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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523

Chapter 11

**DEBTOR'S MOTION FOR AN ORDER
ESTABLISHING ADEQUATE ASSURANCE
PROCEDURES WITH RESPECT TO THE
DEBTOR'S UTILITY PROVIDERS**

Judge: Hon. William J. Lafferty

Date: TBD

Time: TBD

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

1 The Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor
2 in possession (the “Debtor” or “RCBO”) in the above-captioned chapter 11 bankruptcy case (the “Chapter
3 11 Case” or the “Bankruptcy Case”), hereby files this motion (the “Utilities Motion”) for the entry of
4 interim and final orders (i) approving the Debtor’s proposed form of adequate assurance of payment for
5 postpetition Utility Services (defined below), (ii) establishing procedures for providing adequate
6 assurance and resolving objections of Utility Providers (defined below) relating to the proposed adequate
7 assurance, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or
8 discriminating against, the Debtor because of the commencement of this Bankruptcy Case or for a debt
9 that is owed by the Debtor for Utility Services rendered prior to the Petition Date; and (iv) granting related
10 relief.

11 By a separate application, the Debtor is requesting an order shortening time for notice and setting
12 a hearing on this matter and other first day motions on an expedited basis.

13 This Utilities Motion is based on the Memorandum of Points and Authorities set forth herein, the
14 notice of hearing on first day motions filed by the Debtor, the *Declaration of Charles Moore, Managing*
15 *Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to the Roman*
16 *Catholic Bishop of Oakland, in Support of Chapter 11 Petition and First Day Pleadings* (the “First Day
17 Declaration”) filed concurrently herewith and incorporated herein by reference and upon such oral and
18 documentary evidence as may be presented at the hearing on the Utilities Motion.

19 The Debtor’s proposed forms order granting the relief requested herein on an interim basis (the
20 “Interim Order”) and a final basis (the “Final Order”) are attached hereto as **Exhibit A** and **Exhibit B**.

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28 DEBTOR’S MOTION FOR UTILITY ADEQUATE ASSURANCE PROCEDURES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**

4 1. The Debtor’s ongoing business operations require it to maintain uninterrupted utility
5 services including electricity, natural gas, telephone, water, waste removal, internet and other services.
6 The Debtor utilizes these services on a daily basis. Termination of any utility service would cause
7 immediate and irreparable harm to the Debtor’s operations and to its reorganization efforts.

8 2. This Utilities Motion seeks to find a balance between continuing the Debtor’s utility
9 services and protecting the Utility Providers’ rights under the Bankruptcy Code. The Debtor will provide
10 each Utility Provider an Adequate Assurance Deposit (defined below) in an amount equal to the average
11 of two weeks utility costs. The Adequate Assurance Deposit will be maintained in a newly-created
12 Adequate Assurance Account (defined below). This Utilities Motion further seeks to establish procedures
13 in the event a Utility Provider believes it needs further adequate assurance or if there is an issue related to
14 the Debtor’s payment of utility costs.

15 **II.**
16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.
18 This is a core proceeding pursuant to 28 U.S.C. § 157(b), the Order Referring Bankruptcy Cases and
19 Proceedings to Bankruptcy Judges, General Order No. 24 (N.D. Cal.), and Rule 5011-1(a) of the
20 Bankruptcy Local Rules for the United States District Court for the Northern District of California (the
21 “Bankruptcy Local Rules”). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408
22 and 1409.

23 4. The legal bases for the relief requested herein are sections 105(a) and 366 of chapter 11 of
24 Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of
25 Bankruptcy Procedure (the “Bankruptcy Rules”).
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**III.
BACKGROUND FACTS**

A. General Background

5. On the date of this Motion (the "Petition Date"), the Debtor caused its attorneys to file a voluntary petition for chapter 11 bankruptcy relief under Bankruptcy Code. The Debtor continues to operate its ministry and manage its properties as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in this Chapter 11 Case.

6. The Debtor is a corporation sole organized under the laws of the State of California. The Debtor conducts its civil affairs under the laws of the State of California and the United States of America and in accordance with the Code of Canon Law ("Canon Law"), the ecclesiastical law of the Roman Catholic Church (the "Catholic Church").

7. The Diocese of Oakland was established by the Holy See on January 13, 1962 as the spiritual home of the Catholic Church in Northern California. The diocese spans roughly 1,467 square miles and encompasses two counties, Alameda and Contra Costa. The diocese is situated along the eastern shore of the San Francisco Bay.

8. The Debtor estimates that it serves nearly 550,000 resident Catholics and assists approximately 260,000 people through its ministry and charitable services. The Debtor has been under the leadership of the incumbent bishop, Most Reverend Michael C. Barber, SJ ("Bishop Barber" or the "Bishop"), since his appointment on May 25, 2013. The diocese includes 82 parishes and missions and is home to 159 diocesan priests, 160 religious priests, 35 extern priests and 118 permanent deacons.

9. The Debtor provides resources, programming, spiritual leadership, and other key services and support to local Catholics and the East Bay community at large, including substantial support for the poor and for minority communities. The ministry of the Debtor is therefore critical to not only the faithful within the diocese, but also to the public-at-large, including non-Catholics.

10. To carry out its Catholic mission, the Debtor works closely with its 82 parish churches (the "Churches"). The Churches play a central role in the lives of Catholics living within the diocese by

1 administering key aspects of the Catholic Faith, including baptism, education, communion, Mass,
2 confirmation, marriage, and bereavement, including last rites, funeral services and grief support. In this
3 way, the Churches provide the critical connection between the Debtor and the faithful from the beginning
4 of life to the end.

5 11. None of the Churches within the diocese are separately incorporated entities under
6 California law. To the extent the Bishop holds goods belonging to a parish—including, for example, real
7 and personal property—he does so in trust for the benefit of the applicable Church.

8 12. Through common missions, the Debtor is affiliated with certain entities that are separately
9 incorporated under California law and which are not debtors in this Bankruptcy Case (each such affiliated
10 incorporated entity a “Non-Debtor Catholic Entity,” and collectively, the “Non-Debtor Catholic Entities”).
11 The Debtor provides administrative services (centralized human resources, accounting, and financial
12 management) and programmatic support services to certain Non-Debtor Catholic Entities in support of
13 their religious, educational and charitable missions. Each Non-Debtor Catholic Entity operates
14 independently and accounts for its operations separately. None of the Non-Debtor Catholic Entities have
15 sought relief under chapter 11 or are debtors in this Bankruptcy Case.

16 13. Among the affiliates of the Debtor are the Non-Debtor Catholic Entities. This includes,
17 without limitation, the Roman Catholic Welfare Corporation of Oakland, a California nonprofit religious
18 corporation (“RCWC”), and the Roman Catholic Cemeteries of the Diocese of Oakland, a California
19 corporation (“RCC”). RCWC oversees 32 elementary schools and two high schools. RCC operates and
20 administers the six diocesan cemeteries, five diocesan mortuaries, two mausoleums, and one
21 crematory. RCC is also the Debtor’s secured lender.

22 14. Under Canon Law, a diocese is “a portion of the people of God which is entrusted to a
23 bishop for him to shepherd with the cooperation of the presbyterium....” (c. 369). As such, a diocese is
24 inherently *territorial*, comprised of a specific geographic area and the faithful within it. A diocese
25 conducts its civil affairs for the practice of the Catholic Church within that geographic area and for the
26 faithful within the area.

1 15. Also under Canon Law, every diocese is divided into distinct parts, known as parishes, that
2 are ecclesiastical entities consisting of communities of the faithful whose pastoral care is entrusted to a
3 pastor (i.e., a priest) whom the bishop appoints to serve the parish to which he is assigned. (cc. 374 §1,
4 515 §1.)

5 16. Each diocese, and each parish within a diocese, is a separate public juridic person. (cc.
6 573, 515 §3.) The administration of property belonging to a juridic person pertains to its administrator,
7 such as the diocesan bishop over the property of a diocese, and the priest over the property of a parish.
8 (cc. 393, 532.) Each such administrator is obligated to acquire, hold, administer, and/or alienate such
9 property in accordance with Canon Law (c. 1257), which requires that property held by any juridic
10 person—diocese, parish, or otherwise—must be used for the purposes of the Catholic Church. The bishop
11 is responsible for administering the property belonging to the diocese, and each pastor is responsible for
12 being the exclusive administrator of the property belonging to his parish. Similarly, the pastoral care of
13 the faithful across the entire diocese is entrusted to the bishop, whereas the pastoral care of the faithful
14 within each particular parish is entrusted to the pastor for the parish.

15 17. Addressing the needs of victim-survivors of clergy sexual abuse, and the protection of
16 children, have long been priorities of the Debtor. More than a decade before the U.S. Conference of
17 Catholic Bishops adopted in the Spring of 2002 the *Charter for the Protection of Children and Young*
18 *People* (the “Charter”), the Debtor established a “Sensitive Issues Committee” to assist the bishop in
19 reviewing and handling allegations of sexual abuse by persons acting in the name of the Catholic Church.

20 18. Following the Charter’s adoption, the Sensitive Issues Committee was renamed the
21 Diocesan Review Board in 2003 and again renamed the Minor Diocesan Review Board in 2022 (the
22 “MDRB”). The MDRB actively functions today. Its five lay members (including a victim-survivor of
23 clergy sexual abuse and business consultant, a former district attorney, a social worker, a retired
24 educational administrator, and a lay pastoral associate) and three clergy members meet at least quarterly
25 to assess allegations and make recommendations on the handling of those allegations of sexual abuse of
26 children by clergy. This consultative body is critical to the Debtor’s work to address crimes against
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1 children. The MDRB works with the bishop to analyze and properly respond to claims so credibility can
2 be determined and acted upon in the best interest of the victim-survivor.

3 19. In 2004, the Debtor began developing specific “safe environment” trainings for all adults
4 – whether volunteer or employed – who serve in the diocese. The Debtor gives rigorous attention to
5 training materials and teaches adult parish and school leaders to facilitate the training program. Processes
6 have been put in place to refer anyone with claims regarding clergy sexual abuse to law enforcement and
7 Debtor representatives for assistance.

8 20. The Office of Safe Environment has continually improved the content of its trainings and,
9 when online platforms became available, former Bishop John S. Cummins approved their use. In 2016,
10 Bishop Barber moved the training program to an online synchronous platform provided by The National
11 Catholic Risk Retention Group known as Virtus, an international leader in abuse awareness training. The
12 Debtor now has local safe environment coordinators in each of the Churches. There are local safe
13 environment coordinators in every Catholic school within the diocese.

