IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
BICENT HOLDINGS LLC, *et al.*,[1]	:	Case No. 12-11304 (___)
	:	
Debtors.	:	Joint Administration Requested

DECLARATION OF CHRISTOPHER L. RYAN IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS

Under 28 U.S.C. § 1746, I, Christopher L. Ryan, declare as follows under penalty of perjury:

1. I am the Chief Financial Officer of debtor and debtor in possession Bicent Holdings LLC, a Delaware limited liability company ("Holdings"), and the direct or indirect parent company of each of the other debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors" or the "Company") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). I have been employed by the Debtors since 2007, and I am familiar with the day-to-day operations, financial conditions, business affairs, and books and records of the Debtors.

2. Prior to acting as Chief Financial Officer of Holdings, I was a partner in the Financial Advisory Business of Evercore Partners, and was previously employed at Morgan Stanley and Lehman Brothers, where I focused on mergers and acquisitions.

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Bicent Holdings LLC (9347); Bicent R.F. LLC (8269); Bicent Funding LLC (2270); Bicent Power LLC (8567); Colorado Energy Management, LLC (8296); CEM Energy Services, Inc. (9642); Colorado Cogen Operators, LLC (3737); San Joaquin Cogen, L.L.C. (8299); Rocky Mountain Power, LLC (7088); Hartwell, LLC (N/A); Hartwell Power Company (5414); Hartwell Independent Power Partners, LLC (7195); Hart County IPP, LLC (7194). The Debtors' mailing address is 2575 Park Lane, 2nd Floor, Lafayette, Colorado 80026.

3. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has yet been appointed in these Chapter 11 Cases. By motion filed concurrently herewith, the Debtors have requested joint administration of their Chapter 11 Cases for procedural purposes only.

4. The Debtors have filed these Chapter 11 Cases to reorganize their financial affairs, as well as to restructure their debt and de-lever their balance sheets. Importantly, the Debtors have already taken significant steps to achieve the foregoing as they are filing these pre-arranged Chapter 11 Cases with the support of certain of their first lien lenders (the "Consenting First Lien Lenders") and their second lien lenders (the "Consenting Second Lien Lenders" and, together with the Consenting First Lien Lenders, the "Supporting Lenders"), each significantly in excess of the 2/3 required under the RSA (as defined below). As set forth in greater detail below, prior to the Petition Date, the Company engaged in extensive negotiations with the Supporting Lenders, which resulted in the Debtors successfully negotiating a pre-arranged plan of reorganization (the "Plan"). The Debtors intend to file the Plan within the first 5 business days of these Chapter 11 Cases.

5. In addition, to enable the Debtors to operate effectively and to avoid the adverse effects of the chapter 11 filings on their business operations, the Debtors have requested various types of relief in "first day" applications and motions (each a "First Day Pleading," and collectively, the "First Day Pleadings"). The First Day Pleadings seek relief aimed at, among other things, (a) preserving the Debtors' businesses, (b) ensuring the continuation of the Debtors'

accounts and other business operations without disruption, (c) authorizing the Debtors' use of post-petition financing, and (d) establishing certain administrative procedures to facilitate a smooth transition into chapter 11. The relief requested in the First Day Pleadings is critical to the success of the Chapter 11 Cases and the Debtors' reorganization efforts.

6. I submit this declaration (the "Declaration") in support of the Debtors' chapter 11 petitions and First Day Pleadings. I am familiar with the contents of each First Day Pleading, and I believe that the relief sought in each such motion or application (a) is necessary to enable the Debtors to operate in chapter 11 with minimum disruption or loss of productivity or value, (b) constitutes a critical element in achieving a successful reorganization of the Debtors, and (c) is in the best interests of the Debtors, their estates and creditors.

7. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, information supplied to me by other members of the Debtors' management team and/or professionals retained by the Debtors, information learned from my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors' operations, financial condition and present liquidity needs. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

8. Part I of this Declaration describes the Debtors' prepetition ownership structure and provides an overview of the Debtors' business operations and prepetition indebtedness. Part II of this Declaration describes the circumstances surrounding the commencement of these Chapter 11 Cases. Part III of this Declaration describes the Debtors' prepetition restructuring efforts. Part IV of this Declaration briefly summarizes the various First Day Pleadings filed by the Debtors concurrently herewith.

PART I

OVERVIEW OF THE DEBTORS

A. The Acquisition

9. On July 10, 2007, Bicent Power LLC ("Bicent Power"), a privately-held Delaware limited liability company, acquired interests (the "Acquisition") in Centennial Power, LLC ("Centennial") and Colorado Energy Management, LLC ("CEM") from MDU Resources Group, Inc. ("MDU"). Through the Acquisition, Bicent Power indirectly acquired the following entities and their respective assets: (i) Colorado Power Partners ("CPP") and BIV Generation Company, LLC ("BIV" and, together with CPP, "Brush Power"), which own the Brush 1&3 and Brush 4D natural gas-fired facilities located in Brush, Colorado; (ii) Rocky Mountain Power, LLC ("RMP"), which owns a coal-fired facility located in Hardin, Montana; (iii) San Joaquin Cogen, L.L.C. ("SJC"), which owns a natural gas-fired facility located in Lathrop, California; and (iv) Mountain View Power Partners, LLC ("Mountain View"), owner of the Mountain View wind facility located in Palm Springs, California, which was subsequently sold in March 2008. Bicent Power also acquired a 50% interest in an additional electric power generating facility, Hartwell Energy Limited Partnership located in Hartwell, Georgia, which was subsequently sold in October 2009.

10. In connection with the Acquisition, Bicent Power entered into a Management Agreement dated as of July 10, 2007 with Beowulf Energy LLC (the "Management Agreement"). The Management Agreement provided that Beowulf Energy LLC would provide management services to Bicent Power and its subsidiaries during the term of the Management Agreement, including, but not limited to, general executive and management services, assistance in the identification, support, negotiation and analysis of acquisitions, dispositions and financial alternatives and human resource functions.

11. Holdings is a holding company that wholly owns Bicent R.F. LLC, which in turn wholly owns Bicent Funding LLC ("Bicent Funding"), which in turn wholly owns Bicent Power, the Company's principal operating entity and the primary obligor on the Debtors' prepetition first and second lien secured bank debt.[2]

B. The Debtors' Businesses

i. The Power Generation Business

12. As a result of the Acquisition, the Debtors currently own and operate two electric power generating facilities respectively located in California (the "San Joaquin Plant") and Montana (the "Hardin Plant"), with an aggregate production capability of over 168 MW (together, the "Plants").[3]

13. The Hardin Plant, a 120 MW coal-fired facility located approximately 40 miles southeast of Billings, Montana, began commercial operations in April 2006 as the first pulverized coal plant to be built in the state of Montana in over 20 years. The facility includes an overhauled and upgraded GE steam turbine generator and a refurbished Mitchell Engineering / Babcock & Wilcox boiler. The Hardin Plant is controlled by a new state-of-the-art distributed control system. Also, the Hardin Plant was constructed utilizing BACT for new emission sources, including a spray dry absorber, fabric filter baghouse and selective catalytic reduction unit. As a result, the Hardin Plant is one of the cleanest burning coal plants in operation. RMP owns the real property upon which the Hardin Plant is situated.

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2 Attached hereto as Exhibit A is an organizational chart of the Debtor entities and certain non-Debtor affiliates.

3 The Plants are located in the WECC region, which is the largest electric reliability region in the United States. The WECC region covers approximately 1.8 million square miles in 14 western states, western Canada and northern Mexico. WECC provides reliable and affordable electric service to over 80 million people and is comprised of eight sub-regions, including (i) California-North; (ii) California-South; (iii) Northwest; (iv) Rocky Mountains; (v) Desert Southwest; (vi) Basin; (vii) WECC-Canada; and (viii) WECC-Mexico.

14. The San Joaquin Plant is a 48 MW natural gas-fired, simple-cycle facility located approximately 70 miles east of San Francisco in Lathrop, California. San Joaquin began commercial operations in January 1990. SJC owns the real property upon which the San Joaquin Plant sits.

15. All of the capacity and energy generated by the Plants is sold under power purchase and sale agreements (each individually, a "PPA" and, collectively, the "PPAs") with high quality and credit worthy off-take entities that hold strong investment grade credit ratings.

16. In addition, certain non-Debtor affiliates own two natural gas-fired facilities located in Brush, Colorado -- Brush 1&3 (the "Brush 1&3 Plant") and Brush 4D (the "Brush 4D Plant"). The Brush 1&3 Plant commenced commercial operations in October 1990 and consists of one 60 MW combined-cycle unit and one 30 MW simple-cycle unit. Non-Debtor CPP owns the real property upon which the Brush 1&3 Plant is situated. The Brush 4D Plant, which is located adjacent to Brush 1&3, is a 147 MW combined-cycle generating unit that is capable of operating in simple-cycle mode at 50-60 MW, depending on ambient conditions. Brush 4D commenced commercial operations in May 2002. Non-Debtor BIV owns the real property upon which the Brush 4D Plant operates.[4]

ii. Power Management Services Unit

17. As noted above, as part of the Acquisition, the Company also acquired CEM, the Company's power management services unit. Headquartered north of Denver in Lafayette, Colorado, CEM has provided operation and maintenance ("O&M"), design and

[4] Adjacent to the Brush 1&3 Plant and the Brush 4D Plant is Brush 2, a gas-fired cogeneration facility owned by non-Debtor Brush Cogeneration Partners ("BCP"), which is owned by Veresen, Inc. CPP, BIV, and BCP are parties to a certain joint use and cooperation agreement (the "Joint Use Agreement"), pursuant to which the Brush Plants (as defined below) share certain equipment, systems, administrative offices, easements, and allocate project costs pursuant to a delineated protocol.

construction management and engineering, procurement and construction ("EPC") services to Centennial and other power producers since the mid-1980s. CEM has proven EPC experience in the development and construction of new combustion turbine generators projects and experience in the construction and management of coal-fired generation projects. CEM has completed several EPC projects, including Hardin and Brush 4D. CEM has also developed a unique expertise in refurbishing older power plants to improve cost-efficiency, reduce emissions and achieve comparatively lower heat rates. CEM has significant expertise in combined-cycle engineering design as well as major turbine overhauls, retrofits and upgrades.

18. Through CEM,[5] the Company provides comprehensive services to successfully build, operate and maintain power plants. CEM provides O&M and asset management services to (a) the Debtor-owned Plants, (b) certain non-Debtor-owned power plants in Vernon, California (the "Malburg Plant"), Brush, Colorado (the "Brush 2 Plant"), and Morgan County, Colorado (the "Manchief Plant"), and (c) the Brush 1&3 Plant and the Brush 4D Plant (together with the Brush 2 Plant, the "Brush Plants," and collectively with the Malburg Plant and the Manchief Plant, the "Non-Debtor Plants").

19. CEM provides these services to the Plants pursuant to a series of O&M agreements (collectively, the "Operation & Maintenance Agreements"). CEM also provides O&M services to the Non-Debtor Plants, pursuant to a series of Non-Debtor O&M agreements (the "Non-Debtor O&M Agreements and, together with the Operation & Maintenance Agreements, the "O&M Agreements"). Under the O&M Agreements, with respect to each Plant and Non-Debtor Plant, CEM is responsible for, among other things, general maintenance and repair, and the performance of general operational services, including obtaining or maintaining

[5] Certain services are provided by Colorado Cogen Operators, LLC ("CCO"), a wholly-owned subsidiary of CEM.

permits, licenses and certifications, providing and training personnel, procuring supplies, ensuring inventory, coordinating with the PPA counterparties with respect to both the Plants and the Non-Debtor Plants, and maintaining certain levels and types of insurance coverage.

C. Summary of Prepetition Indebtedness

i. Secured Financing

a. First Lien Credit Agreement

20. Bicent Power, as borrower, Bicent Funding and the subsidiary guarantors named therein, as guarantors, the lenders party thereto and Barclays Bank PLC, as collateral agent and administrative agent, are parties to the First Lien Credit Agreement dated as of July 10, 2007 (the "First Lien Credit Agreement"). The First Lien Credit Agreement provides for an aggregate commitment of $480 million consisting of a $330 million term loan facility (the "Term B Facility"), a $30 million revolving credit commitment, a $120 million letter of credit facility and a $10 million swing line commitment. The proceeds from borrowings under the Term B Facility were used, together with the Term C Facility (as defined below) proceeds, the proceeds from the Mezzanine Credit Facility (the "Mezzanine Credit Facility") and the equity capital, to fund the Acquisition. Bicent Power's obligations under the First Lien Credit Agreement are guaranteed by all of Bicent Power's subsidiaries and secured by a first lien on substantially all of the Company's assets as well as pledges of all of the shares of capital stock or other equity interests in substantially all of Bicent Power's subsidiaries (the "Prepetition Collateral"). All of the Debtors in these Chapter 11 Cases guaranteed the obligations under the First Lien Credit Agreement, other than Bicent Holdings and Bicent R.F. LLC. The maturity date for amounts due under the revolving credit facility and the swing line facility is July 10, 2012. The Term B Facility, which has principal amortization in the amount of $825,000 per calendar quarter, matures on June 30, 2014.

21. As of the Petition Date, the aggregate principal amount of loans outstanding under the First Lien Credit Facility was approximately $117.1 million in principal obligations on the Term B Facility, approximately $16.4 million outstanding under the revolving credit facility and approximately $31.6 million in face amount of outstanding letters of credit issued under the First Lien Credit Facility, approximately $13.8 million for Prepetition First Lien Credit Facility reimbursement obligations on account of previously drawn letters of credit, plus all accrued but unpaid interest, fees and other amounts due thereof or with respect thereto.

