

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
1515-Geenergy Holding Co. LLC, <i>et al.</i> , ¹)	Case No. 19-10303 (___)
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF ALLAN BRENNER IN SUPPORT
OF DEBTORS’ FIRST DAY MOTIONS AND APPLICATIONS**

Allan Brenner declares as follows:

1. I am the Managing Member of 1515-Geenergy Holding Co. LLC (“GEE Holding”) and Chief Financial Officer of BBPC, LLC *d/b/a* Great Eastern Energy (“BBPC”), the debtors and debtors in possession in the above-captioned chapter 11 cases (each a “Debtor,” and collectively, the “Debtors”). On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). I am familiar with the day-to-day operations, business, and financial affairs of the Debtors, having served as Chief Financial Officer of BBPC since 2000 and Managing Member of BBPC from 2000 to 2015. In 2015, I became Manager of BBPC and in 2015 upon forming GEE Holding, I became its’ Managing Member.

2. I submit this declaration (the “First Day Declaration”) to provide the Court and other parties in interest with an overview of the Debtors’ businesses and to describe the circumstances compelling the commencement of these chapter 11 cases. I also submit this First

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: 1515-Geenergy Holding Co. LLC (0428) and BBPC, LLC *d/b/a* Great Eastern Energy (0428). The location of the Debtors’ service address is: 1515 Sheepshead Bay Road, Brooklyn, NY 11235.

Day Declaration in support of the first day motions² and applications filed by the Debtors contemporaneously herewith, or as soon as reasonably practicable hereafter, by which the Debtors seek relief enabling the Debtors to continue as going concerns, to operate effectively, to minimize certain of the potential adverse effects of the commencement of their chapter 11 cases, and to preserve and maximize the value of the Debtors' estates. I submit this First Day Declaration based on my own personal knowledge, except as expressly provided, and as my testimony, if called to testify.

The Debtors' Business

A. The Industry and the Debtors' Position

3. The Debtors are a provider of electricity and natural gas to commercial, industrial and residential customers in certain markets that have been restructured to permit retail competition. As of the Petition Date, the Debtors provided natural gas service to customers in New York, Massachusetts, and New Jersey. The Debtors also provided electricity service to customers in New York, Massachusetts, New Jersey, and Connecticut. The restructuring process that permitted retail competition for electricity or natural gas is briefly described below.

4. Prior to significant legislative and industry reforms, the generation, transmission, distribution and sales/marketing of electricity and natural gas in the United States was conducted primarily by local publicly-funded monopolies. Following the development of the Federal Energy Regulatory Commission ("FERC") and regional reliability authorities, Congress passed the Public Utility Regulatory Policies Act ("PURPA") in 1978, which laid the groundwork for deregulation and competition by opening wholesale power markets to non-utility producers of electricity.

² All references to agreements, pleadings, or other documentation or summaries thereof in this First Day Declaration are qualified in their entirety by the terms set forth in the relevant agreements, pleadings, or other documents.

5. Over the course of the 1980s and 1990s state legislatures began passing laws specifically designed to allow competitive retail sale and supply in the natural gas markets. Most significantly, Congress passed the Energy Policy Act of 1992 which specifically promoted greater competition in the bulk power market. This began to de-monopolize the utility industry by allowing independent power producers equal access to the utilities' transmission grid. By 1996, FERC implemented Orders 888 and 889, which were intended to remove impediments to competition in wholesale trade and bring more efficient lower-cost power to the nation's electricity customers. President George W. Bush later signed into law the Energy Policy Act of 2005, which decreased limitations on utility companies' ability to merge or be owned by financial holdings / non-utility companies. This led to a wave of mergers and consolidation within the utility industry.

6. Today, more than 20 states have at least partially deregulated electricity markets whereby energy customers may choose between their incumbent local utility and an array of independent, competitive suppliers. This is commonly referred to as a "deregulated" or "competitive" power market.

7. BBPC, a New York limited liability company, with its headquarters in Brooklyn, New York, was formed with a view of becoming a provider of power and natural gas in certain of the deregulated energy markets. As a provider of energy commodities to retail customers, BBPC had relationships with various commodity supply companies, pipelines and local utility companies for the purchase, delivery and distribution of power and natural gas to their customers.

8. GEE Holding is a limited liability company formed in Delaware on June 26, 2015, with its headquarters in Brooklyn, New York, to own 100% of the equity in BBPC. BBPC

began serving natural gas customers in New York, New Jersey and Massachusetts in 2000, and later expanded to serve electricity customers in New York, New Jersey, Massachusetts, and Connecticut in 2013.

9. BBPC employs a variety of marketing channels to penetrate its existing markets and sell its products to a diverse customer base. BBPC's primary sales channels are: (i) a 12-person internal direct sales team, (ii) a network of approximately 340 independent brokers, (iii) marketing partnerships with unaffiliated companies that market BBPC's energy services through their respective sales forces and distribution networks, and (iv) third-party residential sales forces, telemarketers and door-to-door sales agents that are contracted to market BBPC products on BBPC's behalf.

