
prepetition charges and are deemed to have received adequate assurance of payment in compliance with
section 366 of the Bankruptcy Code.

6. The Debtor is authorized, in its sole discretion, to amend the Utility Service List to add or
delete any Utility Provider, and this Order shall apply to any Utility Provider that is subsequently added

1 to the Utility Service List. In addition, the Debtor may terminate the services of any Utility Provider and
2 are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of
3 such terminated Utility Provider.

4 7. The Debtor shall serve a copy of this Order on any Utility Provider that is subsequently
5 added to the Utility Services List and deposit two (2) weeks' worth of estimated utility costs in the
6 Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with
7 any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such
8 subsequently added Utility Providers shall have twenty (20) days from the date of service of this Order to
9 make an Additional Assurance Request.

10 8. Any Utility Provider that fails to timely provide the Debtor with an Additional Assurance
11 Request in accordance with the procedures set forth here shall be deemed to have consented to the
12 Adequate Assurance Procedures and shall be bound by this Order.

13 9. Nothing in this Order shall be construed as: (a) an admission regarding the validity of any
14 prepetition claim against the Debtor; (b) a promise or requirement to pay any prepetition claim; (c) a
15 request or authorization to assume any prepetition executory contract; (d) a waiver of the Debtor's, or any
16 estate representative's, right to dispute any claim on any grounds; or (e) otherwise a waiver of the Debtor's
17 rights under the Bankruptcy Code or other applicable law.

18 10. This Order shall be immediately effective and enforceable upon entry.

19 11. The Debtor is authorized to take all actions necessary or appropriate to effectuate the relief
20 granted in this Order.

21 12. This Court shall retain jurisdiction with respect to all matters arising from or related to the
22 implementation of or interpretation of this Order.

23
24 **APPROVED AS TO FORM:**

25 OFFICE OF THE UNITED STATES TRUSTEE

26
27 By: /s/ Jason Blumberg
28 Jason Blumberg
Trial Attorney

FINAL ORDER APPROVING UTILITIES MOTION

1 **APPROVED AS TO FORM:**

2 LOWENSTEIN SANDLER LLP

3

4 By: /s/ Brent I. Weisenberg

5 Brent I. Weisenberg

6 Proposed Attorneys for the

7 Official Committee of Unsecured Creditors

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END OF ORDER

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All ECF Recipients.