14 21. In the State of California, there have been two “open window” periods allowing individuals
15 to bring claims under civil law for childhood sexual abuse which otherwise were barred because the statute
16 of limitations (prescription) had expired. In 2002, the California Legislature permitted certain expired
17 claims of childhood sexual abuse not only against the perpetrators but also against third-party defendants
18 (like the Debtor) for a one-year period starting January 1, 2003 (the “First Legislation”). The Debtor paid
19 approximately \$56,000,000 to 52 plaintiffs in settlement of claims brought in the wake of the First
20 Legislation.

21 22. On October 13, 2019, Governor Gavin Newsom signed into law California Assembly Bill
22 No. 218 (“AB 218”). AB 218 revived the statute of limitations for individuals to file civil lawsuits for
23 childhood sexual abuse. This allowed certain individuals to bring what had been time-barred claims
24 against individuals and entities for such claims through and including December 31, 2022. As of May 4,
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2023, there were approximately 332 separate, active lawsuits or mediation demands pending against the Debtor filed by plaintiffs alleging sexual abuse by clergy or others associated with the Debtor.¹

23. In this Chapter 11 Case, the Debtor will pursue a plan of reorganization that will (a) ensure a fair and equitable outcome for victim-survivors of sexual abuse, and (b) allow the Debtor to stabilize its finances, continue its mission to serve the needs of the faithful within the diocese, and continue to provide services to underserved people and groups in the East Bay.

24. Additional information regarding the Debtor, its mission, ministries, and operations, and the events and circumstances preceding the Petition Date is set forth in the First Day Declaration.

B. The Utility Providers

25. In the ordinary course of business, the Debtor incurs expenses for electricity, natural gas, water, sewer, waste management, telecommunications, internet/wifi, and other utility services (collectively, the “Utility Services”). A nonexclusive list (the “Utility Service List”) of the utility companies or brokers (collectively, the “Utility Providers”) that provide the Utility Services to the Debtor as of the Petition Date is attached hereto as **Exhibit C**.²

26. As detailed in the Utility Service List, based on the average cost of Utility Services over the immediately preceding twelve calendar months, the Debtor incurs approximately \$8,357 per month in the aggregate for the Utility Services. As of the Petition Date, the Debtor does not believe that any Utility Provider holds a prepetition security deposit.

C. Proposed Adequate Assurance

27. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after commencing its case. Under section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse, or discontinue a debtor’s utility service if the utility does not receive from the debtor within thirty (30) days of the commencement of the debtor’s chapter 11 case “adequate

¹ It is the Debtor’s understanding that there is a backlog associated with the processing of these cases in the Clerk’s Office for Alameda County, and it is possible that other timely filed claims will be processed after the filing of this case of which the Debtor is not currently aware.

² The Debtor reserves the right to amend or supplement the Utility Service List to include any Utility Provider omitted. The inclusion of any entity on the Utility Service List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves the right to contest any such characterization in the future.

1 assurance of payment” for postpetition utility services. Section 366(c)(1) of the Bankruptcy Code defines
2 “assurance of payment” of postpetition charges as “(i) a cash deposit; (ii) a letter of credit; (iii) a certificate
3 of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security
4 that is mutually agreed on between the utility and the debtor or the trustee.” 11 U.S.C. § 366(c)(1).

5 28. The Debtor intends to pay all postpetition obligations owed to the Utility Providers in a
6 timely manner and expects to have sufficient funds to do so. As set forth in the First Day Declaration, the
7 Debtor’s cash on hand and cash generated from RCBO’s operation is adequate to fund its day-to-day
8 expenses, including postpetition amounts for Utility Services. Notwithstanding the foregoing, to provide
9 adequate assurance of payment to the Utility Providers pursuant to section 366(c) of the Bankruptcy Code,
10 the Debtor proposes to deposit into an interest-bearing bank account designated by the Debtor for holding
11 deposits (the “Adequate Assurance Account”) a sum equal to the cost of two (2) weeks of Utility Services,
12 calculated based on the average of the Debtor’s monthly utility expenses during the twelve-month period
13 from January 1, 2022 through December 31, 2022 (the “Adequate Assurance Deposit”). The Debtor used
14 this period because it reflects any fluctuations in costs resulting from seasonality or other potential factors.

15 29. The Adequate Assurance Deposit will not, however, include any amount on account of any
16 Utility Provider that (a) agrees to a lesser amount or (b) is paid in advance for its Utility Services. To the
17 extent that any Utility Provider is holding or will hold any cash deposit from the Debtor that is in excess
18 of two (2) weeks’ worth of the average utility cost, the Debtor reserves its right to demand return of such
19 excess amounts.

20 30. Based on the foregoing calculation, the Debtor estimates that the total amount of the
21 Adequate Assurance Deposit will be \$3,857.³

22 31. The Debtor requests the right to reduce the Adequate Assurance Deposit to the extent that
23 any of the following occurs: (a) the Adequate Assurance Deposit includes any amount on account of a
24 Utility Provider that the Debtor subsequently determines should be removed from the Utility Service List;
25 (b) a Utility Provider properly serves an Additional Adequate Assurance Request (as defined below), and
26

27 _____
28 ³ The Debtor is not seeking relief with respect to each of the Churches and the utility provider(s) for the Churches.