10. **Internal Sales Team.** BBPC employs a 12-person dedicated sales team based in its various operating regions who service existing customers and work to acquire new commercial customers.

11. **Broker Network.** BBPC generates the majority of its commercial business through its independent network of brokers. BBPC maintains good relationships with its broker network, which controls a large customer base and typically does not exclusively sell BBPC products. Customers who purchase energy through brokers do not typically have the requisite size or expertise to effectively purchase energy contracts via direct sales. Accordingly, brokers work to educate potential buyers on BBPC's product offering and find tailored solutions that fit individual customer needs. BBPC's internal sales force works to train independent broker sales representatives on how to effectively market its products. Brokers receive compensation based on customer enrollment and monthly energy usage for customers that they enroll directly or

indirectly. A typical broker commission structure is paid based on kilowatt hours sold over the life of a customer contract for electricity and per “dth” for a customer using natural gas.

12. **Marketing Partnerships.** BBPC’s marketing partners include cable, telecommunications and other companies with well-established marketing capabilities. The customers acquired through such channels have contractual relationships with BBPC. The marketing partner is compensated similarly to a broker with commissions based on customer enrollment and energy usage.

13. **Residential Sales.** Residential sales are primarily generated by telemarketing and door-to-door sales. BBPC uses a contracted sales force from time-to-time to target certain regions and sell certain products both by phone and by door-to-door sales, and will typically compensate these salespeople on a dollar per customer acquired basis.

14. In addition to residential customers, BBPC services a wide variety of commercial clients. BBPC’s commercial customers include hospitals, movie theaters, shopping centers, banks, car dealerships, schools, dry cleaners, laundromats, restaurants, townships, and a variety of other types of non-residential customers.

15. As of January 31, 2019, BBPC’s existing book of customers was comprised of approximately 49,000 commercial customers and 5,000 residential customers across its four state footprint.

16. Depending on the circumstances and needs of its customers, BBPC negotiates contracts of various durations, ranging from month-to-month contracts up to several years’ long contracts. Although the contractual length in the retail competitive electric industry is generally shorter than one year, fewer than 17% of BBPC’s existing book of customers have been BBPC customers for shorter than one year (*i.e.*, customers stay even though not contractually bound to

do so). In fact, more than half of all customers in BBPC's existing book have been with the company between 1-3 years, and more than one-third of all customers have been with the company for more than 3 years.

17. BBPC bills the majority of its customers through a single bill utility Purchase of Receivable ("POR") billing program. Under this program, the (i) utility sends a bill to the customer for the transmission and transportation of electricity or natural gas as well as distribution charges, and (ii) BBPC incorporates their charges for the commodity supplied on behalf of the customer in the same bill. The utility assumes the risk associated with actual collections of the total charge by submitting to BBPC 98% of the commodity charges back to BBPC every month.

18. The majority of BBPC's residential customers fall under the same POR. A small percentage of BBPC's customers get billed under the dual billing program, where the utility sends a separate bill for all the distribution charges and BBPC sends an independent bill for all the commodity charges.

19. A critical element in the process of acquiring natural gas from gas marketing companies is that the gas must flow through long distance natural gas pipelines to the local utility company. Similarly, a critical element in the process of acquiring electricity from power marketing companies is that the electricity must flow through long distance transmission lines to the local utility. The Debtors have various agreements with several long-distance gas pipeline and power transmission companies to ensure a steady source of natural gas and power for its customers.

20. Just as the Debtors require agreements with long-distance natural gas pipeline and power transmission companies, they also need to ensure that once these long-distance gas

pipeline and power transmission companies deliver the Debtors' commodities to the local utility company that the commodities are then delivered to the Debtors' customers. Accordingly, the Debtors—through tariff provisions or under contractual agreements—have arrangements with certain local utility companies to accept the natural gas and power from the long-distance gas pipeline or power transmission companies and to deliver the commodities through their local pipelines or wires to the Debtors' residential and commercial customers in each market. Pursuant to the terms of these agreements, as of the Petition Date, the Debtors had posted cash, bonds or letters of credit with these utility companies in excess of \$1.6 million as security for the Debtors' performance.

B. The Debtors' Prepetition Credit Facilities

21. BBPC and Macquarie Investments US Inc. ("Macquarie") are parties to that certain Borrowing Base Facility Agreement, dated as of September 2, 2015 (as otherwise amended, restated, supplemented or modified through the Petition Date, the "Prepetition Credit Agreement") and, together with each of the Transaction Documents (as defined in the Prepetition Credit Agreement), the "Prepetition Transaction Documents"). Pursuant to the Prepetition Credit Agreement, Macquarie and Macquarie Energy LLC (together with the Collateral Agent (as defined below) collectively, the "Prepetition Secured Creditors") provided certain Credit Extensions (as defined in the Prepetition Credit Agreement) to BBPC (collectively, the "Prepetition Credit Facility"). As of the Petition Date, BBPC's Obligations (as defined in the Prepetition Credit Agreement) included, without limitation, Obligations in the amount of \$59,579,469.01 under the ISDA Master Agreement (as defined in the Prepetition Credit Agreement), Obligations (as defined in the Prepetition Credit Agreement) in the amount of \$677,740.66 in respect of Reimbursement Obligations (as defined in the Prepetition Credit Agreement) and Working Capital Fees (as defined in the Prepetition Credit Agreement) owing

under the Prepetition Credit Agreement, and the obligation to post cash or credit support to Macquarie in the form of letters of credit acceptable to Macquarie in its sole discretion, an amount equal to \$30,689,085.51 as collateralization for 105% of the full undrawn amount of all outstanding Letters of Credit (as defined in the Prepetition Credit Agreement) (which posted cash shall be returned to BBPC and the face amount of such letters of credit shall be reduced in each case upon the indefeasible repayment in full of all outstanding Obligations (as defined in the Prepetition Credit Agreement) and the cancellation or termination and return to the Prepetition Secured Creditors of all outstanding Letters of Credit (as defined in the Prepetition Credit Agreement) , *plus* accrued and unpaid interest with respect to the foregoing, and any additional fees, costs, expenses (including attorneys', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Credit Agreement) owing under or in connection with the Prepetition Transaction Documents (the "Prepetition Secured Obligations"). BBPC is indebted to the Prepetition Secured Creditors for the Prepetition Secured Obligations without defense, counterclaim, or offset of any kind.

22. In connection with the Prepetition Credit Facility, the Debtors entered into that certain Pledge and Security Agreement, dated as of September 2, 2015 (as amended, supplemented or otherwise modified from time to time, the "Security Agreement"), by and among GEE Holding, BBPC, and Macquarie Energy LLC ("Macquarie Energy"), as Collateral Agent (the "Collateral Agent"). Pursuant to the Security Agreement and the other Prepetition Transaction Documents, the Prepetition Secured Obligations are secured by valid, binding, perfected first-priority security interests in and liens on (the "Prepetition Liens") the Collateral

(as defined in the Security Agreement and referred to herein as the “Prepetition Collateral”), including substantially all of the assets of BBPC, including cash (the “Cash Collateral”), and the equity interests in BBPC. All of BBPC’s cash as of the Petition Date constitutes Cash Collateral of the Prepetition Secured Creditors.

23. BBPC and Macquarie Energy are parties to that certain ISDA Master Agreement dated as of September 2, 2015, including the Schedule, Credit Support Annex, Power Annex and Gas Annex thereto, and all other schedules, annexes, exhibits and appendices thereto, and all transactions and confirmations thereunder (in each case, as amended or otherwise modified from time to time (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its provisions, the “ISDA Agreement”), pursuant to which, among other things, the BBPC and Macquarie Energy entered into certain physically- and financially-settled transactions relating to electricity, related electricity products and natural gas and transactions relating to the scheduling of electricity on behalf of BBPC in certain power markets, which transactions have terminated, and BBPC currently purchases natural gas from Macquarie Energy for resale to its retail customers. .

24. Pursuant to the Prepetition Credit Agreement, Macquarie made one cash advance and provided certain credit support for the benefit of BBPC in the form of cash, certain cash equivalents and letters of credit. BBPC has repaid the amount of the cash advance and is required to pay to Macquarie, in accordance with the provisions of the Prepetition Credit Agreement, certain fees and expenses (including fees of Macquarie’s outside counsel) in accordance with the terms thereof and any amount that has been drawn by any beneficiary of any cash or cash equivalents collateral or letter of credit posted or provided by Macquarie, in each case with interest thereon as provided by the Prepetition Credit Agreement.

Events Leading to Chapter 11

A. Increased Market Competition Leads to Lower Revenue

25. The competitive retail electric power industry is characterized by high degrees of both fragmentation, competition, and customer attrition because power providers compete primarily on price and have little else available to differentiate their products and services. Particularly in years with high volatility in weather and energy prices, customers paying high electricity and gas bills will tend to seek out other competitive retail electric providers, resulting in higher attrition rates. Also, larger independent retail energy providers have been active in acquiring customer books of their competitors.

26. Small consumers are also becoming more and more sophisticated in shopping for electric and gas service. In selecting the lowest cost, some residential consumers may choose a pricing plan that changes every month in order to get the lowest near-term price. Others pay an appropriate premium because they prefer to lock in a price for a period of a year or longer. In some instances, there is no premium because the retail energy provider is interested in the long-term customer relationship. “Low cost” is a determination that is made by each consumer, because individuals know how they want to manage their time and resources.

27. Small consumers are also using energy-efficient appliances and devices, adopting green building technologies, and taking other actions that help protect the environment, but also lower demand for energy products.

28. All of these factors converged to decrease the Debtors’ revenue and cause them to default on certain of their obligations.

