

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS
TO FILE UNDER SEAL THE COLUMBIA GAS SUB-CONTRACTOR LISTS
ATTACHED AS SCHEDULES TO EXHIBIT I TO EXHIBIT C OF THE DEBTORS’
CUSTOMER PROGRAM MOTION AND SIMILAR FUTURE LISTS**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby file this motion (this “**Seal Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “**Seal Order**”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1(d) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), authorizing the Debtors to file under seal Schedules A-1 and A-2 to Exhibit I to the proposed form of order attached as Exhibit C to the *Debtors’ Motion for Entry of an Order, Pursuant to Sections 105(a), 363(b), 503(b)(1), 1107(a) and 1108 of the Bankruptcy Code, Authorizing, But Not Directing (I) the Debtors to Pay Certain Prepetition Claims, Conditioned upon Prior Customer Payment, (II) the Debtors to Honor Customer Obligations, (III) the Debtors to Implement Control Procedures for Customer Project Funding and Completion, and (IV) Granting Related Relief* (the “**Customer Program Motion**”),

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



and any future lists filed in the future under agreements contemplated by the Customer Programs Motion.² In support of this Seal Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d).

BACKGROUND

A. General

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

3. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

² Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Customer Program Motion.

B. Customer Program Motion

4. Contemporaneously herewith, the Debtors filed the Customer Program Motion, which seeks approval of, among other relief, authority to enter into agreements with their Customers on a project-by-project basis to fund ongoing construction and related costs and to satisfy the claims of Sub-Contractors that have the ability to put mechanics liens on the Projects or otherwise are critical to ongoing Project construction. For the benefit of the Court, a form Customer Project Completion Agreement is attached as Exhibit 1 to the proposed form of order approving the Customer Program Motion.

5. Prior to the Petition Date, the Debtors reached an agreement with Columbia Gas, of which Debtors seek approval in the proposed order attached as Exhibit C to the Customer Program Motion. The Columbia Gas Agreement is attached as Exhibit I to Exhibit C to the Customer Program Motion. Lists of Sub-Contractors employed by the Debtors on the Columbia Gas Project is attached as Schedules A-1 and A-2 to Exhibit I to Exhibit C to the Customer Program Motion (the “**Confidential Schedules**”).

RELIEF REQUESTED

6. By this Seal Motion, the Debtors request entry of the Order authorizing the Debtors to file the Confidential Schedules under seal, and any similar lists with other customers that need to be filed with this Court under seal. In addition, the Debtors request that the Confidential Schedules and similar future exhibits not be made available to anyone, except to the Court, the U.S. Trustee, counsel to Columbia Gas, counsel to any official committee appointed in these chapter 11 cases, and any other parties as otherwise ordered or required by the Court.

BASIS FOR RELIEF REQUESTED

7. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides in part that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1). In addition, under section 105(a) of the Bankruptcy Code, the Court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a).

8. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides, “On motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information [.]” FED. R. BANKR. P. 9018. Local Rule 9018-1(d) also provides, in relevant part, that, “Any party who seeks to file documents under seal must file a motion to that effect.” DEL. BANKR. L.R. 9018-1(d).

9. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting party and has no discretion to deny the application.” *In*

re Orion Pictures Corp., 21 F.3d at 27. Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Id.*

10. The Debtors respectfully submit that sealing the Confidential Schedules is warranted. The Confidential Schedules provide the current list of the Debtors’ Sub-Contractors associated with the Columbia Gas Project who the parties to such project intend to treat akin to lienholders and critical vendors in connection with the work they perform on the Columbia Gas Project. The Debtors submit that these Sub-Contractors are vital to the Debtors’ completion of the Columbia Gas Project. However, the Debtors are concerned that disclosure of the list of Sub-Contractors, as well as the agreed-upon payments thereto, will compromise the Debtors’ ability to negotiate with individual Sub-Contractors; the same reasons a critical vendor list is typically not filed with the Court.

11. The relief requested is thus necessary to ensure that the Debtors’ efforts to maximize the values of their properties are not hindered. *See, e.g., In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (finding that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Furthermore, sealing the Confidential Schedules is consistent with the policy underlying section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, which “must be viewed from the practical perspective of damage to the estate or its creditors, and squarely includes information that could prejudice either of them[.]” *Id.* at 725; *see also In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2013) (noting that sealing commercial information under section 107(b)(1) of the Bankruptcy Code “includes situations where a bankruptcy court may reasonably determine that allowing such disclosure would have a chilling effect on [business] negotiations, ultimately affecting the viability of Debtors.”)

(citations and quotations omitted). As such, protecting the information set forth in the Confidential Schedules furthers the purposes of section 107(b).

12. The Debtors submit that filing the Confidential Schedules under seal will not cause undue prejudice to any parties in interest. To ensure that the key constituencies in the chapter 11 cases receive adequate disclosure, the Debtors have provided copies of the Confidential Schedules to the Court, the U.S. Trustee, and Columbia Gas on a confidential basis, and will provide copies of the Confidential Schedules to any official committees appointed in these chapter 11 cases and such other parties as may be ordered or required by the Court. The Debtors submit that the foregoing provides sufficient safeguards to ensure that the relief requested in this Seal Motion will not adversely affect the interests of parties to these chapter 11 proceedings while protecting the Debtors' legitimate interest in keeping sensitive business information from the public's view.

13. For the reasons set forth above, the Debtors submit that good cause exists for the Court to grant the relief requested herein and that approval of this Seal Motion is necessary and appropriate, and further submit that such relief should extend to any similar lists subsequently filed with the Court in connection with the Customer Program Motion.

NOTICE

14. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors' thirty (30) largest unsecured creditors (excluding insiders); (v) the Securities and Exchange Commission; and (vi) counsel to the Debtors' post-petition lenders. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and

Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (i) enter the Order authorizing the Debtors to file the Confidential Schedules under seal and (ii) grant the Debtors such other and further relief as is just.

Dated: October 22, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ M. Blake Cleary

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EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
Debtors.)	(Jointly Administered)
)	Ref. Docket No. ____

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL THE COLUMBIA
GAS SUB-CONTRACTOR LISTS ATTACHED AS SCHEDULES TO
EXHIBIT I TO EXHIBIT C OF THE DEBTORS’ CUSTOMER
PROGRAM MOTION AND SIMILAR FUTURE LISTS**

Upon the motion (the “**Seal Motion**”)² filed by the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in these chapter 11 cases for entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d), authorizing the Debtors to file the Confidential Schedules and similar future lists under seal; and it appearing that the relief requested in the Seal Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Seal Motion in this District is proper before this Court pursuant to 28 U.S.C.

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² Capitalized terms used but not defined herein have the meaning assigned to such terms in the Seal Motion.

§§ 1408 and 1409; and due and proper notice of the Seal Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and after due deliberation; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Seal Motion is GRANTED as set forth herein.
2. The Debtors are authorized to file the Confidential Schedules under seal.
3. The Confidential Schedules shall not be made available to anyone, except to the Court, the U.S. Trustee, counsel to Columbia Gas, counsel to any official committee appointed in these chapter 11 cases, and other parties as otherwise ordered or required by the Court.
4. Any subsequent pleadings that attach the Confidential Schedules or make reference to the information contained therein, and any similar lists filed in connection with the Customer Programs Motion, shall also be filed under seal and/or redacted to preserve the confidentiality of such information.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
7. This Court shall retain jurisdiction and power with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge