

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re: )

The Diocese of Buffalo, N.Y., )

Debtor. )

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) Case No. 20-[10322 ]

) Chapter 11

**MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR  
DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION AMOUNTS DUE,  
(B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR POST-PETITION  
UTILITY SERVICES UNDER 11 U.S.C. § 366, AND (C) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

The Diocese of Buffalo, N.Y. (the “Diocese”), by and through its undersigned counsel, hereby moves the Court (this “Motion”) for entry of interim and final orders, substantially in the form of the proposed orders attached as *Exhibits A* and *B*, respectively, (a) prohibiting utility companies from altering, refusing or discontinuing service on account of prepetition amounts due; (b) determining that the Diocese’s furnishing of deposits to utility companies listed on Schedule 1, upon their timely request for adequate assurance, in an amount equal to two weeks of the Diocese’s estimated average usage as calculated over the past year, constitutes adequate assurance of payment; and (c) establishing a procedure to address assertions by utility companies that they are entitled to additional adequate assurance. In support of this Motion, the Diocese respectfully represents as follows:

**BACKGROUND**

1. On February 28, 2020 (the “Petition Date”), the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of New

York (the “Court”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”). The Diocese continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for a trustee or examiner has been made in this Chapter 11 Case, and as of the date of this filing, no official committees have been appointed or designated.

2. Information regarding the Diocese’s history, business operations and structure, and the events leading up to this Chapter 11 Case is set forth in the *Affidavit of Rev. Peter J. Karalus Regarding Structure and Pre-Filing History of The Diocese of Buffalo and in Support of the Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Charles Mendolera Regarding the Diocese’s Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

### **JURISDICTION**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

6. The statutory and rule-based predicates for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

7. The Diocese does not, by filing its petition for relief and other documents in this Chapter 11 Case, waive any of its rights under any applicable law, including, without limitation, the Code of Canon law, the First Amendment of the United States Constitution, the Constitution for the State of New York, the Religious Freedom Restoration Act, the church autonomy doctrine,

charitable trust law, New York trust law, and the rights to object to disclosure of information and to contend that certain assets which may be discussed in the Motion are not property of the estate.

**RELIEF REQUESTED**

8. By this Motion, the Diocese respectfully requests that the Court enter interim and final orders, (a) prohibiting those utility companies that provide service to the Diocese (each a “Utility Company” and, collectively, the “Utility Companies”) from altering, refusing or discontinuing service on account of prepetition amounts due, (b) determining that the Diocese’s furnishing of deposits to Utility Companies listed on Schedule 1, upon their timely request for adequate assurance, in an amount equal to two weeks of the Diocese’s estimated average usage as calculated over the past year, constitutes adequate assurance of payment, and (c) establishing a procedure to address assertions by Utility Companies that they are entitled to additional adequate assurance.

9. The Diocese’s ongoing operations require the Diocese to maintain uninterrupted utility services, including electricity, natural gas, telephone, water, waste removal, internet and other services. Termination of a utility service would cause immediate and irreparable harm to the Diocese’s operations and critical reorganization efforts.

10. The Diocese receives utility services from several different providers for multiple facilities. These facilities include: the Saint Stanislaus residence at 123 Townsend, Bishop Grosz residence at 125 Townsend, the Archbishop Walsh Academy, Buffalo State Newman Center, Camp Turner, St. Joseph’s Cathedral, the Catholic Center, Monsignor Conniff Residence, Bishop Head Residence, Mother Teresa Home, Newman Center at University at Buffalo, Niagara Catholic School, O’Hara Residence, and St. Gianna Molla Outreach Center. A list of the Utility Companies

and the service addresses is attached as Schedule 1 hereto.<sup>1</sup> The Diocese is generally current with respect to the payment of its prepetition obligations for all utility services and none of the Utility Companies hold prepetition deposits. Pursuant to section 366(c) of the Bankruptcy Code, the Diocese proposes to provide the Utility Companies adequate assurance of payment as follows:

(a) Upon request, the Diocese will provide each Utility Company a cash deposit (each, a “Deposit”) in an amount equal to two weeks of the estimated cost of its utility consumption from each Utility Company, rounded to the nearest dollar. A Deposit will be calculated using an average charge over the past year’s invoices. If a Utility Company provides the Diocese with services under multiple accounts, then the Diocese may provide that Utility Company with separate Deposits or with one Deposit that equals two weeks of the aggregate estimated usage under all of the Diocese’s accounts with that Utility Company. A Deposit shall be provided within 10 business days of the receipt, by the Diocese or its bankruptcy counsel, of a written request from a Utility Company for adequate assurance under the Bankruptcy Code.