B. The Prepetition Defaults

29. Prior to the Petition Date, BBPC and GEE Holding were in default under the Prepetition Credit Agreement and the ISDA Agreement which led to a series of seven (7)

Forbearance Agreements (collectively, the “Forbearance Agreement”), the latest of which was dated as of January 31, 2019. Pursuant to the Forbearance Agreement, the Prepetition Secured Creditors agreed to forbear from exercising certain rights and remedies under the Prepetition Credit Agreement and the ISDA Agreement for a limited period of time, subject to certain terms and conditions.

30. On February 7, 2019, the Prepetition Secured Creditors notified BBPC (i) that the term of the Prepetition Credit Agreement had expired in accordance with its terms, (ii) that the forbearance period set forth under the Forbearance Agreement had terminated in accordance with the terms of the Forbearance Agreement, and (iii) of the existence of certain defaults under the ISDA Agreement and as a result of the existence of such defaults, Macquarie Energy had designated an Early Termination Date (as defined in the ISDA Agreement) under the ISDA Agreement of February 11, 2019. On February 12, 2019, Macquarie Energy notified BBPC of the Early Termination Amount (as defined in the ISDA Agreement) due and owing by BBPC under the ISDA Agreement in respect of the Early Termination Date (as defined in the ISDA Agreement) (which amount is subject to adjustment and correction in accordance with the terms of the ISDA Agreement).

C. Efforts to Refinance and/or Sell its Businesses

31. Over the several months prior to the Petition Date, the Debtors sought to secure a replacement of the indebtedness to Macquarie and Macquarie Energy or locate a third party interested in acquiring all or parts of the Debtors’ business. While the Debtors were working with two interested parties, and notwithstanding the Debtors efforts to seek to locate either a party to provide equity infusion to offset amounts owed to the Prepetition Secured Creditors or to locate a purchaser for some or all of the assets of BBPC, the Debtors were unable to consummate a transaction in the timeframe dictated by the circumstances they faced.

32. As a consequence of the termination of the Prepetition Credit Agreement and the ISDA Agreement, and after discussions with the Prepetition Secured Creditors regarding an agreeable path forward, the Debtors have determined in consultation with their advisors that the value of the Debtors' estates is likely to be maximized through the filing of these Chapter 11 Cases and a prompt sale of their remaining assets. Consequently, the Debtors intend to pursue a sale of substantially all of their assets pursuant to section 363 of the Bankruptcy Code and intend to file a sale procedures and sale motion as soon as possible after the First Day Hearing.

Evidentiary Support for First Day Motions

33. Contemporaneously the Debtors have filed a number of first day pleadings seeking relief that the Debtors believe is necessary to enable them to efficiently administer their estates with minimal disruption and loss of value during these chapter 11 cases. The Debtors request that the relief requested in each of the first day motions be granted as critical elements in ensuring the maximization of value of the Debtors' estates. I believe that the relief requested in the first day motions is necessary to allow the Debtors to operate with minimal disruption during the pendency of these chapter 11 cases. I have reviewed each of the first day motions discussed below and the facts set forth in each first day motion are true and correct to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors. A description of the relief requested in and the facts supporting each of the first day motions is set forth in Exhibit A attached hereto and incorporated herein by reference.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Dated: February 14, 2019

/s/ Allan Brenner
Allan Brenner, Managing Member of 1515-
Geenergy Holding Co. LLC and Chief
Financial Officer of BBPC, LLC *d/b/a* Great
Eastern Energy

EXHIBIT A

Evidentiary Support for First Day Motions¹

I. Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Their Related Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").

1. Pursuant to the Joint Administration Motion, the Debtors request entry of an order (a) directing procedural consolidation and joint administration of their related chapter 11 cases and (b) granting related relief. Given the integrated nature of the Debtors' operations, joint administration of these chapter 11 cases will provide significant administrative convenience and cost savings to the Debtors without harming the substantive rights of any party in interest.

2. Many of the motions, hearings, and orders in these chapter 11 cases will affect each Debtor entity. For example, virtually all of the relief sought by the Debtors in the First Day Motions is sought on behalf of all of the Debtors. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration of these chapter 11 cases, for procedural purposes only, under a single docket, will also ease the administrative burdens on the Court by allowing the Debtors' cases to be administered as a single joint proceeding, instead of multiple independent chapter 11 cases. Accordingly, I respectfully submit that the Joint Administration Motion should be approved.

II. Debtors' Motion For Entry of an Order (I) Authorizing the Debtors to File A Consolidated List of Creditors in Lieu of Submitting A Separate Mailing Matrix for Each Debtor, and (II) Authorizing the Debtors to Redact Certain Personal Identification Information for Individual Creditors, and (III) Granting Related Relief (the "Creditor Matrix Motion").

¹ Capitalized terms not defined hereafter shall have the same meanings ascribed to such terms in the respective First Day Motions.

