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PROPOSED ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION
**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION**

In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	
)	Case No. 03-46590(DML)11
Debtors.)	Jointly Administered
)	
)	Hearing Date and Time: To Be Set

**DEBTORS' AMENDED MOTION FOR AN ORDER PURSUANT TO 11 U.S.C.
 § 366(b): (A) PROHIBITING UTILITY COMPANIES FROM
 ALTERING, REFUSING OR DISCONTINUING SERVICE TO DEBTORS; (B)
 DETERMINING THAT ADEQUATE ASSURANCE HAS BEEN PROVIDED; AND (C)
ESTABLISHING PROCEDURES FOR REQUESTS FOR ADDITIONAL ASSURANCE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, file this amended motion for entry of an order pursuant to section 366 of the Bankruptcy Code (a) prohibiting utility companies from altering, refusing or discontinuing service to the Debtors; (b) determining that adequate assurance of payment to the

Debtors' utility companies has been provided; and (c) establishing procedures for determining requests for additional assurance of payment, and respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Joint Administration Request is Pending. Concurrently with the filing of the Motion, the Debtors have moved the court to jointly administer the bankruptcy estates of the Debtors.

4. The Creditors' Committee. No creditors' committee has yet been appointed in these cases by the United States Trustee. Further, no trustee or examiner has been requested or appointed in any of the Debtors' chapter 11 cases.

FACTUAL BACKGROUND

5. Mirant and its direct and indirect subsidiaries comprise a competitive energy concern that generates and sells electricity in North America, the Philippines and the Caribbean. Through its direct and indirect subsidiaries, Mirant produces, sells and delivers reliable energy products and services to utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers. Mirant's

core business centers on the production and sale of electricity and electrical capacity (essentially the ability to produce electricity on demand). Mirant currently owns or controls more than 21,800 megawatts of electric generating capacity around the world, of which more than 18,000 megawatts is located in the United States. In 2002, Mirant produced 73 million megawatt-hours of electricity, sold 312 million megawatt-hours of electricity and sold or marketed an aggregate average of 21 billion cubic feet per day of natural gas.

6. Mirant employs in excess of 7,000 employees worldwide, of which approximately 1,100 employees are based at Mirant's corporate headquarters in Atlanta and approximately 5,900 employees are based at operating facilities. In 2002, Mirant recorded \$542 million loss in earnings before interest, taxes and depreciation ("EBITDA") on a consolidated basis. Its 2002 operating revenues were approximately \$6.4 billion.

7. A more detailed description of Mirant's assets, liabilities, and business operations, and a discussion of the events leading to the commencement of these chapter 11 cases is set forth in the Affidavit of John W. Ragan in Support of Certain First Day Motions.

Utility Services

8. In connection with the operation of their businesses and management of their properties, the Debtors obtain a wide range of utility services (together, the "Utility Services") from many different utility companies. Included among the Debtors' Utility Services are electricity, telephone, gas, oil, coal, pipeline, rail and transmission services. A list identifying the utility companies providing services to the Debtors is annexed hereto as Exhibit "A" (such utility companies together with any utility companies inadvertently excluded from Exhibit "A," the "Utility Companies").

9. Historically, the Debtors have paid all amounts owed to the Utility Companies in full and on time. Furthermore, to the best of the Debtors' knowledge, the Debtors

are current with respect to their undisputed utility invoices, other than payment interruptions that may be caused by the commencement of these chapter 11 cases.

10. Prior to the Petition Date, the average monthly cost of Utility Services was approximately \$10.6 million in the aggregate.

11. The Debtors currently have in excess of \$733 million of available cash and anticipate receiving approval of a \$500 million debtor in possession financing facility.

12. It is essential that the Utility Services continue uninterrupted. If the Utility Companies are permitted to terminate Utility Services, the Debtors' operations, including its generating plants, will be impaired and may be forced to shut down. The latter event would have devastating consequences for the Debtors' operations, jeopardizing the Debtors' ability to reorganize and exposing their employees to the risk of being laid-off.

13. Moreover, due to the particular nature of the Debtors' businesses -- supplying energy services nationwide -- a disruption in service could present health and safety hazards to the Debtors' customers and the public at large. Quite simply, a cessation in Utility Services could leave millions of homeowners and businesses without power. To avert this potentially disastrous situation, the Debtors have sought the relief requested herein to avoid the termination of essential Utility Services except on terms established by this Court.

14. It is not realistic to expect the Debtors to be able to work out individual adequate assurance arrangements with each Utility Company, given the hundreds of Utility Companies that supply the Debtors' operations.