(b) In the event that a Utility Company believes that the proposed Deposit does not constitute adequate assurance of payment that is satisfactory to that Utility Company within the meaning of section 366 of the Bankruptcy Code, the Utility Company, no later than 20 days following the entry of the interim order with respect to this Motion, must

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<sup>1</sup> The Diocese reserves the right to amend or supplement the list of Utility Companies included on Schedule 1. It is possible that, despite the Diocese’s best efforts, certain Utility Companies have not yet been identified by the Diocese or included on Schedule 1. To the extent the Diocese identifies additional Utility Companies, the Diocese will file amendments to Schedule 1, and will serve copies of the interim order in respect to this Motion (when and if entered) on such newly-identified Utility Companies. The Diocese requests that any order entered with respect to this Motion be binding on all Utility Companies regardless of when any given Utility Company was added to Schedule 1 and that all Utility Companies, including subsequently added Utility Companies, be prohibited from altering, refusing, or discontinuing utility services to the Diocese absent further order of the Court. Designation of a service provider as a Utility Company on Schedule 1 is not intended, nor shall it be construed, as an admission or concession by the Diocese that such provider is a “utility” within the meaning of Bankruptcy Code section 366, and the Diocese reserves all rights and defenses with respect thereto.

serve upon the Diocese and Diocese's counsel, and file with the Court, a specific request for adequate assurance (each, an "Assurance Request"). An Assurance Request must include: (i) the location and account number(s) for which utility services are provided; (ii) the outstanding balance (if any) on the account and a summary of the Diocese's payment history; (iii) the reasons why a Deposit does not constitute satisfactory adequate assurance of payment; and (iv) a proposal of what would constitute satisfactory adequate assurance of payment. Without further order of the Court, the Diocese may, in its discretion, enter into agreements to provide additional adequate assurance to any Utility Company. Failure by a Utility Company to timely file and serve an Assurance Request will result in the Utility Company waiving any right to request additional adequate assurance of payment beyond a Deposit and each such Utility Company will be deemed to have received adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code.

(c) In the event that a Utility Company timely submits an Assurance Request and the parties cannot promptly resolve such Assurance Request on a consensual basis, the Court shall determine the appropriate amount of adequate assurance and the Diocese will schedule a hearing on shortened notice and serve notice of such hearing on the Utility Company by overnight mail or hand delivery. Each Utility Company submitting an Assurance Request shall be prohibited from altering, refusing or discontinuing service to the Diocese until, after a hearing on adequate assurance, the Court issues an order authorizing such action.

11. The Diocese submits that the above proposed procedure and adequate assurance to Utility Companies sufficiently addresses the requirements of section 366 of the Bankruptcy Code.

## **BASIS FOR RELIEF**

12. Courts in this and other jurisdictions recognize that the continuation of utility services is a necessary minimum requirement for rehabilitation of a chapter 11 debtor and have granted similar procedures. *See, e.g., In re Eastern Niagara Hospital, Inc.*, Case No. 19-12342 (CLB) [D.E. 148] (Bankr. W.D.N.Y. Dec. 11, 2019); *In re Diocese of Rochester, Inc.*, Case No. 19-20905 (PRW) [D.E. 121] (Bankr. W.D.N.Y. Oct. 25, 2019); *In re Cenveo, Inc.*, Case No. 18-22178 (RDD) [D.E. 174] (Bankr. S.D.N.Y. Mar. 8, 2018); *In re Appvion Inc.*, Case No. 17-12082 (KJC) [D.E. 206] (Bankr. D. Del. Oct. 30, 2017); *In re CGG Holding (U.S.) Inc.*, Case No. 17-11637 (MG) [D.E. 100] (Bankr. S.D.N.Y. July 14, 2017); *In re True Religion Apparel Inc.*, Case No. 17-11460 (CSS) [D.E. 239] (Bankr. D. Del. July 31, 2017); *In re National Air Cargo, Inc.*, Case No. 14-12414 (MJK) [D.E. 65] (Bankr. W.D.N.Y. Nov. 18, 2014); *In re Personal Communications Devices, LLC*, Case No. 13-74303 (AST) [D.E. 131] (Bankr. E.D.N.Y. Sept. 13, 2013); *In re Interfaith Medical Center, Inc.*, Case No. 12-48226 (CEC) [D.E. 77] (Bankr. E.D.N.Y. Dec. 20, 2012); *In re Global Aviation Holdings Inc.*, Case No. 12-40783 (CEC) [D.E. 172] (Bankr. E.D.N.Y. Mar. 5, 2012).

13. Because utility companies often exercise practical monopoly power in providing essential services, utility companies may force a debtor in bankruptcy to capitulate to payment demands by threatening to terminate service. *See In re Woodland Corp.*, 48 B.R. 623, 624 (Bankr. D. N.M. 1985); *In re Tel-Net Hawaii, Inc.*, 131 B.R. 723, 727 (Bankr. D. Haw. 1991); *see also Bertrand Pan and Jennifer Taylor, Sustaining Power: Applying 11 U.S.C. § 366 in Chapter 11 Post-BAPCPA*, 22 Bankr. Dev. J. 371, 373 (2006).

14. In protecting debtors from the termination of utility services, section 366(a) of the Bankruptcy Code works as an injunction and provides, in part, that a “utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.” 11 U.S.C. § 366(a). At the same time, section 366(b) permits a utility company to alter, refuse, or discontinue service to a debtor, if, within 20 days after the petition date, the debtor does not furnish “adequate assurance of payment, in the form of a deposit or other security, for service after such date.” 11 U.S.C. § 366(b). Courts recognize however, that “[a]dequate assurance of payment” does not require an absolute guaranty of payment. *In re Utica Floor Maintenance, Inc.*, 25 B.R. 1010, 1014 (N.D.N.Y. 1982).

15. By the enactment of the Bankruptcy Abuse and Consumer Protection Act of 2005 (“BAPCPA”), section 366 was expanded to include subsection (c), which provides that a chapter 11 debtor must provide assurance of payment that is satisfactory to the utility within 30 days of the petition date, and limits the types of security that are acceptable as assurance of payment. *See* 11 U.S.C. § 366(c)(1)(A). While subsection (c) specifies the available forms that “assurance of payment” may take, it also authorizes the bankruptcy court to determine the proper monetary amounts of such assurance. *See* 11 U.S.C. § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing, the court may order modification of an assurance of payment . . .”). Bankruptcy courts exercise great discretion and flexibility in applying section 366 of the Bankruptcy Code. *Marion Steel Co. v. Ohio Edison Co. (In re Marion Steel Co.)*, 35 B.R. 188, 195 (Bankr. N.D. Ohio 1983). Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to

carry out the provisions of this title.” 11 U.S.C. § 105(a). A determination under section 366 is necessarily fact-intensive and looks to the totality of the circumstances. *Marion Steel*, 35 B.R. at 198 (citations omitted).

16. Thus, there is nothing within section 366 of the Bankruptcy Code that prevents a court from ruling that, on the facts of the case before it, the amount required to adequately assure future payment to a utility company is nominal, or even zero. Prior to the enactment of section 366(c) of the Bankruptcy Code, courts enjoyed precisely the same discretion to make such rulings pursuant to § 366(b) of the Bankruptcy Code, and frequently did so. *See Caldor*, 117 F.3d at 650 (2d Cir. 1997) (“[A] bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”).

17. Moreover, Congress has not changed the requirement that the assurance of payment only must be adequate. Courts construing section 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guarantee of the debtor’s ability to pay. *See In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that [section] 366(b) of Bankruptcy Code “contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor’s financial circumstances”), *abrogated on other grounds by In re Lease-a-Fleet, Inc.*, 131 B.R. 945, 950 (Bankr. E.D. Pa. 1991); *accord In re Caldor, Inc.-N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Caldor*, 117 F.3d 646; *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (same); *see also Steinebach v. Tucson*



*Elec. Power Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not, however, absolute assurance . . . all [section] 366(b) requires is that a utility be protected from an unreasonable risk of non-payment”).<sup>2</sup> Therefore, despite its language allowing a utility to take adverse action against the debtor should the debtor fail to provide adequate assurance of future payment satisfactory to the utility, section 366(c) of the Bankruptcy Code does not require that the assurance provided be satisfactory once a party seeks to have the Court determine the appropriate amount of adequate assurances.