3. Pursuant to the Creditor Matrix Motion, the Debtors seek entry of an order: (a) authorizing the Debtors to maintain a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor; (b) authorizing the Debtors to redact certain personal identification information for individual creditors; and (c) granting related relief.

4. Although I understand that a list of creditors usually is filed on a debtor-by-debtor basis, in a complex chapter 11 bankruptcy case involving more than one debtor, the debtors may file a consolidated creditor matrix “in the interest of justice.” Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be an unnecessarily burdensome task and result in duplicate mailings.

5. Additionally, I believe that it is appropriate to authorize the Debtors to redact from the Creditor Matrix address information of individual creditors—including the Debtors’ customers and current and former employees—and interest holders because such information could be used to perpetrate identity theft. The Debtors propose to provide an unredacted version of the Creditor Matrix to the Office of the United States Trustee for the District of Delaware, any official committee of unsecured creditors appointed in these chapter 11 cases, and the Court. Accordingly, I respectfully submit that the Court should approve the Creditor Matrix Motion.

III. Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (II) Granting Related Relief (the “Cash Management Motion”).

6. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to (i) continue to operate their Cash Management System;

(ii) honor certain prepetition obligations related thereto; and (iii) maintain existing Business Forms in the ordinary course of business; (b) granting related relief.

7. The Debtors' Cash Management System is similar to the centralized cash management systems used by other comparably sized companies to manage cash flow. The Debtors use their Cash Management System in the ordinary course to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting. The Debtors' treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds. Additionally, the Debtors' corporate accounting, treasury, and internal audit departments regularly reconcile the Debtors' books and records to ensure that all transfers are accounted for properly.

8. Because of the disruption that would result if the Debtors were forced to close their existing bank accounts, I believe that it is critical that the existing Cash Management System remain in place. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

IV. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages Motion").

Pursuant to the Wages Motion, the Debtors seek entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, withholding obligations, payroll processing fees, reimbursable employee expenses, non-insider employee incentive programs and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto. The

Debtors seek authority to make the following payments related to prepetition amounts owed on account of the Employee Compensation and Benefits:

Employee Obligation	Interim Amount	Final Amount
Employee Compensation	\$60,000	\$60,000
Withholding Obligations	\$0	\$0
Reimbursable Expenses	\$10,000	\$10,000
Employee Benefits Programs	\$45,000	\$45,000
Total	\$112,000	\$112,000

9. The Debtors employ approximately 54 Employees, all of which are salaried. The Employees perform a variety of functions critical to the preservation of value and the administration of the Debtors' estates. In many instances, the Employees include personnel who are intimately familiar with the Debtors' businesses, processes, and systems, and who cannot be easily replaced.

10. The majority of Employees rely on the Employee Compensation and Benefits to pay their daily living expenses. Thus, Employees will face significant financial consequences if the Debtors are not permitted to continue the Employee Compensation and Benefits in the ordinary course of business. The Debtors seek to minimize the personal hardship the Employees would suffer if employee obligations are not paid when due or as expected. Consequently, I believe the relief requested is necessary and appropriate.

11. The Debtors are seeking authority to pay and honor certain prepetition claims relating to the Employee Compensation and Benefits, including, among other things, wages, salaries, other compensation, withholding obligations, payroll processing fees, reimbursable expenses, non-insider employee incentive programs health insurance, life and accidental death and dismemberment insurance, workers' compensation benefits, short- and long-term disability coverage, auxiliary benefits, retirement plans, paid time off, severance, and other benefits that the

Debtors have historically directly or indirectly provided to the Employees in the ordinary course of business and as further described in the Wages Motion.

12. I believe the Employees provide the Debtors with services necessary to conduct the Debtors' business, and absent the payment of the Employee Compensation Benefits owed to the Employees, the Debtors will likely experience Employee turnover and instability at this critical time. I believe that without these payments, the Employees may become demoralized and unproductive because of the potential significant financial strain and other hardships the Employees may face. Employees may then elect to seek alternative employment opportunities. I believe enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. I, therefore, believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their business in these chapter 11 cases.

13. Therefore, I believe that the relief requested in the Wages Motion inures to the benefit of all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Wages Motion.

V. Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a) and 363(b), (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors, (II) Authorizing Financial Institutions to Honor and Process Prepetition Checks and Transfers to Critical Vendors, and (III) Granting Related Relief (the "Critical Vendors Motion").

14. Pursuant to the Critical Vendors Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to pay the Critical Vendors Claims in an amount not to exceed \$6.1 million all pursuant to the Interim Order (the "Interim Order Cap") and, in the aggregate, inclusive of amounts paid pursuant to the Interim Order, an amount not to exceed

\$10.4 pursuant to the Final Order (the “Final Order Cap”), in each case absent further order of the Court; and (b) granting related relief.