22. The First Lien Credit Agreement requires Bicent Power to maintain interest rate hedge agreements covering a notional amount of not less than 50% of the aggregate then outstanding principal of the Term B Facility (the "Interest Rate Swap Agreements"). The Interest Rate Swap Agreements effectively convert a portion of the Company's floating-rate debt to fixed-rate debt. As of the Petition Date, Bicent Power's obligations outstanding under the Interest Rate Swap Agreements are approximately $20.8 million.

b. Second Lien Credit Agreement

23. Bicent Power, as borrower, Bicent Funding and the subsidiary guarantors named therein, as guarantors, the lenders party thereto and U.S. Bank National Association, as successor collateral agent and administrative agent, are parties to the Second Lien Credit Agreement dated as of July 10, 2007 (the "Second Lien Credit Agreement"). The Second Lien Credit Agreement consists of a $130 million term loan facility (the "Term C Facility"). Bicent Power's obligations under the Second Lien Credit Agreement are guaranteed by substantially all of Bicent Power's subsidiaries and secured by a second lien on the Prepetition Collateral. All of the Debtors in these Chapter 11 Cases guaranteed the obligations under the Second Lien Credit Agreement, other than Bicent Holdings and Bicent R.F. LLC. The Term C Facility matures on

December 31, 2014. As of the Petition Date, the aggregate principal amount of loans outstanding under the Second Lien Credit Agreement was approximately $128.5 million plus accrued and unpaid interest.

c. ***Intercreditor Agreement***[6]

24. Barclays Bank PLC, as First Lien Administrative Agent, Second Lien Administrative Agent, First Lien Collateral Agent, Second Lien Collateral Agent, First Lien Commodity Hedge Counterparty and Hedge Bank, Goldman Sachs Capital Markets, L.P., as Hedge Bank, Bicent Power, and the Guarantors entered into that certain Collateral Agency and Intercreditor Agreement dated as of July 10, 2007 (as amended, supplemented or otherwise modified, the "Intercreditor Agreement") to set forth the relative lien priorities and other rights and remedies of the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders with respect to, among other things, the Prepetition Collateral.

d. ***Mezzanine Credit Agreement***

25. Bicent R.F. LLC, as borrower, and Barclays Bank PLC, as initial lender, collateral agent and administrative agent, are parties to the Mezzanine Credit Agreement dated as of July 10, 2007 (the "Mezzanine Credit Agreement"). The Mezzanine Credit Agreement provides for, among other things, loans of up to $50 million to fund a portion of the Acquisition and matures on June 30, 2015. Bicent R.F. LLC's obligations under the Mezzanine Credit Facility are secured by pledges of the limited liability company interests of Bicent Funding. As of the Petition Date, the aggregate principal amount of loans outstanding under the Mezzanine Credit Agreement was approximately $65.2 million.

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[6] Capitalized terms used in this paragraph describing the Intercreditor Agreement, but not otherwise described herein, shall be ascribed the meanings given to such terms in the Intercreditor Agreement.

ii. **Equity Interests in Bicent Power and Bicent Holdings**

26. On July 10, 2007, Bicent Power's Amended and Restated Limited Liability Company Agreement became effective whereby the original holders of the limited liability company interests in Bicent Power each contributed all of their respective interests in Bicent Power to Bicent Funding and whereby Bicent Funding became the sole holder of limited liability company interests in Bicent Power. Holdings is 100% owned by non-Debtor Bicent Prime Holdings LLC, which in turn is 87.07% owned by Natural Gas Partners VIII, L.P., Natural Gas Partners IX, L.P. and NGP IX Offshore Holdings, L.P. (collectively, "NGP") and 12.93% by Beowulf (Bicent) LLC.

PART II

CIRCUMSTANCES LEADING TO COMMENCEMENT OF CHAPTER 11 CASES

27. As discussed in more detail above, the Debtors have approximately $383.7 million[7] of outstanding principal indebtedness under the First Lien Credit Agreement, Second Lien Credit Agreement and Mezzanine Credit Agreement (collectively, the "Prepetition Credit Agreements"). A series of unexpected and unforeseen events made it impossible for the Debtors to comply with certain covenants contained in the Prepetition Credit Agreements, and to otherwise refinance the debt under the Prepetition Credit Agreements, some of which is maturing in 2012, ultimately compelling the need to file these Chapter 11 Cases.

[7] This figure does not include funded letters of credit.

A. Market Pressures and Declining Revenues Impaired
the Debtors' Ability to Service The Prepetition Credit Agreements

28. The Acquisition occurred in July 2007 before the rapid softening of the economy and tightening of the U.S. financial markets in the second half of 2008, which resulted in the effective collapse of the U.S. credit markets. The loans under the Prepetition Credit Agreements were made under the assumptions that business would continue to grow and that the capital markets would remain stable, thus allowing the Prepetition Credit Agreements to be refinanced on similar terms. These assumptions did not hold. The Debtors ended up with more debt than they could service in today's sluggish U.S. economy.

29. The decline in the value of the collateral securing the Prepetition Credit Agreements also negatively impacted the Debtors' ability to refinance them. The price of natural gas, which is closely tied to the price of electricity in much of the U.S. (including regions where the Plants are located)[8], has fallen from about $7 or $8 per mmbtu in June 2007 to under $2.00 as of April 12, 2012 (a decline of approximately 60-70%). While this decline did not necessarily have an immediate impact on the Company's cash flow because nearly all of the capacity and energy generated by the Plants is contracted or hedged through at least 2015, it has had a significant impact on the value of the Debtors' assets – the Plants – given the decline in the Debtors' potential future earnings capacity.

30. Bicent Power's acquisition of Centennial and CEM was based in large part on CEM receiving approximately $25 million in incentive and bonus fees in connection with the completion of a combined cycle power plant in Hobbs, New Mexico (the "Hobbs Project") and CEM's continued growth in the power management services sector. However, as a result of the

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[8] Natural gas sets the price of electricity in much of the United States as it represents the marginal generating source. Therefore, gas fired generators will bid their power into the spot market as long as the price they receive is higher than their variable cost of generation (the vast majority of which is the price of fuel).

commencement and prosecution of an arbitration captioned *Lea Power Partners, LLC* ("LPP") v. *Colorado Energy Management, LLC* (the "Hobbs Arbitration"), CEM estimates it lost in excess of $50 million[9] in cash flow, comprised of lost incentive and bonus fees expected from the completion of the Hobbs Project, legal expenses incurred in defending the Hobbs Arbitration and lost O&M fees it would have received in connection with operating the Hobbs Project. The indirect damage to CEM from the Hobbs Arbitration, while difficult to quantify precisely, was also very significant since customers were unwilling to enter into new O&M and EPC contracts with CEM while it was defending against the gross negligence claims alleged in the Hobbs Arbitration. As a result of the Hobbs Arbitration, CEM has been unable to secure any new O&M business and has lost three contracts that it had at the time of the Acquisition.