18. Here, the Diocese proposes to provide each Utility Company, upon request, a cash Deposit equal to two weeks’ average historical usage, calculated over the past year, and adequate funds have been budgeted for payment of all post-petition utility services. Based upon the foregoing, the Diocese believes that most, if not all, of the Utility Companies have adequate assurance of payment even *without* the Diocese’s proposed Deposit. When the offered Deposit is complemented by the Diocese’s ability to pay postpetition invoices through access to cash from continued operations, such assurance of payment significantly alleviates—if not eliminates—any honest concern of nonpayment on the part of the Utility Companies, and is therefore adequate.

19. Moreover, under the procedure proposed by the Diocese, if a Utility Company disagrees with the Diocese’s adequate assurance analysis, the Utility Company may file an Assurance Request and negotiate a resolution thereof with the Diocese or, if necessary, seek Court intervention without jeopardizing the Diocese’s continuing operations. If a Utility Company fails to file an Assurance Request prior to any deadline established by this Court, such Utility Company should be deemed to consent to receipt of a Deposit as adequate assurance of payment under

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<sup>2</sup> Courts have recognized that “[i]n deciding what constitutes ‘adequate assurance’ in a given case, a bankruptcy court must ‘focus upon the need of the utility for assurance, and to require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.’” *Caldor*, 117 F.3d at 650 (emphasis in original) (quoting *Penn Jersey*, 72 B.R. at 985).

section 366. *See In re Syroco, Inc.*, 2007 WL 2404295, at \*2 (Bankr. D. P.R. 2007) (finding that a utility company's lack of objection, response, or counter-demand after receiving notice of hearing on utilities motion, notice of interim order, and notice of final hearing constitutes tacit acceptance of the debtor's proposed two-week cash deposit as adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code).

20. The Diocese submits that it satisfies the requirements of section 366 by proposing a Deposit as an acceptable form of adequate assurance of payment. The Diocese has also proposed reasonable procedures that will allow for a Utility Company to submit an Assurance Request and for the scheduling of a hearing thereon. The Diocese anticipates that in conjunction with the Diocese's proposed Deposits, the Diocese will maintain post-petition liquidity, and therefore, the Utility Companies will not suffer any prejudice.

#### **WAIVER OF NOTICE AND STAY REQUIREMENTS**

21. To implement the foregoing successfully, the Diocese seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

#### **RESERVATION OF RIGHTS**

22. Nothing in this Motion, nor any payment made pursuant to the relief sought herein, if granted, is intended or should be construed as an admission as to the validity of any claim against the Diocese, a waiver of the Diocese's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, and the Diocese expressly reserves its rights with respect thereto.

**NOTICE**

23. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the Diocese's twenty (20) largest unsecured creditors as set forth in the list filed with the Diocese's petition, (iii) all required governmental agencies (iv) the Utility Companies identified on Schedule 1 attached hereto, and (v) the Diocese's banks. In light of the nature of the relief requested herein, the Diocese submits that no further notice is required.

**NO PRIOR REQUEST**

24. The Diocese has not previously sought the relief requested herein from this or any court.

WHEREFORE, for the reasons set forth above, the Diocese respectfully requests that this Court (i) enter an interim order substantially in the form annexed hereto as *Exhibit A*, granting the relief requested herein, (ii) schedule a final hearing within 30 days of the Petition Date to consider entry of a proposed final order substantially in the form annexed hereto as *Exhibit B*; and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: February 28, 2020

BOND, SCHOENECK & KING, PLLC

By:       /s/ Stephen A. Donato        
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Buffalo, N.Y.*