15. The Debtors supply electricity and natural gas to customers in deregulated markets. The Debtors purchase their natural gas needs from gas marketing companies and all of their electricity needs from the ISOs (as defined below) and transport the natural gas and electricity to their customers using the wires, poles, power lines and pipelines that are owned and operated by local transmission and distribution service providers and utilities (the “Distribution Providers”). These Distribution Providers are the sole source provider of energy transportation services in the local areas for energy providers. Generally, the Debtors pay these Distribution Providers for distribution services and related charges on a monthly basis for costs incurred for the previous month. Therefore, although the Debtors are current in all of the payments to the various Distribution Providers, the Debtors anticipate that there will still be amounts due on the Commencement Date for prepetition transportation services provided by the Distribution Providers prior to the Commencement Date. Based on historical data, the Debtors estimate that the aggregate amount due to the Distribution Providers as of the Commencement Date will be approximately \$8.2 million.

16. The ISOs are the sole electricity provider for their particular state or region, and therefore, the Debtors’ only source of electricity for their customers. If the ISOs are not paid prepetition amounts that they are owed, they may terminate the Debtors ability to continue to purchase electricity in that state or region. If the Debtors are unable to procure electricity, then they will be unable to provide the customers with their electricity needs. In that circumstance, the customers will revert to their default energy provider, and the Debtors will lose all of their customers in that area to the default energy provider for that area.

17. Recognizing that payment of prepetition claims of such third-party vendors outside of a plan of reorganization would be extraordinary relief, the Debtors, with the assistance of their advisors, reviewed their books and records, consulted operations management and purchasing personnel, reviewed contracts and supply agreements, and analyzed applicable laws, regulations, and historical practices to identify the limited number of vendors that are critical to the continued and uninterrupted operation of the Debtors' businesses—the loss of which could materially harm their businesses, shrink their market share, reduce their enterprise value, and impair going-concern viability.

18. The Debtors propose to condition the Critical Vendor Payments on the agreement of the individual Critical Vendor to continue supplying goods to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors in the twelve (12) months before the Petition Date, or on terms more favorable to the Debtors to which the Debtors and the Critical Vendor may otherwise agree (the "Customary Trade Terms"). The Debtors seek the authority to obtain written verification before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms throughout the Chapter 11 Cases and for the twelve-month period commencing on the date the plan of reorganization or liquidation is consummated.

19. If a Critical Vendor accepts a Critical Vendor Payment and thereafter fails to provide the Debtors with the requisite Customary Trade Terms (each such Critical Vendor, a "Defaulting Vendor"), the Debtors seek authority to (i) treat any Critical Vendor Payment received by the Defaulting Vendor as an unauthorized postpetition transfer under Bankruptcy Code section 549 that the Debtors may (a) recover from the Defaulting Vendor in cash or goods, or (b) at the Debtors' option (with consent from Macquarie and Macquarie Energy), apply as a

credit against any outstanding postpetition claims held by such Defaulting Vendor, and (ii) upon recovery of any Critical Vendor Payment under clause (a) or (b), reinstate the prepetition claim of the Defaulting Vendor in the amount recovered by the Debtors, less the Debtors' reasonable costs incurred in recovering such amounts. Further, by virtue of having accepted a Critical Vendor Payment, each Critical Vendor shall be deemed to have waived any and all defenses it might otherwise have against the Debtors with respect to any action commenced by the Debtors under Bankruptcy Code section 549 as described immediately above. In essence, the Debtors seek to return the parties to their respective positions immediately before entry of the Order if a Critical Vendor refuses to supply goods to the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim.

20. The Debtors submit that the requested relief will allow the Debtors to preserve stakeholder value by paying certain prepetition claims of certain counterparties where critical to unlock incremental liquidity for the Debtors' business enterprise. Accordingly, the Debtors seek authority, but not direction, to pay and discharge, on a case-by-case basis, a total of approximately \$10.4 million in the aggregate, with an amount up to \$6.1 million due and payable on an interim basis and up to an additional \$4.3 million due and payable on a final basis (the "Critical Vendor Cap").

21. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Critical Vendors Motion.

VI. Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (VI) Granting Related Relief (the "Utilities Motion").

22. Pursuant to the Utilities Motion, the Debtors seek entry of interim and final orders: (a) determining adequate assurance of payment for future utility services; (b) prohibiting utility

companies from altering, refusing, or discontinuing services; (c) establishing procedures for determining adequate assurance of payment; and (d) granting related relief.

23. In connection with the operation of their business and management of their properties, the Debtors obtain water, sewer service, electricity, waste disposal, natural gas, and other similar services (“Utility Services”) either directly from utility companies or their brokers or indirectly from landlords that pay for and pass through the costs associated therewith to the Debtors in accordance with the applicable nonresidential real property lease (“Utility Providers”). The relief requested herein applies to all Utility Providers.

24. The Debtors pay approximately \$12,000 per month to their Utility Providers. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days will be approximately \$12,000. The Debtors propose depositing \$5,842.94 into a segregated account as additional assurance of payment (the “Adequate Assurance Deposit”), which is an amount sufficient to cover one-half of the Debtors’ average monthly cost based on the historical average payment.