RELIEF REQUESTED

15. By this motion, the Debtors seek the entry of an order (the "Utility Order"), pursuant to sections 105(a) and 366 of the Bankruptcy Code (a) prohibiting the Utility Companies from altering, refusing or discontinuing services, including the making of demands

for security deposits or accelerated payment terms; (b) determining that the Utility Companies have been provided with “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code; (c) establishing procedures for determining requests for additional assurance of payment, providing that each Utility Company may petition this Court for relief consistent with section 366.

BASIS FOR RELIEF

16. Section 366 provides as follows:

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366. Section 366 protects a debtor from the termination of essential utility services within the first 20 days after the filing of a petition, and thereafter if the debtor provides adequate assurance of payment.

A. Section 366 Covers all the Scheduled Utility Companies.

17. The legislative history of section 366 indicates that it was intended “to cover utilities that have some special position with respect to the debtor, such as an electric company, gas supplier, or telephone company that is a monopoly in the area so that the debtor

cannot easily obtain comparable service from another utility.” S. Rep. No. 989, 95th Cong., 1st Sess. 60.

18. Courts have defined the scope of “utilities” covered by section 366 expansively, including many entities not traditionally considered utilities. See In re Good Time Charlie’s Ltd., 25 B.R. 226, 227 (Bankr. E.D. Pa. 1982); Collier § 366.05 (15th ed. rev. 2003) (explaining that in view of the purpose of section 366, courts have read the term, “utility,” broadly); see Hobbs v. Summit House Condominiums (In re Hobbs), 20 B.R. 488, 489 (Bankr. E.D. Pa. 1982) (a condominium association deemed a utility under section 366); see Aponte v. Aungst (In re Aponte), 82 B.R. 738, 743 (Bankr. E.D. Pa. 1988) (a residential landlord deemed a utility under section 366); see Petrallex Stainless, Ltd. v. Bishop Tube Division of Christiana Metals, 78 B.R. 738, 742 (Bankr. E.D. Pa. 1987) (a commercial landlord deemed a utility under Section 366).

19. “[T]he fact that a regulated monopoly does not exist does not preclude a service from being considered a ‘utility.’” Collier § 366.05; see also In re: Agrifos Fertilizer L.P., 2002 WL 32054779, 7 (Bankr. S.D. Tex. 2002) (the determination of whether an entity qualifies as a “utility” under section 366 does not turn on whether it is a monopoly). An entity that provides an essential service and is stringently regulated by the state will be considered a “utility” covered by section 366, even if it is not a monopoly. Id.; see also In re One Stop Realtor Place, 268 B.R. 430, 436-7 (Bankr. E.D. Pa. 2001) (finding that a non-monopoly telephone exchange carrier that was regulated by the FCC and provided necessary service to the debtor that could not easily be replaced was a “utility” for the purposes of section 366); see In re Gehrke, 57 B.R. 97, 98 (Bankr. D. Or. 1985).

20. In addition to state regulated entities, service providers will also be deemed “utilities” under section 366 where the debtor would have difficulty in obtaining

comparable service from an alternate provider. See In re Good Time Charlie's, 25 B.R. at 227. In Good Time Charlie's, a shopping mall, which supplied the debtor, a tenant restaurant in the shopping mall, with electricity from the local power company, was found to be a utility under section 366 because, "the debtor would be forced to incur a large and very possibly prohibitive expense in the form of rewiring, among other things, if it were required to seek electrical service" directly from the electric company. Id. at 226-27. The court found that because the shopping mall occupied a special relationship with respect to the debtor it was a "utility" under section 366. Id. at 227; see also In re Gehrke, 57 B.R. 97, 98 (Bankr. D. Or. 1985) (where a debtor "cannot easily obtain comparable service," from an electric company, the electric company has a "practical monopoly" and is deemed a utility for the purposes of 366); In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986) (the operator of a navy yard that functioned as a conduit between an electricity provider and the debtor tenant of the yard, was found to be in a "special position with respect to the debtor" and thus governed by section 366). "The Congressional purpose of ensuring vital services such as energy, water and telephone would not be met, for example, if each of three possible providers of a particular service all refused service to a bankruptcy debtor." Collier § 366.05.