**SCHEDULE 1**

Utility Companies

3482318.3

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
123 Townsend	Buffalo Water	04122490	\$114.31	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
123 Townsend	National Fuel	3154021 10	\$339.41	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
123 Townsend	National Grid	53851-34104	\$126.26	Electricity	300 Erie Blvd West Syracuse NY 13202	
123 Townsend	Time Warner Cable	202-969758901-001	\$81.77	TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652
Archbishop Walsh Academy	City of Olean	20-1930-40	\$15.44	Water & Sewer	P.O. Box 668 Olean, NY 14760	
Bishop's Residence	Buffalo Water	04119250	\$121.92	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Bishop's Residence	National Fuel	3154027 09	\$515.68	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
Bishop's Residence	National Fuel	3154025 02	\$103.23	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
Bishop's Residence	National Grid	95051-29107	\$86.05	Electricity	300 Erie Blvd West Syracuse NY 13202	
Bishop's Residence	National Grid	61651-34105	\$92.40	Electricity	300 Erie Blvd West Syracuse NY 13202	
Bishop's Residence	Spectrum	202-204905803-001	\$105.85	Phone, TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
Buffalo State	Buffalo Water	5526200	\$238.25	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Buffalo State	National Fuel	3191525 06	\$138.57	Gas	P.O. Box 371835 Pittsburgh PA 15250-7835	409 Main St. Buffalo NY 14203
Buffalo State	National Grid	27349-03105	\$67.25	Electric	300 Erie Blvd West Syracuse NY 13202	
Buffalo State	Time Warner Cable	7429901	\$94.98	TV, Internet	P.O. Box 223085 Pittsburgh, PA 15251-2085	1900 Blue Crest Lane San Antonio, TX 78247
Camp Turner	Windstream	20336008	\$271.68	Phone, Internet	P.O. Box 9001013 Louisville KY 40290-1013	P.O. Box 3177 Cedar Rapids IA 52406-3177
Cathedral	Buffalo Water	05006400	\$59.47	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Cathedral	Buffalo Water	05008200	\$485.05	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Cathedral	National Fuel	3596434 11	\$755.43	Gas	P.O. Box 371835 Pittsburgh PA 15250-7835	409 Main St. Buffalo NY 14203
Cathedral	National Grid	00400-27101	\$655.97	Electric	300 Erie Blvd West Syracuse NY 13202	
Cathedral	National Grid	57800-30109	\$96.65	Electric	300 Erie Blvd West Syracuse NY 13202	
Cathedral	Republic Services	3-0111-0007998	\$98.99	Garbage	P.O. Box 9001099 Louisville KY 40290-1099	2321 Kenmore Ave. Buffalo NY 14207-1311
Cathedral	Time Warner Cable	37869901	\$336.18	Phone, Internet	P.O. Box 223085 Pittsburgh, PA 15251-2085	1900 Blue Crest Lane San Antonio, TX 78247

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
Catholic Center	AT&T	287245268615	\$393.47	Phone	P.O. Box 6463 Carol Stream, IL 60197-6463	
Catholic Center	AT&T	824528274	\$307.50	Phone	P.O. Box 6463 Carol Stream, IL 60197-6463	
Catholic Center	Buffalo Water	03037800	\$455.79	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Catholic Center	Buffalo Water	17453100	\$460.37	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Catholic Center	Buffalo Water	03038200	\$111.11	Water	P.O. Box 18 Buffalo NY 14240-0018	281 Exchange St. Buffalo NY 14204
Catholic Center	National Fuel	3739190 09	\$1,049.54	Gas	P.O. Box 371835 Pittsburgh PA 15250-7835	409 Main St. Buffalo NY 14203
Catholic Center	National Grid	74200-26103	\$2,567.42	Electric	300 Erie Blvd West Syracuse NY 13202	
Catholic Center	National Grid	37200-27102	\$10.05	Electric	300 Erie Blvd West Syracuse NY 13202	
Catholic Center	National Grid	31800-34103	\$21.35	Electric	300 Erie Blvd West Syracuse NY 13202	
Catholic Center	Republic Services	3-0111-0008002	\$350.00	Garbage	P.O. Box 9001099 Louisville KY 40290-1099	2321 Kenmore Ave. Buffalo NY 14207-1311
Catholic Center	Time Warner Cable	202-127273001-001	\$74.49	Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652
Catholic Center	Time Warner Cable	202-206709101-001	\$116.25	TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
Catholic Center	Verizon	153-913-158-0001-18	\$61.38	Phone, Internet	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
Catholic Center	Verizon	651-763-746-0001-37	\$26.44	Phone, Internet	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
Catholic Center	Windstream	2163743	\$709.05	Phone	P.O. Box 9001013 Louisville KY 40290-1013	P.O. Box 3177 Cedar Rapids IA 52406-3177
Conniff	Erie County Water Authority	60545714-7	\$165.58	Water	295 Main St. Rm 350 Buffalo, NY 14203	P.O. Box 5148 Buffalo, NY 14240-5148
Conniff	National Fuel	6736785 02	\$295.77	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
Conniff	NYSEG	1004-8933-765	\$230.65	Electricity	P.O. Box 5240 Binghamton, NY 13902-5240	P.O. Box 847812 Boston, MA 02284-7812
Conniff	Republic Services	3-0111- 001061998	\$112.97	Garbage	P.O. Box 9001099 Louisville KY 40290-1099	2321 Kenmore Ave. Buffalo NY 14207-1311
Conniff	Spectrum	202- 126145401- 001	\$418.63	Phone, TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578- 8652
Head Residence	Erie County Water Authority	71010580-9	\$9.00	Fire Line	295 Main St. Rm 350 Buffalo, NY 14203	P.O. Box 5148 Buffalo, NY 14240-5148
Head Residence	National Fuel	5519838 04	\$195.85	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
Head Residence	National Grid	20470-4404	\$212.96	Electric	300 Erie Blvd West Syracuse NY 13202	