25. Additionally, the Debtors seek approval of their proposed Adequate Assurance Procedures. These procedures allow Utility Providers to request adequate assurance for unpaid Utility Services and additional adequate assurance when they believe the proposed amount is not sufficient. This ensures that all key stakeholder groups obtain notice of such request before it is honored.

26. Any disruption in the Debtors’ business would adversely impact customer relationships and result in a significant decline in the Debtors’ revenues and profits. This, in turn, jeopardizes the value of the Debtors’ estates and impact creditor recoveries. Therefore, it is critical that Utility Services continue uninterrupted during these chapter 11 cases. Accordingly,

on behalf of the Debtors, I respectfully submit that the Court should approve the Utilities Motion.

VII. Debtors' Motion for Entry of an Interim and Final Order (I) Authorizing, But Not Directing the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief (the "Taxes Motion").

27. The Debtors request authority to: (a) negotiate, remit and pay certain accrued and outstanding prepetition obligations accrued in the ordinary course of business on account of the Taxes and Fees (as defined herein) in an aggregate amount not to exceed \$1.4 million on an interim basis and \$2.0 million on a final basis, absent further order of the Court; and (b) continue negotiating and paying the Taxes and Fees accrued in the ordinary course of business on a postpetition basis.

28. The Debtors collect, incur, and pay sales taxes, use taxes, annual report and licensing fees, personal property taxes, franchise taxes and fees, income taxes, and various other governmental taxes, fees, and assessments (collectively, the "Taxes and Fees"). The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing authorities (collectively, the "Governmental Authorities"). Taxes and Fees are remitted and paid by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions. The Debtors estimate that approximately \$1.4 million in Taxes and Fees relating to the prepetition period are or will become due and owing to the Governmental Authorities after the Petition Date in the ordinary course.² The Debtors further estimate that approximately \$2.0 million in Taxes and Fees relating to the prepetition period are or will become due and owing to the Governmental Authorities within 30 days after the Petition Date.

² This estimate does not include any potential prepetition tax liability that may later come due as the result of an audit.

29. The Debtors must continue to pay the Taxes and Fees to avoid potential costly distractions during these chapter 11 cases. Specifically, the Debtors' failure to pay the Taxes and Fees could adversely affect the Debtors' estate because the Governmental Authorities could file liens or seek to lift the automatic stay.

30. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes Motion should be approved.

VIII. Debtors' Motion for Entry of an Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (II) Granting Related Relief (the "Insurance Motion").

31. The Debtors request authority to: (a) authorizing, but not directing, the Debtors to (i) pay their obligations under insurance policies entered into prepetition, and (ii) renew, supplement, modify, or purchase insurance coverage in the ordinary course; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 30 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

32. The Debtors' Insurance Policies are essential to the preservation of the value of the Debtors' business, properties, and assets. I understand that, in many cases, insurance coverage such as that provided by the Insurance Policies is required by diverse regulations, laws, and contracts.

33. Failure to make the payments required by the Debtors' Insurance Policies, including the Financing Agreement, could have a significant negative impact on the Debtors' operations. Continuation of the Insurance Policies is essential to the preservation of the value of

the Debtors' properties and assets. Moreover, in many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts governing the Debtors' commercial activities, including the requirements of the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee").

34. I believe that the relief requested in the Insurance Motion is in the best interest of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

IX. Debtors' Application For Entry of an Order, Pursuant to 28 U.S.C. § 156(C), Authorizing the Retention and Appointment of Omni Management Group, Inc. as Claims and Noticing Agent for the Debtors Nunc Pro Tunc to the Petition Date (the "Omni 156(c) Retention Application").

35. Pursuant to the Claims and Noticing Agent Application, the Debtors seek entry of an order (a) appointing Omni Management Group, Inc. ("Omni") as claims and noticing agent for the Debtors and their chapter 11 cases, effective *nunc pro tunc* to the Petition Date, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases, and (b) granting related relief.

36. Based on my discussions with the Debtors' advisors, I believe that the Debtors' selection of Omni to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the estates. Moreover, it is my understanding that based on all engagement proposals obtained and reviewed that Omni's rates are competitive and comparable to the rates charged by their competitors for similar services.

37. Based on my discussions with the Debtors' advisors I was made aware of the Claims Agent Protocol in the District of Delaware. The exigencies of this case have required a deviation from the Claims Agent Protocol. Prior to the bankruptcy proceeding, the Debtors

defaulted under their secured financing facility, and the Debtors' secured lender exercised its rights under the deposit account control agreements for the Debtors' bank accounts. The Debtor, therefore, had no ability to hire a claims and noticing agent because it appeared there was no path to a restructuring. After continued discussions, the secured lender agreed to permit the Debtors to use certain cash collateral in order to commence a bankruptcy filing on an expedited basis. The Debtors determined, in their judgment, that they would not be able solicit competitive bids and properly analyze the proposals from claims agents prior to requiring a claims agent to commence preparations for filing. The Debtors submit that complying with the Claims Agent Protocol's requirement of soliciting and analyzing competitive bids in this instance would have materially impaired their ability to commence the bankruptcy process and provide notice to parties in interest.