B. Significant Legal Proceedings Have Impacted the Debtors' Business

i. The Hobbs Arbitration

31. LPP initiated the Hobbs Arbitration on December 7, 2009. The Hobbs Arbitration arose out of an EPC contract entered into by and between CEM and LPP in November 2006 (the "Hobbs Contract") for the construction of the Hobbs Project. LPP, the owner of the Hobbs Project, alleged that CEM, the contractor, was grossly negligent in performing its duties under the Hobbs Contract and sought over $114 million in damages for such alleged gross negligence. CEM filed several counterclaims, including one alleging that LPP breached its duty to pay a $12 million Cost Bonus Incentive Fee (the "Heat Rate Claim") and a $1 million Joint Development Agreement completion bonus (the "JDA Claim").

32. A 10-day arbitration proceeding took place in September of 2011 and the arbitrator issued the arbitration award on January 13, 2012. With respect to LPP's claims against

[9] This figure excludes approximately $21 million in net damages awarded to LPP in the Hobbs Arbitration.

CEM, the arbitrator found that LPP did not demonstrate that CEM's conduct amounted to gross negligence. He also found that any claim for delay damages was barred by the fact that LPP's own conduct contributed to the delays. However, the arbitrator found that CEM breached the Hobbs Contract and awarded LPP $22,043,302 in damages. With respect to CEM's counterclaims, the arbitrator ruled in favor of CEM on its $1 million JDA Claim, but ruled against CEM on the Heat Rate Claim. CEM has since filed a petition to vacate the arbitration award in the Supreme Court of the State of New York, which has yet to rule on CEM's petition.

ii. Indemnification Claims

33. In connection with the Hobbs Arbitration, CEM and Bicent Power are also involved in litigation in the Supreme Court of the State of New York ("NY State Supreme Court") with Centennial Energy Holdings, Inc. ("CEHI") and Centennial Energy Resources LLC ("CER"), MDU subsidiaries from which Bicent Power acquired CEM in 2007. At the time the Hobbs Contract was executed in 2006, CEM was still an indirect subsidiary of MDU. After CEM and LPP executed the Hobbs Contract, LPP and CEHI entered into a Guaranty Agreement dated February 12, 2007 (the "Guaranty Agreement") that provided CEHI would indemnify LPP for losses resulting from any breach of the Hobbs Contract by CEM.

34. Pursuant to the Purchase and Sale Agreement between CER and Bicent Power dated as of April 25, 2007 (the "PSA") entered into in connection with the Acquisition, CER agreed to indemnify Bicent Power for certain losses from third-party claims arising from CEM's actions taken before the closing date of the PSA. The PSA also provided that Bicent Power would seek a discharge of any obligations by CEHI under the Guaranty Agreement. Bicent Power was unable to obtain a discharge of the Guaranty Agreement, and, as a result, the PSA was amended such that Bicent agreed to post a $10 million letter of credit that CEHI was to draw upon in the event CEHI was required to make any payments to LPP under the Guaranty

Agreement. CEHI and CER brought the current action in the NY State Supreme Court alleging various breach of contract and common-law indemnification claims against CEM and Bicent Power. CEM and Bicent Power filed counterclaims seeking indemnification for costs and expenses incurred in connection with the Hobbs Arbitration pursuant to the PSA. This action is still pending and is currently in the discovery phase of the litigation.

iii. Defaults Under the First and Second Lien Credit Agreements

35. As the Debtors engaged in discussions with Barclays Bank PLC, the collateral and administrative agent under the First Lien Credit Agreement (in such capacity, the "First Lien Agent") and certain of the First Lien Lenders, the Debtors had difficulty complying with certain financial covenants in the First Lien Credit Agreement after the Debtors had to write off certain receivables for incentive and bonus fees due in connection with the Hobbs Project. Ultimately, the Debtors defaulted under the financial covenant in the First Lien Credit Agreement for the period ending December 31, 2011. The First Lien Credit Agreement provided for a 15 day cure period of such default subsequent to the reporting deadline, which was up to four months after the end of the fiscal year. During this time, the Debtors negotiated with counsel to the First Lien Agent on behalf of the Steering Committee of First Lien Lenders regarding a forbearance under the First Lien Credit Agreement.

36. On February 24, 2012, the Debtors entered into a forbearance agreement (the "Forbearance Agreement") pursuant to which the First Lien Agent and the members of the Steering Committee of First Lien Lenders agreed to forbear from exercising their rights and remedies on account of the financial covenant default and any possible defaults or events of default in connection with the Hobbs Arbitration through March 19, 2012. On March 19, 2012, the Forbearance Agreement was amended to (i) extend the forbearance period to April 2, 2012 and (ii) add that the First Lien Agent and the members of the Steering Committee of First Lien

Lenders party thereto would also forbear from exercising their rights and remedies on account of the Debtors' failure to make a $825,000 principal repayment on the Term B Facility on March 30, 2012. On March 30, 2012, the Debtors failed to make (i) the principal repayment on the Term B Facility under the First Lien Credit Agreement and (ii) interest payments under the First Lien Credit Agreement and the Second Lien Credit Agreement. On April 2, 2012, the Forbearance Agreement was further amended to (i) extend the forbearance period to April 9, 2012 and (ii) add that the First Lien Agent and the members of the Steering Committee of First Lien Lenders party thereto would also forbear from exercising their rights and remedies on account of (A) the Debtors' failure to make an interest payment on March 30, 2012 and (B) any cross defaults relating to the Second Lien Credit Facility and Swap Agreements. On April 6, 2012, the loans under the Second Lien Credit Agreement were accelerated upon the Debtors failure to cure the missed interest payment due on March 30, 2012 within a five business day grace period. On April 9, 2012 and April 16, 2012, the Forbearance Agreement was further amended to extend the forbearance period to April 16, 2012 and April 18, 2012, respectively.

PART III

PREPETITION RESTRUCTURING EFFORTS

A. The Debtors Initiate Discussions with the First Lien Agent and First Lien Lenders

37. In response to the Debtors' depressed financial performance and declining financial condition, after thoroughly evaluating their options, the Debtors undertook the process of negotiating a balance sheet restructuring with certain lenders party to the Prepetition Credit Agreements. To that end, the Debtors retained Moelis & Company LLC, as their financial advisor and investment banker on December 22, 2011, and Young Conaway Stargatt & Taylor, LLP, as their bankruptcy counsel on January 20, 2012, to advise in restructuring negotiations,

any resulting transactions and these Chapter 11 Cases. The Debtors also engaged Paul, Weiss, Rifkind, Wharton & Garrison LLP, their existing corporate counsel, to assist in connection with any restructuring proposals and the implementation thereof. In addition to the balance sheet restructuring, the Debtors evaluated other potential restructuring alternatives, including possible asset sales, to maximize enterprise value for the Debtors' estates.

38. The Debtors began discussions with the First Lien Agent regarding a potential restructuring approximately 6 months ago. Shortly thereafter, the First Lien Agent and certain other First Lien Lenders, as part of the restructuring negotiations, commenced a due diligence process and the First Lien Agent engaged Milbank, Tweed, Hadley & McCloy LLP as its counsel in connection with the Debtors' potential restructuring. The First Lien Agent later retained RPA Advisors, LLC, as financial advisor, to assist with its diligence and analysis.