1 any settlement results in such Utility Provider's removal from the Utility Service List or in the Debtor's
2 provision of alternate assurance to the Utility Provider; or (c) any Utility Provider has instead been
3 provided with a letter of credit, cash deposit, or some other form of security acceptable to the Utility
4 Provider. The Debtor submits that the Adequate Assurance Deposit, together with the Debtor's ability to
5 pay for future Utility Services in the ordinary course of business (the "Proposed Adequate Assurance"),
6 constitutes sufficient adequate assurance to the Utility Providers.

7 **D. Proposed Adequate Assurance Procedures and Resolution of Objections**

8 32. The Debtor proposes that the procedures described below (the "Adequate Assurance
9 Procedures") be utilized in connection with the Proposed Adequate Assurance:

- 10
- 11 (a) The Debtor will fax, e-mail, serve by overnight mail, or otherwise
12 expeditiously send a copy of the applicable order (as approved by the
13 Court), which includes the proposed Adequate Assurance Procedures, to
14 each Utility Provider on the Utility Service List within three (3) business
15 days after entry of the applicable order by the Court.
- 16 (b) The Debtor will deposit the Adequate Assurance Deposit in the Adequate
17 Assurance Account within five (5) business days of entry of the Interim
18 Order; provided, that to the extent any Utility Provider receives any
19 additional assurance of payment as set forth herein, the Debtor may reduce
20 the Adequate Assurance Deposit maintained in the Adequate Assurance
21 Account by such amount.
- 22 (c) The portion of the Adequate Assurance Deposit attributable to each Utility
23 Provider shall be returned to the Debtor on the earlier of (i) the date on
24 which the Debtor has terminated the service from such provider and have
25 satisfied in full all postpetition obligations due and owing to the applicable
26 Utility Provider and (ii) the effective date of a plan of reorganization in the
27 Bankruptcy Case, if not applied earlier.
- 28 (d) Any Utility Provider not satisfied with the Proposed Adequate Assurance
must serve a written request for additional assurance (an "Additional
Assurance Request") on the following parties: (i) the Debtor, Attn: Paul
Bongiovanni, 2121 Harrison Street, Suite 100, Oakland, CA 94612
(pbongiovanni@oakdiocese.org); and (ii) proposed counsel for the Debtor,
Foley & Lardner LLP, 500 Woodward Avenue, Suite 2700, Detroit, MI
48226-3489, Attn: Ann Marie Uetz, Esq. (collectively, the "Adequate
Assurance Notice Parties").
- (e) Any 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 Proposed Adequate
Assurance is not sufficient adequate assurance of future payment.

DEBTOR'S MOTION FOR UTILITY ADEQUATE ASSURANCE PROCEDURES

- 1 (f) Any Additional Assurance Request must be made and actually received by
2 the Adequate Assurance Notice Parties by no later than twenty (20) days
3 after entry of an applicable order by the Court, or such greater period as may
4 be agreed to by the Debtor and the relevant Utility Provider. If a Utility
5 Provider fails to timely file and serve an Additional Assurance Request, it
6 shall: (i) be deemed to have received adequate assurance of payment
7 “satisfactory” to such Utility Provider in compliance with section 366 of the
8 Bankruptcy Code; and (ii) be forbidden to discontinue, alter, or refuse
9 service to, or discriminate against, the Debtor on account of any unpaid
10 prepetition charges, or require additional assurance of payment other than
11 the Proposed Adequate Assurance.
- 12 (g) Upon receipt by the Adequate Assurance Notice Parties of any Additional
13 Assurance Request as set forth above, the Debtor shall have the greater of
14 (i) twenty (20) days from the receipt of such Additional Assurance Request,
15 and (ii) thirty (30) days from entry of an order (the “Resolution Period”) to
16 negotiate with such Utility Provider to resolve such Utility Provider’s
17 Additional Assurance Request, or such greater period as may be agreed to
18 by the Debtor and the relevant Utility Provider in writing.
- 19 (h) If the Debtor determines that an Additional Assurance Request or any
20 consensual agreement reached in connection therewith is reasonable, the
21 Debtor may resolve any Additional Assurance Request without further
22 order of the Court, and may, in connection with any such agreement,
23 provide a Utility Provider with additional adequate assurance of future
24 payment, including but not limited to cash deposits, prepayments, or other
25 forms of security.
- 26 (i) If the Debtor determines that the Additional Assurance Request is not
27 reasonable and is not able to reach a resolution with the Utility Provider
28 during the Resolution Period, the Debtor, during or immediately after the
Resolution Period, will schedule a hearing before this Court to determine
the adequacy of assurances of payment with respect to such Utility Provider
(the “Determination Hearing”) pursuant to section 366(c)(3) of the
Bankruptcy Code.
- (j) Pending resolution of a disputed Additional Assurance Request at the
Determination Hearing, the relevant 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 Proposed Adequate Assurance.

33. If the Utility Providers do not comply with the above Adequate Assurance Procedures, the Debtor requests that the Utility Providers be prohibited from altering, refusing, or discontinuing service on account of any unpaid prepetition charges and be deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

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V.
BASIS FOR RELIEF

A. **The Adequate Assurance Deposit And Adequate Assurance Procedures Comply With Section 366 Of The Bankruptcy Code.**

38. The relief requested herein will ensure that the Debtor's operations will not be disrupted, which would severely impact the services provided by the Debtor and prospects for a successful reorganization. The Debtor proposes fair and orderly procedures for submitting and determining requests for Additional Adequate Assurance, without which the Debtor potentially could be forced to address numerous requests by Utility Providers in a disorganized manner at a critical period in these Bankruptcy Case when the Debtor should be focused on its reorganization efforts.

39. Before the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Amendments"), it was well established that section 366 of the Bankruptcy Code did not require, as a matter of course, that the debtor provide a deposit or other security to its utilities as adequate assurance of payment. For example, in *Virginia Electric & Power Co. v. Caldor, Inc.*, the United States Court of Appeals for the Second Circuit affirmed the bankruptcy court's ruling that the debtor's prepetition payment history and postpetition liquidity, as well as the administrative expense priority afforded to postpetition invoices, constituted adequate assurance of future performance. *See* 117 F.3d 646, 647 (2d Cir. 1997). The Court rejected the argument that section 366(b) nevertheless required a "deposit or other security," holding that "a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under section 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'" *Id.* at 650.

40. Amendments to the Bankruptcy Code did not abrogate a court's ability to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment simply must be "adequate." Thus, while section 366(c) of the Bankruptcy Code limits the factors a court may consider when determining whether a debtor has provided adequate assurance of payment, it does not limit the court's ability to determine the amount of payment necessary, if any, to provide adequate

1 assurance. Section 366(c) of the Bankruptcy Code gives courts the same discretion in determining the
2 amount of payment necessary for adequate assurance that they previously had. *Compare* 11 U.S.C. §
3 366(b) (“On request of a party in interest and after notice and a hearing, the court may order reasonable
4 modification of the amount of the deposit or other security necessary to provide adequate assurance of
5 payment.”) *with* 11 U.S.C. § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing,
6 the court may order modification of the amount of an assurance payment under paragraph (2).”).

7 41. Further, section 366(c) only requires that a utility’s assurance of payment be “adequate.”
8 Courts recognize that adequate assurance of performance does not constitute an absolute guarantee of a
9 debtor’s ability to pay. *See, e.g., In re Steinebach*, 303 B.R. at 641 (“Adequate assurance of payment is
10 not, however, absolute assurance . . . ‘a Bankruptcy Court is not required to give a utility company the
11 equivalent of a guarantee of payment, but must only determine that the utility is not subject to any
12 unreasonable risk of non-payment for postpetition services.’”) (quoting *In re Adelpia Bus. Solutions*,
13 *Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002)); *see also In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996)
14 (section 366(b) “does not require an ‘absolute guarantee of payment’”) (citation omitted), *aff’d sub nom.*
15 *Va. Elec. & Power Co., v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997).

16 42. Courts also have recognized that, in determining the requisite level of adequate assurance,
17 bankruptcy courts should “focus ‘upon the need of the utility for assurance, and to require that the debtor
18 supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce
19 financial resources.’” *Va. Elec. & Power Co.*, 117 F.3d at 650 (emphasis in original); *see also In re Penn.*
20 *Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming a bankruptcy court’s ruling that utility
21 deposits were not necessary where such deposits likely would “jeopardize the continuing operation of the
22 [debtor] merely to give further security to suppliers who already are reasonably protected”). Indeed, if
23 circumstances warrant, a court may find that no adequate assurance payment at all constitutes adequate
24 assurance. *See Va. Elec. & Power Co. v. Caldor Inc.*, 117 F.3d at 650 (“Even assuming that ‘other security’
25 should be interpreted narrowly, . . . a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or
26 other security’ provided for under § 366(b), includes the power to require ‘no deposit or other security’
27 where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”); *In re*
28

DEBTOR’S MOTION FOR UTILITY ADEQUATE ASSURANCE PROCEDURES

1 *Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Courts have exercised that discretion to determine,
2 that a number of factors including prepetition payment history and lack of any past requirement for a
3 deposit may relieve a debtor from having to make any adequate assurance deposit postpetition”).

4 43. The Court may also rely on its equitable powers to grant the relief requested in this Utilities
5 Motion. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the
6 bankruptcy court, empowers the Court to “issue any order, process, or judgment that is necessary or
7 appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Accordingly, the Court may
8 authorize the Adequate Assurance Deposit proposed herein because such relief is necessary for the Debtor
9 to carry out its fiduciary duties under sections 1107(a) of the Bankruptcy Code. Under section 1107(a) of
10 the Bankruptcy Code “the debtor in possession has the same fiduciary duties and liabilities as a Trustee.
11 When the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to
12 the corporate debtor in possession and to the creditors.” *In re Anchorage Nautical Tours, Inc.*, 145 B.R.
13 637, 643 (B.A.P. 9th Cir. 1992); *see also In re Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir.
14 1986) (“[T]he debtor’s directors bear essentially the same fiduciary obligation to creditors and
15 shareholders as would a trustee for a debtor out of possession”).

16 44. As set forth above, the Debtor has sufficient liquidity and intends to pay all valid
17 postpetition obligations for Utility Services in a timely manner. Additionally, the Utility Providers are
18 protected through the Adequate Assurance Deposit that will be held in a segregated account, and are
19 afforded flexibility and an opportunity to be heard through the Adequate Assurance Procedures. Absent
20 the approval of the Adequate Assurance Procedures, Utility Providers could discontinue service, without
21 warning, thirty (30) days from the Petition Date, if they claim they have not yet received a “satisfactory”
22 adequate assurance payment. Under the Adequate Assurance Procedures, however, any Utility Provider
23 that fails to file a timely Additional Assurance Request shall be deemed to consent to the Adequate
24 Assurance Procedures and shall be bound by the Proposed Order.