38. The Debtors anticipate that there will be thousands of persons and entities to be noticed in these chapter 11 cases. In light of the number of parties in interest and the complexity of the Debtors' business, the Debtors submit that the appointment of a claims and noticing agent will provide the most effective and efficient means of, and relieve the Debtors and/or the Clerk's office of the administrative burden of, noticing and processing proofs of claim and is in the best interests of both the Debtors' estates and their creditors. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Omni 156(c) Retention Application.

X. Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Use Cash Collateral, (B) Granting Adequate Protection, (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing, and (E) Granting Related Relief (the "Cash Collateral Motion").

39. The Debtors have an immediate postpetition need to use Cash Collateral. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash to, among other things, continue operating

their business and satisfy other working capital needs during these chapter 11 cases. The Debtors believe that all or substantially all of their available cash constitutes the cash collateral of the Prepetition Secured Creditors, as that term is used by section 363(c) of the Bankruptcy Code. The Debtors will therefore be unable to proceed with operating their businesses without the ability to use Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to finance their business operations, and the availability of sufficient working capital and liquidity to the Debtors through the use of Cash Collateral, is vital to the preservation and maintenance of the value of the Debtors' estates and the successful prosecution of these chapter 11 cases.

40. Based on consultation with the Debtors' advisors, I believe that the terms for the use of the Cash Collateral and the terms of the related adequate protection (discussed below) are (i) reasonable and sufficient to protect the interests of the Prepetition Secured Creditors, (ii) consistent with and authorized by the Bankruptcy Code, and (iii) necessary to obtain the consent of the Prepetition Secured Creditors to the Debtors' use of the Cash Collateral. The terms of the Interim Order, including, without limitation, the Adequate Protection, are fair and reasonable, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

41. The Debtors, in consultation with their proposed restructuring financial advisor, Glass Ratner Advisory & Capital Group LLC, reviewed and analyzed the Debtors' projected cash needs with the intention of preparing and finalizing a 13-week projection that would typically be filed with a motion to use cash collateral. Despite the efforts of the Debtors and its advisors and the Prepetition Secured Creditors and its advisors, the exigencies of the circumstances facing the Debtors and the short timeframe available before the need to file these

Chapter 11 Cases, it became apparent that finalizing a 13-week projection was not feasible. Consequently, the Debtors in consultation with its advisors and the Prepetition Secured Creditors and their advisors prepared a 2-week projection (as updated from time to time in accordance with the terms of the Cash Collateral Orders, the “Budget”)⁷ outlining the Debtors’ postpetition cash needs in the initial 2 weeks of these cases. The Prepetition Secured Creditors have agreed to work diligently with the Debtors and their advisors to finalize the balance of the 13-week projection and to file a revised 13-week Budget prior to a Final Hearing. The Debtors believe that the Budget is an accurate reflection of their cash requirements over the identified period, will allow them to meet their obligations—including the administrative expenses of the chapter 11 cases—and is reasonable and appropriate under the circumstances.

42. Based on this forecast, the Debtors’ determined that access to Cash Collateral provides sufficient liquidity to efficiently administer the Debtors’ estates during these chapter 11 cases. Among other things, the Debtors need such liquidity to satisfy payroll, pay their taxes, and make other payments that are essential or appropriate efficient administration of the Debtors’ chapter 11 estates. The Debtors’ ability to continue making such payments during these chapter 11 cases is essential to the preservation of their assets during the pendency of these cases.

43. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Secured Creditors with a variety of adequate protection to protect against the postpetition diminution in value of Cash Collateral resulting from the use, sale, or lease of Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the “Adequate Protection Obligations”):

⁷ A copy of the initial Budget is attached to the Interim Order as Exhibit 1.

- a. Valid and automatically perfected first priority replacement liens and security interests in and upon the Prepetition Collateral subject only to the Carve Out and Prior Liens;
- b. superpriority administrative claims and all of the other benefits and protections allowed under section 507(b) of the Bankruptcy Code, junior only in right to the Carve Out;
- c. payment of monthly interest at the non-default rate on the aggregate outstanding amount of Prepetition Secured Obligations beginning March 1, 2019; and
- d. attorneys' fees and expenses and financial advisors' fees and expenses.

44. Therefore, the Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Creditors from any diminution in value to the Cash Collateral. In light of the foregoing, the Debtors further submit, and the Prepetition Secured Creditors agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Creditors are appropriate.³ Thus, the Debtors' provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates

45. The Debtors, therefore, request immediate authority to use Cash Collateral on an interim basis, as set forth in this Motion and in the Interim Order, to prevent immediate and irreparable harm to their estates pending the Final Hearing.

³ Pursuant to the Cash Collateral Orders, the Prepetition Secured Creditors are permitted to seek additional adequate protection in accordance with the terms thereof.