1. *Certain of the Fuel Suppliers are "Utilities"*

21. In addition to those entities which the Court might traditionally view as "utilities" in common parlance -- e.g., suppliers of water, electricity, sewer and telephone services -- the nature of the Debtors' generating business is such that certain of its commercial suppliers and contractors have attained "utility" status insofar as section 366 is concerned. Among the Debtors' Utility Companies scheduled herein is Massey Coal Sales Company, Inc. ("Massey"), a commercial provider of coal necessary to fuel the production of electricity at the Debtors' Lovett, New York generation facility. There is no question that the providers of fuels

can be “utilities” for the purposes of section 366. Gas suppliers are specifically listed as “utilities” in the legislative history of section 366. See supra S. Rep. No. 989, 95th Cong., 1st Sess. 6 (section 366 covers a “gas supplier . . . that is a monopoly in the area so that the debtor cannot easily obtain comparable service from another utility.”); see In re Santa Clara Circuits, 27 B.R. 680 (Bankr. D. Utah 1982) (while not specifically stating that the debtor’s gas supplier was a “utility” under 366, the court treated it as a “utility” in finding that adequate assurance existed for the debtor’s payment to the gas supplier). The Debtors use coal in the same way that they use gas: as fuel for the production of electricity. The continued supply of this fuel is vital to the Lovett generation facility’s operations.

22. As set forth in the accompanying Affidavit of John W. Ragan, sworn to July 14, 2003 (the “Ragan Affidavit”), the Debtors have conducted an exhaustive analysis of each of their suppliers of gas, oil and coal to their operating facilities and have only scheduled on Exhibit “A” the provider for which alternate service cannot be obtained so as to provide a seamless supply of fuel to the Lovett generation facility. For this “utility” it would be extremely time consuming, expensive and disruptive to find replacement service.

23. Because Massey provides essential coal to the Lovett generation facility and this service cannot easily be replaced, this supplier is a “utility” governed by section 366 and should be enjoined from attempting to “alter, refuse or discontinue” service to the Debtors.

2. *The Pipeline, Rail and Transmission Grid Operators are “Utilities”*

24. Section 366 not only covers suppliers of utility services, but also entities that function as conduits for those services. See Aponte, 82 B.R. at 743 (landlord who controlled delivery of heat and hot water acted in the role of a utility pursuant to section 366); see In re Hobbs, 20 B.R. at 489 (condominium association through which the electric company supplied electricity to a debtor was barred by section 366 from terminating service); see In re Coastal Dry

Dock & Repair, 62 B.R. at 883 (the operator of a navy yard that functioned as a conduit between an electricity provider and the ultimate user, the debtor tenant of the yard, was found to be a utility for the purposes of section 366); see In re Good Time Charlie's, 25 B.R. at 227 (shopping mall was governed by section 366 because the electric company transferred electricity to the debtor tenant through the shopping mall's wires). An entity occupies a special position with relation to a debtor where it would be impossible for the debtor to bypass the entity to obtain its own source for utilities. See Petrallex Stainless, 78 B.R. at 742.

25. CSX Transportation, Inc. and Norfolk Southern Railway Co., the rail companies that transport coal to the Lovett generation facility cannot be bypassed. Again as set forth in the Ragan Affidavit, despite extensive efforts, the Debtors have been unable to arrange for alternate providers for this service. If these rail operators are allowed to terminate service to the Debtors, the Lovett generation facility will be unable to obtain coal. Because these rail operators are essential conduits for the delivery of coal to the Debtors, they are "utilities" under section 366 and should be enjoined from attempting to "alter, refuse or discontinue" service to the Debtors.

B. Adequate Assurance Exists.

26. The Debtors submit that the Utility Companies are adequately assured of payment given that:

- (a) The Debtors have historically paid amounts owing to the Utility Companies in respect of the contracts and/or tariffs at issue in full and on time.
- (b) For gas, oil and coal contracts, the Debtors intend to prepay for these commodities;
- (c) The Debtors possess in excess of \$733 million cash and anticipate receiving approval of a \$250 million debtor in possession financing facility;

- (d) The Debtors project generating sufficient cash postpetition to meet all working capital needs or otherwise obtaining sufficient debtor in possession financing;
- (e) Postpetition utility charges will have administrative expense priority pursuant to sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code; and
- (f) As further described below, in the event of a postpetition default or other changes in circumstances, any utility may petition the Court for relief consistent with section 366 of the Bankruptcy Code.