39. During this time, the First Lien Agent, which also served as collateral agent and administrative agent under the Second Lien Credit Agreement (in such capacity, the "Second Lien Agent"), requested that it be replaced as Second Lien Agent in the event that the interests of the First Lien Credit Facility Lenders and the Second Lien Credit Facility Lenders diverged. On December 30, 2011, Barclays Bank PLC, in its capacity as Second Lien Agent, the Second Lien Credit Facility Lenders party thereto and U.S. Bank National Association entered into that certain Successor Agent Agreement whereby Barclays Bank PLC resigned as the Second Lien Agent and U.S. Bank National Association became the Second Lien Agent under the Second Lien Credit Agreement.

B. The Debtors Successfully Negotiate a Prearranged Chapter 11 Plan

40. The Debtors first initiated discussions and negotiations with the First Lien Agent's advisors in connection with determining the parameters of a potential restructuring.

These discussions led to a negotiation whereby the First Lien Credit Facility Lenders would acquire substantially all of the equity of the Debtors on account of their First Lien Credit Facility Claims. After initial discussions between the Debtors' advisors and the First Lien Agent's advisors, those certain First Lien Lenders then entered into confidentiality agreements with the Debtors in February 2012 to finalize the terms of the restructuring. The Debtors, the First Lien Agent and the First Lien Lenders and their advisors engaged in extensive in-person meetings and telephonic meetings regarding the terms of the restructuring, which ultimately resulted in the terms embodied in the Plan.

41. On March 6, 2012, the Debtors entered into a Lock-Up Agreement (the "Second Lien Lock-Up") with certain Second Lien Credit Facility Lenders that provided such lenders with the restructuring proposals being negotiated with the First Lien Agent and the Consenting First Lien Lenders. Under the Second Lien Lock-Up, the Second Lien Credit Facility Lenders party thereto agreed to keep the details of the restructuring confidential and not to transfer any of their Second Lien Credit Facility Claims until the Second Lien Lock-Up terminated on March 26, 2012. Thereafter, the Debtors, the First Lien Agent, the Consenting First Lien Lenders and the Second Lien Credit Facility Lenders party to the Second Lien Lock-Up and their advisors continued to engage in discussions regarding the terms of the restructuring.

42. After good faith, arm's-length negotiations among the Debtors, the First Lien Agent, the Consenting First Lien Lenders, the Consenting Second Lien Lenders and their counsel and financial advisors, the Debtors reached an agreement with the First Lien Agent and the Consenting First Lien Lenders and Consenting Second Lien Lenders with respect to a consensual restructuring on the terms set forth in the Plan, and formalized by the Restructuring Support Agreement dated as of April 18, 2012 (the "RSA," a copy of which, exclusive of

exhibits, is attached hereto as Exhibit B). The RSA was executed by Consenting First Lien Lenders and Consenting Second Lien Lenders, each holding significantly in excess of the 2/3 of the principal amount under the First Lien Credit Facility and the Second Lien Credit Facility, respectively, as required by the RSA.

43. As noted above, certain wholly-owned affiliates that are not Debtors in these Chapter 11 Cases (collectively, the "Brush Entities") own the Brush 1&3 Plant and the Brush 4D Plant. The Plan contemplates the potential sale of the Brush Entities and their respective assets, including the Brush 1&3 Plant and the Brush 4D Plant, outside of these Chapter 11 Cases. Although the Brush Entities are guarantors under the First Lien Credit Agreement and the Second Lien Credit Agreement, the First Lien Agent and the members of the Consenting First Lien Lenders have agreed to forbear from exercising their rights and remedies on account of the financial covenant default and any possible defaults or events of default in connection with the Brush Entities while the Brush Entities pursue a potential sale.

C. The Pre-Negotiated Plan

44. In accordance with the RSA, the Debtors expect to file their proposed Plan and related disclosure statement (the "Disclosure Statement"), within 5 business days of the Petition Date. The Plan sets forth the manner in which the claims against, and equity interests in, the Debtors will be treated, and the Disclosure Statement describes certain aspects of the Plan, the Debtors' businesses and related matters.

45. Generally, the Plan contemplates (among other things), that allowed administrative claims, fee claims, and priority claims will be paid in full upon the effective date of the Plan, the holders of Allowed First Lien Credit Facility Claims (as defined in the Plan) will receive substantially all of the equity of the post-emergence Company, and the holders of

Allowed Second Lien Credit Facility Claims (as defined in the Plan) shall receive, on a ratable basis, warrants to obtain equity so long as their class of Second Lien Credit Facility Claims votes to accept the Plan.

46. Pursuant to the terms of the RSA, the Debtors are seeking approval of the Disclosure Statement within the first 55 days of these Chapter 11 Cases and confirmation of the Plan within the first 105 days after the Petition Date.

PART IV

SUMMARY OF FIRST-DAY MOTIONS

47. The Debtors believe that this Court's approval of each of the Debtors' First Day Pleadings submitted concurrently herewith is an important element of their reorganization efforts and is necessary to ensure a smooth transition into chapter 11 with minimal disruption to their operations. I have reviewed each of the First Day Pleadings, including exhibits thereto, and believe that the relief requested therein is critical to the Debtors' ability to achieve a successful reorganization and is in the best interests of the Debtors' estates and creditors. I affirm that to the best of my knowledge, the contents thereof are true and correct. Factual information with respect to each First Day Pleading is provided below and in each First Day Pleading.

Administrative and Procedural Motions

A. Motion of the Debtors for an Order Directing Joint Administration of Related Chapter 11 Cases ("Joint Administration Motion")

48. The Debtors have filed a motion with this Court seeking approval of the joint administration of these Chapter 11 Cases for procedural purposes only. The Debtors believe that many of the motions, applications, hearings and orders that will arise in these Chapter 11 Cases will jointly affect each Debtor. Under the circumstances, the Debtors believe

that the interests of the Debtors, their creditors, and other parties-in-interest would best be served by the joint administration of these Chapter 11 Cases for procedural purposes only. The Debtors further believe that joint administration of the Chapter 11 Cases will ease the administrative burden on the Court and all parties-in-interest, as the relief requested will permit the Clerk of the Court to utilize a single docket for all of the Chapter 11 Cases, and to combine notices to be provided to creditors and parties-in-interest. Consequently, I believe that the joint administration of the Chapter 11 Cases, and the consolidation thereof for procedural purposes only, is in the best interest of the Debtors' estates, creditors and parties-in-interest.

B. Application of the Debtors for an Order Authorizing and Approving the Appointment of Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. § 156(c), Section 105(a) of the Bankruptcy Code, and Local Rule 2002-1(f) (the "Claims Agent Application")

49. The Debtors have filed an application pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for an order appointing Epiq Bankruptcy Solutions, LLC ("Epiq") as the claims and noticing agent in order to assume full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors' cases. The Debtors' selection of Epiq to act as the claims and noticing agent has satisfied the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Based on all engagement proposals obtained and reviewed by the Debtors, Epiq's rates were competitive and reasonable, especially given Epiq's quality of services and expertise. By

separate application, and as more fully described below, the Debtors are also seeking to retain Epiq as administrative advisor in these Chapter 11 Cases.

50. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be in excess of 2,000 entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is both necessary and in the best interests of the Debtors' estates and their creditors. Further, by appointing Epiq as the claims and noticing agent in these cases, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of a significant administrative burden.

51. For these reasons and the reasons set forth in the Claims Agent Application, I believe that the retention of Epiq as the Court-appointed claims and noticing agent for these Chapter 11 Cases is in the best interests of the Debtors, their estates and creditors.

C. Application of the Debtors for an Order Authorizing and Approving the Employment and Retention of Epiq Bankruptcy Solutions, LLC as Administrative Advisor for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date (the "Administrative Advisor Application")[10]

52. As noted above, the Debtors have filed an application seeking an order authorizing and approving the employment and retention of Epiq under section 327(a) of the Bankruptcy Code to act as the Debtors' administrative advisors in connection with these Chapter 11 Cases. More specifically, the Debtors seek to employ Epiq to provide certain bankruptcy administrative services, including, but not limited to, providing solicitation and balloting services, assisting with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs, and providing claims processing and reconciliation services.

[10] The Debtors are not seeking immediate approval of the Administrative Advisor Application at the first day hearing.

53. The Debtors are seeking to retain Epiq to help manage administrative tasks with respect to the hundreds of creditors, equity security holders and other parties in interest that are expected to be involved in the Debtors' Chapter 11 Cases. Given the complexity of these cases, the Debtors submit that Epiq's employment as administrative advisor is necessary and in the best interests of the Debtors and their estates.

Business Operations Motions

D. Motion of the Debtors for an Order (I) Approving Continued Use of Cash Management System, (II) Authorizing the Continuation of Intercompany Transactions, (III) Granting Administrative Priority Status to Post-Petition Intercompany Transactions, (IV) Authorizing the Use of Prepetition Bank Accounts, and (V) Waiving the Requirements of 11 U.S.C. § 345(b) on an Interim Basis (the "Cash Management Motion")

54. In the ordinary course of their business, and as is common with power projects of this kind, the Debtors maintain an integrated cash management system that provides well established mechanisms for the collection, concentration, management and disbursement of funds used in their operations. The cash management system is comprised of a plant-level system (the "Plant-Level Cash Management System") and a corporate-level system (the "Corporate Cash Management System," and, together with the Plant-Level Cash Management System, the "Cash Management System"). As part of the Cash Management System, the Debtors maintain and/or administer certain operating accounts on behalf of third parties pursuant to the Non-Debtor O&M Agreements.[11] Under the Non-Debtor O&M Agreements, the non-debtor owner of each plant either pre-pays the operating expenses for its respective plant on a

[11] Although the Debtors do not believe that these accounts are property of the Debtors' estates under section 541(a) of the Bankruptcy Code, out of an abundance of caution, the Debtors are seeking authority to continue to administer the Non-Debtor Plant-Level Operating Accounts in the ordinary course of business on a post-petition basis. For the reasons set forth herein and in the Cash Management Motion, the Debtors submit that the continued administration of these non-debtor accounts post-petition is essential to their performance under the Non-Debtor O&M Agreements.

monthly basis, subject to a subsequent true up, or otherwise provides working capital sufficient to fund at least one month of Plant operations.

55. Pursuant to the Cash Management Motion, the Debtors seek authority to continue to use their Cash Management System. Preservation of the going-concern value of the Debtors' estates cannot be achieved if the Debtors' cash management procedures are substantially disrupted. The Cash Management System enables the Debtors to: (a) control and monitor corporate funds, (b) ensure cash availability, and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. In addition, preservation of the Debtors' existing Cash Management System will help ensure that the Debtors operate under the O&M Agreements without interruption.

56. Given the general demands of the Debtors' reorganization process, it would be unduly burdensome to require the Debtors to establish an entirely new system for the management of the Debtors' cash assets. By contrast, preserving a "business as usual" atmosphere and avoiding the unnecessary distractions that inevitably would be associated with any substantial disruption of the Cash Management System will facilitate the Debtors' stabilization of their post-petition business and assist the Debtors in their reorganization efforts. If the Debtors are not permitted to continue to utilize the Cash Management System, their operations would be severely, and perhaps irreparably, disrupted. Accordingly, the Debtors believe that it is essential that the Debtors' currently existing Cash Management System remain in place.

57. In addition, the Debtors are seeking authority to continue post-petition intercompany transfers in the ordinary course of business, and will maintain all receipts of

disbursements and records of all transfers within the Cash Management System during the post-petition period; provided, however, that pending a final hearing, the Debtors are not seeking authority to make transfers to or on account of the Brush 1&3 Plant and the Brush 4D Plant that aggregate in excess of $500,000 more than the revenue received from or on account of the Brush 1&3 Plant and the Brush 4D Plant.[12] It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of funds in order to efficiently and effectively operate their large and complex business operations. Substantially disrupting their current cash management procedures would impair the Debtors' ability to optimize their business performance, perform under the Non-Debtor O&M Agreements in the ordinary course, and successfully prosecute these Chapter 11 Cases.

58. I understand that the United States Trustee Guidelines require chapter 11 debtors to cease using their existing bank accounts and checks, and to open or begin use of new accounts and checks. In order to avoid operational disruptions, and to ensure as smooth a transition into chapter 11 as possible, the Debtors have sought permission to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations.

59. In that vein, the Debtors have also requested that they be authorized to continue to use all check stock in existence as of the Petition Date without the "debtors-in-possession" designation. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession. The Debtors believe that it would be costly and disruptive to cease using their existing check stock. However, once the Debtors' existing check

[12] The Debtors intend to establish a cutoff with respect to Intercompany Transactions that occurred prior to the Petition Date. The Debtors are not seeking authority through the Cash Management Motion to pay any prepetition Intercompany Transfers.

stock is depleted, the Debtors have agreed to insert the designation of "debtor-in-possession" on all newly-purchased checks.

60. Further, as all of the Banks that the Debtors utilize as part of their Cash Management System are authorized depositories in Region 3, the Debtors believe that they are in compliance with section 345(b) of the Bankruptcy Code. However, out of an abundance of caution, the Debtors are seeking an interim waiver of the requirements of section 345(b). Given the relative security of the Bank Accounts' funds, which are deposited with major financial institutions, I believe that cause exists to grant such an extension. If the Debtors determine that they are unable to comply with the requirement of section 345 within that sixty day period, the Debtors intend to file a motion seeking authority to deviate from such requirements.

61. I believe that the relief requested in this motion is necessary and in the best interest of the Debtors' estates and creditors.