<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
Head Residence	Republic Services	3-0111-0008009	\$46.02	Garbage	P.O. Box 9001099 Louisville KY 40290-1099	2321 Kenmore Ave. Buffalo NY 14207-1311
Head Residence	Time Warner Cable	202-173845701-001	\$215.61	TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652
Head Residence	Verizon	251-518-752-0001-89	\$36.33	Phone	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
Head Residence	Verizon	251-518-759-0001-33	\$39.14	Phone	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
Mother Teresa Home	National Fuel	7526471 04	\$65.00	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
Mother Teresa Home	National Grid	20950-93111	\$88.01	Electric	300 Erie Blvd West Syracuse NY 13202	
Mother Teresa Home	Time Warner Cable	202-892102901-001	\$114.90	Phone, Internet	P.O. Box 4617 Carol Stream, IL 60197-4617	4145 S. Falkenburg Rd. Riverview FL 33578-8652
NewmanUB	Erie County Water Authority	60542793-0	\$95.97	Water	295 Main St. Rm 350 Buffalo, NY 14203	P.O. Box 5148 Buffalo, NY 14240-5148
NewmanUB	Erie County Water Authority	60542794-2	\$9.00	Water Fire Line	295 Main St. Rm 350 Buffalo, NY 14203	P.O. Box 5148 Buffalo, NY 14240-5148
NewmanUB	National Fuel	6730419 02	\$116.26	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
NewmanUB	National Grid	08726-28003	\$366.27	Electric	300 Erie Blvd West Syracuse NY 13202	

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
NewmanUB	National Grid	42486-93123	\$18.79	Electric	300 Erie Blvd West Syracuse NY 13202	
NewmanUB	Republic Serves	3-0111- 0006192	\$71.65	Garbage	P.O. Box 9001099 Louisville KY 40290- 1099	2321 Kenmore Ave. Buffalo NY 14207-1311
NewmanUB	Spectrum	74299901	\$94.98	TV, Internet	P.O. Box 70872 Charlotte NC 28272- 0872	4145 S. Falkenburg Rd. Riverview FL 33578- 8652
NewmanUB	Time Warner Cable	202- 178470105- 001	\$82.27	TV, Internet	P.O. Box 4617 Carol Stream, IL 60197-4617	4145 S. Falkenburg Rd. Riverview FL 33578- 8652
NewmanUB	Verizon	488135825- 00001	\$132.38	Phone	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 408 Newark, NJ 07101-0408
NewmanUB	Verizon	552-117-800- 0001-13	\$280.11	Phone, TV, Internet	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
Niagara Catholic School	National Fuel	3756669 05	\$1,329.57	Fuel	P.O. Box 371835 Pittsburg PA 15250- 7835	409 Main St. Buffalo NY 14203
Niagara Catholic School	National Grid	91299-58102	\$233.51	Electricity	300 Erie Blvd West Syracuse NY 13202	
Niagara Catholic School	National Grid	18330-96004	\$10.12	Electricity	300 Erie Blvd West Syracuse NY 13202	
Niagara Catholic School	Niagara Falls Water Board	I47500104-001	\$169.09	Water	745 Main Street Niagara Falls, NY 14302	P.O. Box 1950 Niagara Falls, NY 14302-1950
O'Hara	National Fuel	5379237 08	\$305.74	Gas	P.O. Box 371835 Pittsburg PA 15250- 7835	409 Main St. Buffalo NY 14203