27. “Adequate assurance” under section 366 is not synonymous with “adequate protection.” In determining adequate assurance, courts are not required to give utility companies the equivalent of a guaranty of payment, but must determine only that the utility is not subject to an unreasonable risk of non-payment for post-petition services. See In re Heard, 84 B.R. 454 (Bankr. W.D. Tex. 1987); In re Caldor, Inc., 199 B.R. 1 (S.D.N.Y. 1996); In re Adelphia Business Solutions, Inc., 280 B.R. 63, 79 (Bankr. S.D.N.Y. 2002); In re Santa Clara Circuits West, Inc., 27 B.R. 680, 685 (Bankr. D. Utah 1982); In re George C. Frye Co., 7 B.R. 856, 858 (Bankr. D. Me. 1980). Further, in deciding whether to grant a request for any additional post-petition deposit, courts should ensure that the utility is treating the debtor the same as it would treat a similarly situated, non-bankruptcy debtor. See In re Whitaker, 84 B.R. 934, 937 (Bankr. E.D. Pa. 1988), aff’d 882 F.2d 791 (3d Cir. 1989); In re Pacific Gas and Electric Co., 271 B.R. 626, 644 (N.D. Cal. 2002).

28. The determination of adequate assurance must be made on a case-by-case basis examining the facts and circumstances of each case. See In re Keydata Corp., 12 B.R. 156, 158 (Bankr. 1st Cir. 1981). In the instant case, the Debtors have an excellent history of promptly paying all of their utility obligations.

29. Prepayment for the delivery of gas, oil and coal will completely eliminate the risks to the counterparties to these transactions. Prepayment is a mechanism that ensures

creditors against future loss. In re CoServ, L.L.C., 237 B.R. 487, 494-95 (Bankr. N.D. Tex. 2002); In re Monroe Well Service, Inc., 83 B.R. 317 (Bankr. E.D. Pa. 1988) (the electric utility “availed itself of the benefits offered under section 366 by having the debtor pay for all postpetition electricity usage in advance”).

30. In addition, the Debtors have in excess of \$733 million in cash on hand and anticipate receiving approval of a \$250 million debtor in possession financing facility. The Debtors also anticipate generating sufficient revenue to meet all working capital needs, including payments owing to Utility Companies in respect of postpetition Utility Services. A debtor’s financial resources are an important factor in determining adequate assurance. In re Adelphia Business Solution, Inc., 280 B.R. 63, 83 (Bankr. S.D.N.Y. 2002). Because the Debtors have more than sufficient liquidity to meet all postpetition utility obligations the risk of nonpayment is diminished.

31. Payment for Utility Services rendered to the Debtors by the Utility Companies following the petition date are entitled to administrative expense priority pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code. The granting of administrative expense priority to a utility provider, where a debtor has a good payment history and a high degree of liquidity, satisfies the requirements of adequate assurance, obviating the need for the debtor to post a security deposit. See Virginia Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646 (2d Cir. 1997). See In re Heard, 84 B.R. 454 (Bankr. W.D. Tex. 1987); In re Washington-St. Tammany Electric Cooperative, Inc., 111 B.R. 555, 559 (Bankr. E.D. L.A. 1989); see also In re Demp, 22 B.R. 331, 332 (Bankr. E.D. Pa. 1982); George C. Frye Co., 7 B.R. at 858; In re Shirley, 25 B.R. 247, 249 (Bankr. E.D. Pa. 1982) (“section 366(b) of the Code does not permit a utility to request adequate assurance of payment for continued service unless there has been a default by the debtor on a pre-petition debt owed for services rendered”).

32. Given the Debtors' history of prompt payment of their relevant amounts owing to the Utility Companies and the availability of cash to fund the Debtors' ongoing business operations, the Debtors submit that the prompt payment and treatment of all postpetition charges for Utility Services as administrative expenses, each Utility Company has been provided with sufficient adequate assurance of payment. Accordingly, by this Motion, the Debtors seek an order approving their proposed adequate assurance to each Utility Company and the procedure concerning requests for additional assurance.

33. The relief requested herein is within the spirit and intent of section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility Company, and is in the best interest of the Debtors' estates.

34. The relief sought in this Motion is without prejudice to the rights of the Utility Companies to request additional assurances in the form of deposits or other security; provided, however, that any such request must be made in writing and actually received by the Debtors and counsel for the Debtors within forty-five (45) days of the date of the Order entered in accordance with this Motion (the "Deposit Request Deadline"). Any request for additional assurances received by the Debtors after the Deposit Request Deadline shall constitute an untimely and invalid adequate assurance request.

35. Under the relief requested herein, if a Utility Company disputes the finding of adequate assurance, such Utility Company shall be required to file a motion for determination of adequate assurance of payment unless otherwise agreed to by the parties or ordered by the Court, and the Court shall hold a hearing on such motion ("Adequate Assurance Hearing").