25 45. The Adequate Assurance Deposit and Adequate Assurance Procedures are reasonable,
26 appropriate, and properly balance the interests of the Debtor and the Utility Providers. Accordingly, the
27 relief requested herein should be approved

28 DEBTOR’S MOTION FOR UTILITY ADEQUATE ASSURANCE PROCEDURES

1 Debtor's rights under any insurance policies and to proceeds thereof, and to object to disclosure of
2 information and contend that certain assets discussed in this Utilities Motion are not property of the estate.

3 **VII.**
4 **NOTICE**

5 49. Notice of this Utilities Motion will be provided to (i) the Office of the United States Trustee
6 for Region 17; (ii) the Debtor's 20 largest unsecured creditors; (iii) the Office of the California Attorney
7 General; (iv) the Utility Providers; (v) counsel for RCC; and (vi) those persons who have formally
8 appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002. Based on the
9 urgency of the circumstances surrounding this Utilities Motion and the nature of the relief requested
10 herein, the Debtor respectfully submits that no further notice is required.

11 **VIII.**
12 **CONCLUSION**

13 WHEREFORE, the Debtor respectfully requests that the Court enter Court enter interim and final
14 orders authorizing and approving the Adequate Assurance Deposit and Adequate Assurance Procedures,
15 granting the related relief requested herein and as set forth in the Debtor's proposed form of order, and
16 granting such other and further relief as it deems just and appropriate.

17
18 DATED: May 8, 2023

FOLEY & LARDNER LLP
Jeffrey R. Blease
Thomas F. Carlucci
Shane J. Moses
Emil P. Khatchatourian
Ann Marie Uetz
Matthew D. Lee

19
20
21
22 /s/ Thomas F. Carlucci
23 THOMAS F. CARLUCCI

24 *Proposed Counsel for the Debtor*
25 *and Debtor in Possession*
26
27
28

DEBTOR'S MOTION FOR UTILITY ADEQUATE ASSURANCE PROCEDURES

Exhibit A

1 **J FOLEY & LARDNER LLP**

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16 *Proposed Counsel for the Debtor
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17 **UNITED STATES BANKRUPTCY COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **OAKLAND DIVISION**

20 In re:

21 THE ROMAN CATHOLIC BISHOP OF
22 OAKLAND, a California corporation sole,

23 Debtor.

24 Case No. 23-40523

25 Chapter 11

26 **[PROPOSED] INTERIM ORDER
27 ESTABLISHING ADEQUATE ASSURANCE
28 PROCEDURES WITH RESPECT TO THE
DEBTOR'S UTILITY PROVIDERS**

Judge: Hon. William J. Lafferty

Date: TBD

Time: TBD

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 hearing on the Utilities Motion; the Court finding that it has
14 jurisdiction over this matter, that venue in this Court is proper, and that notice of the Utilities Motion and
15 the interim hearing thereon was reasonable and sufficient under the circumstances for the granting of
16 interim relief; the Court finding that there is good cause for entry of an immediate interim order pursuant
17 to Fed. R. Bankr. P. 6003, and that ample cause exists to grant a waiver of the 14-day stay imposed by
18 Bankruptcy Rule 6004(h) for the entry of an interim order granting the Utilities Motion; and the Court
19 further finding that the relief requested in the Utilities Motion is in the best interests of the Debtor, its
20 creditors, and other parties in interest; and after due deliberation and good cause appearing

21 **IT IS HEREBY ORDERED THAT:**

- 22 1. The Motion is GRANTED on an interim basis to the extent set forth herein.
- 23 2. The Adequate Assurance Deposit is hereby approved on an interim basis and is deemed
24 adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.
- 25 3. The following Adequate Assurance Procedures to be utilized in connection with the
26 Adequate Assurance Deposit are approved on an interim basis:

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

- 1 (a) The Debtor will fax, e-mail, serve by overnight mail, or otherwise expeditiously
2 send a copy of the applicable order (as approved by the Court), which includes the
3 proposed Adequate Assurance Procedures, to each Utility Provider on the Utility
4 Service List within three (3) business days after entry of the applicable order by the
5 Court.
- 6 (b) The Debtor will deposit the Adequate Assurance Deposit in the Adequate
7 Assurance Account within five (5) business days of entry of the Interim Order;
8 provided, that to the extent any Utility Provider receives any additional assurance
9 of payment as set forth herein, the Debtor may reduce the Adequate Assurance
10 Deposit maintained in the Adequate Assurance Account by such amount.
- 11 (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider
12 shall be returned to the Debtor on the earlier of (i) the date on which the Debtor has
13 terminated the service from such provider and have satisfied in full all postpetition
14 obligations due and owing to the applicable Utility Provider and (ii) the effective
15 date of a plan of reorganization in the Bankruptcy Case, if not applied earlier.
- 16 (d) Any Utility Provider not satisfied with the Proposed Adequate Assurance must
17 serve a written request for additional assurance (an “Additional Assurance
18 Request”) on the following parties: (i) the Debtor, Attn: Paul Bongiovanni, 2121
19 Harrison Street, Suite 100, Oakland, CA 94612 (PBongiovanni@oakdiocese.org);
20 and (ii) proposed counsel for the Debtor, Foley & Lardner LLP, 500 Woodward
21 Avenue, Suite 2700, Detroit, MI 48226-3489, Attn: Ann Marie Uetz, Esq.
22 (auetz@foley.com) (collectively, the “Adequate Assurance Notice Parties”).
- 23 (e) Any Additional Assurance Request must (i) be made in writing, (ii) identify the
24 Debtor to which Utility Services are provided, (iii) include a summary of the
25 Debtor’s payment history relevant to the affected account(s), including the amounts
26 of any security deposits, and (iv) set forth an explanation of why the Utility Provider
27 believes the Proposed Adequate Assurance is not sufficient adequate assurance of
28 future payment.
- (f) Any 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
an applicable order by the Court, or such greater period as may be agreed to by the
Debtor and the relevant Utility Provider. If a Utility Provider fails to timely file
and serve an Additional Assurance Request, it shall: (i) be deemed to have received
adequate assurance of payment “satisfactory” to such Utility Provider in
compliance with section 366 of the Bankruptcy Code; and (ii) be forbidden to
discontinue, alter, or refuse service to, or discriminate against, the Debtor on
account of any unpaid prepetition charges, or require additional assurance of
payment other than the Proposed Adequate Assurance.
- (g) Upon receipt by the Adequate Assurance Notice Parties of any Additional
Assurance Request as set forth above, the Debtor shall have the greater of (i)
twenty (20) days from the receipt of such Additional Assurance Request, and (ii)
thirty (30) days from entry of an order (the “Resolution Period”) to negotiate with

1 such Utility Provider to resolve such Utility Provider's Additional Assurance
2 Request, or such greater period as may be agreed to by the Debtor and the relevant
3 Utility Provider in writing.

4 (h) If the Debtor determines that an Additional Assurance Request or any consensual
5 agreement reached in connection therewith is reasonable, the Debtor may resolve
6 any Additional Assurance Request without further order of the Court, and may, in
7 connection with any such agreement, provide a Utility Provider with additional
8 adequate assurance of future payment, including but not limited to cash deposits,
9 prepayments, or other forms of security.

10 (i) If the Debtor determines that the Additional Assurance Request is not reasonable
11 and is not able to reach a resolution with the Utility Provider during the Resolution
12 Period, the Debtor, during or immediately after the Resolution Period, will schedule
13 a hearing before this Court to determine the adequacy of assurances of payment
14 with respect to such Utility Provider (the "Determination Hearing") pursuant to
15 section 366(c)(3) of the Bankruptcy Code.

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

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

25 5. The Debtor is authorized, in its sole discretion, to amend the Utility Service List to add or
26 delete any Utility Provider, and this Order shall apply to any Utility Provider that is subsequently added
27 to the Utility Service List. In addition, the Debtor may terminate the services of any Utility Provider and
28 are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of
such terminated Utility Provider.

6. The Debtor shall serve a copy of this Order on any Utility Provider that is subsequently
added to the Utility Services List and deposit two (2) weeks' worth of estimated utility costs in the
Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with
any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such

1 subsequently added Utility Providers shall have twenty (20) days from the date of service of this Order to
2 make an Additional Assurance Request.

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

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

11 9. This Order shall be immediately effective and enforceable upon entry.

12 10. A final hearing on the Utilities Motion shall be held on [_____, 2023] at __:____
13 __.m.] (Prevailing Pacific Time). Any objections to the granting of the relief requested in the Insurance
14 Motion on a final basis shall be filed not later than [_____, 2023].

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

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

19 **END OF ORDER**

Exhibit B

1 **FOLEY & LARDNER LLP**

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16 *Proposed Counsel for the Debtor
and Debtor in Possession*

17 **UNITED STATES BANKRUPTCY COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **OAKLAND DIVISION**

20 In re:

21 THE ROMAN CATHOLIC BISHOP OF
22 OAKLAND, a California corporation sole,

23 Debtor.

Case No. 23-40523

Chapter 11

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

Judge: Hon. William J. Lafferty

Date: TBD

Time: TBD

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 hearing on the Utilities Motion; the Court finding that it has
14 jurisdiction over this matter, that venue in this Court is proper, and that notice of the Utilities Motion and
15 the interim and final hearings thereon was reasonable and sufficient under the circumstances for the
16 granting of interim and final relief; the Court finding that ample cause exists to grant a waiver of the 14-
17 day stay imposed by Bankruptcy Rule 6004(h) for the entry of a final order granting the Utilities Motion;
18 and the Court further finding that the relief requested in the Utilities Motion is in the best interests of the
19 Debtor, its creditors, and other parties in interest; and after due deliberation and good cause appearing

20 **IT IS HEREBY ORDERED THAT:**

- 21 1. The Utilities Motion is granted on a final basis.
- 22 2. The Adequate Assurance Deposit is hereby approved on a final basis and is deemed
23 adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.
- 24 3. For the avoidance of doubt, any Utility Providers that received an Adequate Assurance
25 Deposit pursuant to the Interim Order will be bound by the time limits set forth in the Interim Order and
26 not in this Final Order.

27
28 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Utilities Motion.