E. Motion of the Debtors for an Order (A) Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation and Employee Benefits and Continue Payments of Wages, Compensation and Employee Benefits in the Ordinary Course of Business; and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing (the "Employee Wage Motion")

62. Pursuant to the Employee Wage Motion, CEM and CCO (together, the "Employer-Debtors") are seeking authority to (a) pay all prepetition employee wages, salaries and other accrued compensation; (b) reimburse all prepetition employee business expenses; (c) make all contributions to prepetition benefit programs and continue such programs; (d) honor workers' compensation obligations; (e) make all payments for which prepetition payroll withholding deductions (including, but not limited to, payroll taxes) were made; (f) pay all processing costs and administrative expenses relating to the foregoing payments and contributions; and (g) make all payments to third parties incident to the foregoing payments and

contributions. The Employer-Debtors are also seeking authorization to continue the payment of wages, compensation and employee benefit programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described more fully below. The Employer-Debtors are further seeking an order authorizing and directing applicable banks and other financial institutions to honor and pay all checks and transfers drawn on the Employer-Debtors' payroll and employee Benefits (as defined in the Employee Wage Motion) accounts to make the foregoing payments.

63. Pursuant to the Employee Wage Motion, the Employer-Debtors are seeking authority to pay prepetition wages to Employees in an amount not to exceed $240,000 and such that no single Employee is paid in excess of $11,725 on account of prepetition wages. As discussed more fully in the Employee Wage Motion, the Employer-Debtors are also seeking authority to honor benefits and other programs, such as paid time off and medical coverage, in the ordinary course of business.

64. The vast majority of the Employees rely exclusively on their full compensation, benefits and reimbursement of their expenses to continue to pay their daily living expenses, and the Employees will be exposed to significant financial difficulties if the Employer-Debtors are not permitted to pay the unpaid employee obligations. The Debtors believe that if they are unable to honor all such obligations immediately, employee morale and loyalty will be jeopardized at a time when such support is critical.

65. Further, the uninterrupted continuation of the Debtors' business is critically dependent upon a stable work force. The Debtors believe that any significant number of employee departures or deterioration in morale at this time will immediately and substantially adversely impact the Debtors' businesses and result in immediate and irreparable harm to the

estates and their creditors. There is a real, immediate risk that if the Debtors are not authorized to continue to honor their prepetition employee obligations in the ordinary course, the employees would no longer support and maintain the operations of the Debtors, thereby crippling the Debtors' business operations and instantly destroying the prospects of a successful reorganization. Consequently, the Debtors strongly believe, and I agree, that it is critical that they be permitted to pay their employees their prepetition wages and continue with their ordinary course personnel policies, programs and procedures that were in effect prior to the Petition Date.

F. Motion of the Debtors for an Order Authorizing the Payment of Certain Prepetition Claims of Critical Vendors (the "Critical Vendors Motion")

66. By the Critical Vendors Motion, the Debtors seek authority to pay, in their sole discretion, certain prepetition claims of a limited number of certain suppliers of coal, chemicals and treatment supplies, and other products integral to the operation of the Plants (collectively, the "Critical Vendors"). The Critical Vendors generally consist of sole-source providers of, among other things, maintenance, chemicals, water treatment supplies, minerals, parts, equipment and other products.

67. The Debtors believe that payment of certain claims of the Critical Vendors is critical, because the Plants operate, in large part, based on series of major project contracts, including the PPAs (collectively, the "Project Agreements"). The Project Agreements ensure, among other things, the provision of critical supplies to the Plants, and ultimately, the timely delivery of each Plant's energy to the applicable counterparty to the PPA (each a "PPA Counterparty," and together, the "PPA Counterparties"). The PPA Counterparties have contracted to receive 100% of the output from the Debtors' Plants and rely upon the delivery of such output in order to service their customers. Should one of these sole-source suppliers cease

delivering goods to the Debtors, the Debtors' operations would be crippled and their ability to perform under the PPAs would be hindered significantly.

68. In addition, a portion of the prepetition claims held by certain of the Critical Vendors may be entitled to administrative priority under sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code. Therefore, granting the relief sought in the Critical Vendors Motion would only affect the timing, and not the amount or priority of the applicable portion of such claim.

69. In addition, the Debtors believe that certain of the Critical Vendors may have state or common law possessory liens with respect to property of the Debtors' estates. Thus, in addition to the justifications set forth above, the Debtors believe their failure to pay certain of the Critical Vendor Claims may result in the assertion of possessory Liens by the respective claimants under applicable state law with respect to any supplies or goods in such Critical Vendor's possession.

70. Through the Critical Vendors Motion, the Debtors are seeking authority to make payments, in their sole discretion, to Critical Vendors in an amount not to exceed $320,000.

71. For these reasons and the reasons set forth in the Critical Vendors Motion, I believe that the relief requested in the Critical Vendors Motion is in the best interests of the Debtors' businesses, estates and creditors.

G. Motion of the Debtors for Order Authorizing (I) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Liability, Property, and Other Insurance Programs, Including Payment of Policy Premiums and (II) Continuation of Insurance Premium Financing Programs ("Insurance Motion")

72. Pursuant to the Insurance Motion, the Debtors are seeking an order authorizing them to continue the Insurance Programs, and to pay any and all obligations

thereunder, including all premiums, deductibles, and other fees and costs relating to the Insurance Programs, in an amount not to exceed $120,000.

73. In connection with the operation of their businesses, the Debtors maintain workers' compensation, fiduciary, crime, umbrella & excess liability and various other liability, property, and automobile insurance programs, described in part below (collectively, the "Insurance Programs"), through several different insurance carriers (the "Insurance Carriers"). The Insurance Programs cover the Plants, the Non-Debtor Plants, and the Debtors' corporate offices in Lafayette, Colorado. The insurance coverage provided under the Insurance Policies is essential for preserving the value of the Debtors' assets and, in most cases, such coverage is required by various Plant-related contracts, including the O&M Agreements, as well as various regulations and state and federal laws that govern the Debtors' business operations. Further, under the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain during the Chapter 11 Cases certain types of insurance coverage, which coverage is provided by certain of the policies included in the Debtors' Insurance Programs.

74. In addition, the Debtors are seeking, through the Insurance Motion, authority to continue their existing insurance premium financing agreements and to pay insurance premium financing obligations owned by the Debtors on account of such premium financing programs. The Debtors also seek an order (a) authorizing that their banks honor such checks and/or funds transfer requests and (b) authorizing the Debtors to issue replacement checks, submit replacement funds transfer requests or provide other means of payment to AFCO Credit Corporation (the counterparty to the PFAs) or, the Insurance Carriers, to the extent necessary to pay all outstanding Insurance Obligations described in the Motion.

75. In light of the importance of maintaining the insurance coverage with respect to their business activities and the preservation of the Debtors' cash flow by financing their insurance premiums, the Debtors believe it is in the best interest of creditors in these chapter 11 cases for the Court to authorize the Debtors to honor its obligations under the Insurance Policies and the PFAs.

76. For these reasons, and the reasons set forth in the Insurance Motion, the Debtors believe that the relief requested in the Insurance Motion is necessary to avoid immediate and irreparable harm.