36. To the extent any Utility Company is inadvertently omitted from Exhibit A, the Debtors shall mail a copy of this Order to such Utility Company upon discovery of such

omission and the Utility Company will have forty-five (45) days from the date of service of this Order to request additional assurances in the form of deposits or other security; provided however, that any such request must be made in writing and actually received by the Debtors and counsel for the Debtors within forty-five (45) days of the date of the mailing of this Order.

37. If an Adequate Assurance Hearing is scheduled in accordance with this Motion, such Utility Company shall be deemed to have adequate assurance of payment until an order of the Court is entered in connection with such Adequate Assurance Hearing. Nothing in the order granting the relief requested in this Motion shall be deemed to affect any burden of proof that either the Debtors or the Utility company shall have at the Adequate Assurance Hearing.

NOTICE

38. Notice of this Motion has been provided to the Office of the United States Trustee for the Northern District of Texas; the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis; and certain governmental entities, counsel and parties-in-interest; all as set forth in more detail on the Certificate of Service attached hereto. The Debtors submit that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of an order (a) prohibiting utility companies from altering, refusing or discontinuing service to the Debtors; (b) determining that adequate assurance of payment to the Debtors' utility companies has been provided; and (c) establishing procedures for determining requests for additional assurance of payment and granting such other and further relief as is just and proper.

Dated: Fort Worth, Texas
July 15, 2003

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By s/ Robin Phelan
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-and-

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PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided true and correct copies of the foregoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the attached Service Lists via facsimile and email transmission, where indicated, or via overnight courier, on the 15th day of July, 2003.

s/ Judith Elkin

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590(DML)11
Debtors.)	Jointly Administered

**ORDER PURSUANT TO 11 U.S.C. § 366(b):
(A) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING
OR DISCONTINUING SERVICE TO DEBTORS; (B) DETERMINING
THAT ADEQUATE ASSURANCE HAS BEEN PROVIDED; AND (C)
ESTABLISHING PROCEDURES FOR REQUESTS FOR ADDITIONAL ASSURANCE**

Upon the amended motion, dated July 15, 2003 (the "Motion"), of Mirant Corporation and its affiliated debtors, (collectively, the "Debtors"), as debtors-in-possession, for entry of an order pursuant to section 366 of title 11 of the United States Code (the "Bankruptcy Code"): (a) prohibiting utility companies from altering, refusing or discontinuing service to the Debtors; (b) determining that adequate assurance of payment to the Debtors' utility companies has been provided; and (c) establishing procedures for determining requests for additional

assurance of payment; and upon consideration of the Affidavit of John W. Ragan in Support of First Day Motions and Applications sworn to the 14th day of July, 2003; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion and that no other or further notice need be provided; and based on the evidence presented, the Court finds that the Debtors' estates are administratively solvent; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that, the Motion be, and it hereby is, granted, to the extent set forth herein; and it is further

ORDERED that, the Debtors' Utility Companies listed in Exhibit "A" attached hereto are prohibited from altering, refusing or discontinuing service to the Debtors; and it is further

ORDERED that, the Debtors have demonstrated "adequate assurance of payment" as such terms are used in section 366 of the Bankruptcy Code; and it is further

ORDERED that, any Utility Company seeking to challenge the Debtors' "adequate assurance of payment" or otherwise alter, refuse, or discontinue any service to the Debtors shall not alter, refuse or discontinue such service without further order of this Court obtained by motion, filed within forty-five (45) days from date of this Order, on not less than twenty (20) days notice to the Debtors, any statutory committee appointed in these chapter 11 cases, the United States Trustee, and other parties in interest who have requested notice of all pleadings in these chapter 11 cases in accordance with the Federal Rule of Bankruptcy Procedure 2002; and it is further

ORDERED that, any relief in favor of a Utility Company granted due to a motion filed by such Utility Company as set forth in the preceding paragraph shall apply solely to the Utility Company filing such motion unless the court orders otherwise; and it is further

ORDERED that, no provision of this Order shall be deemed to shift any burden of proof imposed under 11 U.S.C. § 366 upon the Debtors or a Utility Company with respect to seeking relief from this Order; and it is further

ORDERED that, the Debtors shall give notice of this Order to the Utility Companies within three (3) business days of the entry of this Order; and it is further

ORDERED that, this Order shall apply to all Utility Companies served with this Order with regard to the Debtors regardless of whether such Utility Company is listed on Exhibit A annexed to the Motion; and it is further

ORDERED that, nothing in this Order or the Motion shall be deemed to constitute an assumption of any executory contract under § 365 of the Bankruptcy Code; and it is further

ORDERED that, the Court shall retain jurisdiction over the Debtors and the Utility Companies with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Order.

End of Order

PREPARED BY:

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