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

- 3 (a) The Debtor will fax, e-mail, serve by overnight mail, or otherwise expeditiously
4 send a copy of the applicable order (as approved by the Court), which includes the
5 proposed Adequate Assurance Procedures, to each Utility Provider on the Utility
6 Service List within three (3) business days after entry of the applicable order by the
7 Court.
- 8 (b) For any Adequate Assurance Deposit not previously deposited in the Adequate
9 Assurance Deposit after entry of the Interim Order, the Debtor will deposit the
10 Adequate Assurance Deposit in the Adequate Assurance Account within five (5)
11 business days of entry of the Final Order; provided, that to the extent any Utility
12 Provider receives any additional assurance of payment as set forth herein, the
13 Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate
14 Assurance Account by such amount.
- 15 (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider
16 shall be returned to the Debtor on the earlier of (i) the date on which the Debtor has
17 terminated the service from such provider and have satisfied in full all postpetition
18 obligations due and owing to the applicable Utility Provider and (ii) the effective
19 date of a plan of reorganization in the Bankruptcy Case, if not applied earlier.
- 20 (d) Any Utility Provider that was not included in the relief obtained in the Interim
21 Order (a “New Utility Provider”) and that is not satisfied with the Adequate
22 Assurance Deposit must serve a written request for additional assurance (a “New
23 Utility Provider Additional Assurance Request”) on the following parties: (i) the
24 Debtor, Attn: Paul Bongiovanni, 2121 Harrison Street, Suite 100, Oakland, CA
25 94612 (PBongiovanni@oakdiocese.org); and (ii) proposed counsel for the Debtor,
26 Foley & Lardner LLP, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226-
27 3489, Attn: Ann Marie Uetz, Esq. (auetz@foley.com) (collectively, the “Adequate
28 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
be agreed to by the Debtor and the relevant New Utility Provider. If a New Utility
Provider fails to timely file and serve an Additional Assurance Request, it shall: (i)
be deemed to have received adequate assurance of payment “satisfactory” to such
New Utility Provider in compliance with section 366 of the Bankruptcy Code; and

1 (ii) be forbidden to discontinue, alter, or refuse service to, or discriminate against,
2 the Debtor on account of any unpaid prepetition charges, or require additional
3 assurance of payment other than the Adequate Assurance Deposit.

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

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

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

24 (j) Pending resolution of a disputed New Utility Provider Additional Assurance
25 Request at the Determination Hearing, the relevant New Utility Provider shall be
26 prohibited from discontinuing, altering, or refusing service to the Debtor on account
27 of unpaid charges for prepetition services or on account of any objections to the
28 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
to the Utility Service List. In addition, the Debtor may terminate the services of any Utility Provider and

1 are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of
2 such terminated Utility Provider.

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

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

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

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

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

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

22 **END OF ORDER**
23
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Exhibit C

Utility Provider Name	Type of Service	Mailing Address	Account Number(s)	Monthly Spend Average	Adequate Assurance Deposit
Amerigas Propane LP	Natural Gas	P.O. BOX 7155 PASADENA, CA 91109-7155	201078244	\$818	\$377
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	925 934-5802 098 2	\$960	\$443
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	510 536-0719 716 4	\$1,968	\$908
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	510 536-0722 716 4	\$991	\$457
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	518907992001	\$40	\$18
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	510 635-7252 085 2	\$263	\$122
AT&T	Telecommunications	ONE AT&T WAY BEDMINSTER, NJ 07921	828205863	\$150	\$69
Comcast	Internet/WIFI	P.O. BOX 60533 CITY OF INDUSTRY, CA 91716-0533	8155400390230033	\$438	\$202
East Bay Municipal District	Water and Sewer	375 11TH STREET OAKLAND, CA 94607	26062000001	\$436	\$201

Utility Provider Name	Type of Service	Mailing Address	Account Number(s)	Monthly Spend Average	Adequate Assurance Deposit
East Bay Municipal District	Water and Sewer	375 11TH STREET OAKLAND, CA 94607	26062100001	\$189	\$87
PG&E	Electricity / Natural Gas	BOX 997300 SACRAMENTO, CA 95899-7300	4979956678-8	\$1,083	\$500
PG&E	Electricity	BOX 997300 SACRAMENTO, CA 95899-7300	9314821414-6	\$580	\$268
PG&E	Electricity	BOX 997300 SACRAMENTO, CA 95899-7300	9273154750-8	\$167	\$77
PG&E	Electricity	BOX 997300 SACRAMENTO, CA 95899-7300	9356488078-4	\$8	\$4
Republic Services	Waste Management and Sewer	ALLIED WASTE SYSTEMS INC P.O. BOX 78829 PHOENIX, AZ 85062-8829	3-0210-0086090	\$84	\$39
Telspan, Inc.	Internet/WIFI	7956 VAUGHN ROAD BOX 171 MONTGOMERY, AL 36116	10128	\$19	\$9
Telspan, Inc.	Internet/WIFI	7956 VAUGHN ROAD BOX 171 MONTGOMERY, AL 36116	10079	\$12	\$6
Telspan, Inc.	Internet/WIFI	7956 VAUGHN ROAD BOX 171 MONTGOMERY, AL 36116	11740	\$14	\$6

Utility Provider Name	Type of Service	Mailing Address	Account Number(s)	Monthly Spend Average	Adequate Assurance Deposit
Verizon Wireless	Telecommunications	22001 LOUDOUN COUNTY PKWY ASHBURN, VA 20147		\$138	\$63
Total				\$8,357	\$3,857