<b>Property</b>	<b>Utility</b>	<b>Account #</b>	<b>Proposed Deposit</b>	<b>Type:</b>	<b>Primary Address on File</b>	<b>Additional Address</b>
O'Hara	National Grid	68887-35104	\$246.58	Electric	300 Erie Blvd West Syracuse NY 13202	
O'Hara	Republic Services	3-0111-0007988	\$61.80	Garbage	P.O. Box 9001099 Louisville KY 40290-1099	2321 Kenmore Ave. Buffalo NY 14207-1311
O'Hara	Time Warner Cable	202-665940301-001	\$342.27	Phone, TV, Internet	P.O. Box 70872 Charlotte NC 28272-0872	4145 S. Falkenburg Rd. Riverview FL 33578-8652
St. Gianna	National Fuel	4404012 01	\$60.90	Gas	P.O. Box 371835 Pittsburg PA 15250-7835	409 Main St. Buffalo NY 14203
St. Gianna	Verizon	453-058-522-0001-32	\$102.58	Phone, Internet	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124
St. Gianna	Verizon	751-822-972-0001-27	\$76.57	Phone, Internet	500 Technology Dr. Suite 500 Weldon Spring MO 63304	P.O. Box 15124 Albany NY 12212-5124

**EXHIBIT A**

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re: )

The Diocese of Buffalo, N.Y., )

Debtor. )

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Case No. 20-[ 10322 ]

Chapter 11

**INTERIM ORDER (A) PROHIBITING UTILITY COMPANIES  
FROM ALTERING, REFUSING OR DISCONTINUING SERVICE ON  
ACCOUNT OF PREPETITION AMOUNTS DUE, (B) DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR POST-PETITION  
UTILITY SERVICES UNDER 11 U.S.C. § 366, AND (C) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion of The Diocese of Buffalo, N.Y. (the “Diocese”), for entry of interim and final orders (a) prohibiting Utility Companies from altering, refusing or discontinuing service on account of prepetition amounts due, (b) determining adequate assurance of payment for post-petition utility services under 11 U.S.C. § 366 and, (c) establishing procedures for determining adequate assurance of payment (the “Motion”)<sup>1</sup>; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Diocese, its estate, its creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them as in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, on an interim basis, as set forth herein.
2. The Utility Companies are prohibited from altering, refusing or discontinuing service to the Diocese on account of prepetition amounts due.
3. The following procedure for determining adequate assurance of payment for the Utility Companies within the meaning of section 366 of the Bankruptcy Code is hereby approved and adopted:

(a) Upon request, the Diocese will provide each Utility Company a cash deposit (each, a “Deposit”) in an amount equal to two weeks of the estimated cost of its utility consumption from each Utility Company, rounded to the nearest dollar. A Deposit will be calculated using an average charge over the past year’s invoices. If a Utility Company provides the Diocese with services under multiple accounts, then the Diocese may provide that Utility Company with separate Deposits or with one Deposit that equals two weeks of the aggregate estimated usage under all of the Diocese’s accounts with that Utility Company. A Deposit shall be provided within 10 business days of the receipt, by the Diocese or its bankruptcy counsel, of a written request from a Utility Company for adequate assurance under the Bankruptcy Code.