H. Motion for Interim and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance Payment (the "Utilities Motion")

77. Pursuant to the Utilities Motion, the Debtors are seeking entry of interim and final orders pursuant to section 366 of the Bankruptcy Code (a) prohibiting the Debtors' utility providers (the "Utility Companies") from altering, refusing, or discontinuing utility services (the "Utility Services") on account of prepetition invoices, (b) deeming the Debtors' utility service providers adequately assured of future performance, and (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utility Companies. The Utility Companies provide Utility Services both to the Plants, as well as to the Debtors' administrative facilities. The Utility Services include electric, waste management, water, gas, telephone, data, and ash disposal, and many of these services are critical to the operation of the Plants. The Debtors propose establishing a segregated account containing an amount equal to 50% of the Debtors' average aggregate monthly cost of utility service (which the Debtors estimate to be

approximately $100,000) in order to provide the Utility Companies adequate assurance of the Debtors' future payment of their utility bills.

78. Uninterrupted utility service is vital to the continued operation of the Debtors' businesses, including the operation of their Plants and their performance under the Project Agreements, and, consequently, to the success of their chapter 11 cases. Termination of Utility Services provided to the Debtors (even temporarily) could result in the disruption of the Debtors' business and affect the ability of the Debtors to preserve and maximize the value of their estates. Thus, the relief requested herein is necessary and in the best interests of the Debtors' estates and their creditors.

I. Motion of the Debtors for an Order Pursuant to Sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code Authorizing (I) Payment of Certain Prepetition Taxes and Fees, and (II) Financial Institutions to Process and Cash Related Checks and Transfers (the "Taxes Motion")

79. Through the Taxes Motion, the Debtors request entry of an order (i) authorizing, but not requiring, the Debtors to remit and pay (a) property and use taxes incurred in connection with the Debtors' power generation business, *ad valorem* taxes related thereto, and other personal liability and/or trust fund taxes (collectively, the "Taxes"), and (b) permit, licensing, processing and related fees (collectively, the "Permit Fees") related to the Debtors' operation of their businesses, as the Debtors, in their discretion deem necessary, to various federal, state, county and municipal taxing and licensing authorities (the "Authorities"); and (ii) authorizing financial institutions to receive, process and honor all checks and electronic payment requests relating to the foregoing. Through the Taxes Motion, the Debtors are seeking, in their sole discretion, to pay Taxes in an aggregate amount not to exceed $200,000 and Permit Fees in an aggregate amount not to exceed $125,000.

80. I believe that the Debtors' failure to remit the Taxes could have a material adverse impact on their ability to operate in the ordinary course of business, and thus harm these reorganizations to the detriment of all constituents. Additionally, any attempts to collect the Taxes from the Debtors' officers and directors has the potential to divert the attention of those individuals away from the reorganization process.

81. Further, claims for some or all of the Taxes, including property taxes owed by the Debtors, are or may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code. As such claims must be paid in full pursuant to a confirmed plan of reorganization under section 1129(a)(9)(c) of the Bankruptcy Code, the payment of those Taxes at this time only affects the timing of the payment for the vast majority of the amounts at issue and therefore should not unduly prejudice the rights of other creditors.

82. With respect to the Permit Fees, it is essential that the Debtors continue to maintain the permits and licenses related to the Plants and Non-Debtor Plants. Failure to do so would cause the Debtors to default under the O&M Agreements and could seriously jeopardize the Debtors' business operations. Further, the Debtors believe that the Permit Fees are for the most part *de minimis* in nature, and the harm that would occur if the Debtors did not receive authority to remit payments with respect to the Permit Fees justifies the need for immediate payment.

83. Therefore, I believe that it is appropriate to pay, and the Debtors seek authority to pay, in their sole discretion, the Taxes and Permit Fees, including penalties and interest thereon, if any, and any liabilities resulting from audits of prepetition Taxes and Permit Fees, to the relevant Authorities or other applicable parties.

J. Motion for Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Secured Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral Under 11 U.S.C. § 363, (II) Granting Adequate Protection to Certain Prepetition Secured Parties Under 11 U.S.C. §§ 361, 362, 363 and 364, and (III) Scheduling a Final Hearing Under Bankruptcy Rule 4001 (the "DIP Financing Motion")

84. Prior to the Petition Date, the Debtors' day-to-day business operations were funded from cash receipts received from operations and from borrowing under the Prepetition Credit Agreements. As set forth above, the Debtors' prepetition secured obligations are secured by prepetition liens on the Prepetition Collateral, including cash collateral ("Cash Collateral"). As such, the Debtors do not have any unencumbered cash with which to operate their businesses. In addition, as described above, the Debtors lack adequate availability under the Prepetition Credit Agreements to sustain their business operations for an extended period of time. As a result, at this time, the Debtors have an immediate need for the use of Cash Collateral, without which they will be unable to operate their businesses.

85. However, the use of Cash Collateral alone will not sustain the Debtors' operations. Without additional liquidity in the form of post-petition financing, the Debtors' liquidity crisis will be exacerbated, which will further impair the Debtors' ability to operate their businesses as a going concern and will significantly impair the value of the Debtors' assets.

86. Prior to the Petition Date, when the Debtors endeavored to obtain post-petition financing it became clear that they would not be able to obtain any such financing on a non-priming basis, much less on an unsecured, administrative or junior secured basis, based on the amount of secured claims against the Debtors relative to the valuation of the Debtors' business. Substantially all of the Debtors' assets are subject to the liens granted under the various agreements among the Debtors and their prepetition lenders. Because of the extent of the pre-petition lenders' secured claims, obtaining the financing needed by the Debtors as unsecured

debt or debt which would be secured by liens junior to the liens held by the pre-petition debtors was not a realistic option. Moreover, the Debtors' Prepetition First Lien Lenders indicated that they would not consent to having their liens primed by a third-party lender. Therefore, the Debtors determined after unsuccessfully attempting to solicit proposals from third-party lenders that the debtor in possession facility described more fully in the DIP Financing Motion (the "DIP Facility") was the best financing option available to them under the circumstances.

87. Without post-petition financing, the Debtors would be unable to operate their businesses as a going concern, which would significantly impair the value of the Debtors' assets to the detriment of all creditor constituencies. Furthermore, by obtaining post-petition financing, the Debtors will be in a position to preserve the value of their assets for the benefit of all creditors. Finally, the terms of the DIP Facility are fair, reasonable and adequate given the Debtors' circumstances.

88. I have reviewed the DIP Facility and all related documents and I am familiar with their contents. The DIP Facility is the product of extensive negotiations between the Debtors, the DIP Agent and DIP Lenders, and their legal and financial advisors. I believe that the terms of the DIP Facility are fair and reasonable under the circumstances and are the product of good faith, arms'-length negotiations. For these reasons and the reasons set forth in the DIP Financing Motion, I believe that the relief requested in the DIP Financing Motion, including approval of the DIP Facility, is in the best interests of the Debtors' estates and is critical to the Debtors' continued business operations.

CONCLUSION

89. Accordingly, for the reasons states herein and in each of the First Day Pleadings, the Debtors request that the relief sought in the First Day Pleadings be approved.

I swear under penalty of perjury that the foregoing is true and correct.

Dated: April 23, 2012

Name: Christopher L. Ryan
Title: Chief Financial Officer of Bicent Holdings LLC, on behalf of the debtors and debtors in possession