(b) In the event that a Utility Company believes that a Deposit does not constitute adequate assurance of payment that is satisfactory to that Utility Company within the meaning of section 366 of the Bankruptcy Code, the Utility Company, no later than 20 days following the entry of the interim order with respect to this Motion, must serve upon the Diocese and Diocese’s counsel, and file with the Court, a specific request for adequate assurance (each, an “Assurance Request”). An Assurance Request must include: (i) the

location and account number(s) for which utility services are provided; (ii) the outstanding balance (if any) on the account and a summary of the Diocese's payment history; (iii) the reasons why a Deposit does not constitute satisfactory adequate assurance of payment; and (iv) a proposal of what would constitute satisfactory adequate assurance of payment. Without further order of the Court, the Diocese may, in its discretion, enter into agreements to provide additional adequate assurance to any Utility Company. Failure by a Utility Company to timely file and serve an Assurance Request will result in the Utility Company waiving any right to request additional adequate assurance of payment beyond a Deposit and each such Utility Company will be deemed to have received adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code.

(c) In the event that a Utility Company timely submits an Assurance Request and the parties cannot promptly resolve such Assurance Request on a consensual basis, the Court shall determine the appropriate amount of adequate assurance and the Diocese will schedule a hearing on shortened notice and serve notice of such hearing on the Utility Company by overnight mail or hand delivery. Each Utility Company submitting an Assurance Request shall be prohibited from altering, refusing or discontinuing service to the Diocese until, after a hearing on adequate assurance, the Court issues an order authorizing such action.

4. The Diocese is authorized in its sole discretion, to amend Schedule 1 to the Motion to add or delete any Utility Company, and this Interim Order shall apply to any entity that is subsequently designated as a Utility Company. Any subsequently added Utility Company shall have 20 days from the date of such designation to file and serve an Assurance Request.

5. The Diocese's service of the Motion or this Interim Order upon an entity or the designation of an entity as a Utility Company for purposes of the Motion shall not constitute an admission or concession by the Diocese that such entity is a utility within the meaning of Bankruptcy Code section 366 and all of the Diocese's rights and defenses with respect thereto are fully reserved.

6. The Diocese shall serve a copy of the Motion, this Interim Order and notice of the Final Hearing on the Diocese's 20 largest unsecured creditors as listed in the Diocese's petition and each of the Utility Companies, within three (3) business days of the date this Order is entered, and shall also serve this Interim Order, or the Final Order (once entered) on each entity subsequently designated by the Diocese as a Utility Company.

7. Nothing in this Interim Order, nor any action taken by the Diocese in furtherance of the implementation hereof, shall be deemed an approval of the assumption or rejection of any executory contract or unexpired leases pursuant to Bankruptcy Code section 365.

8. Nothing in the Motion or this Interim Order shall be construed as impairing the Diocese's right to contest the validity, priority or amount of any claim pursuant to applicable law or otherwise dispute, contest, setoff or recoup any claim, or assert any right, claim or defenses related thereto.

9. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

11. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

12. This Interim Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or



vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

13. A final hearing on the Motion shall be held on \_\_\_\_\_, 2020 at \_\_\_\_\_:\_\_\_\_\_ a.m./p.m. prevailing Eastern Time (the “Final Hearing”). Any objections or responses to the Motion shall be filed on or before \_\_\_\_\_, 2020 at 4:00 p.m. and served on parties in interest as required by the Local Rules. This Interim Order, and all acts taken in furtherance of or reliance upon this Interim Order, shall be effective notwithstanding the filing of an objection. In the event no objections or responses are timely filed and served in accordance with the foregoing, the Court may grant the relief requested in the Motion on a final basis without holding a Final Hearing.

14. The Diocese is authorized and empowered to take all actions it determines are necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

15. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Interim Order.

Dated: \_\_\_\_\_, 2020  
Buffalo, New York

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Hon. Carl L. Bucki  
United States Bankruptcy Judge

**EXHIBIT B**

Proposed Final Order

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

\_\_\_\_\_) )  
In re: ) )  
The Diocese of Buffalo, N.Y., ) Case No. 20-[ 10322 ]  
Debtor. ) Chapter 11  
\_\_\_\_\_)

**FINAL ORDER (A) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION AMOUNTS DUE, (B) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR POST-PETITION UTILITY SERVICES UNDER 11 U.S.C. § 366, AND (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion of The Diocese of Buffalo, N.Y. (the “Diocese”), for entry of interim and final orders (a) prohibiting Utility Companies from altering, refusing or discontinuing service on account of prepetition amounts due, (b) determining adequate assurance of payment for postpetition utility services under 11 U.S.C. § 366 and, (c) establishing procedures for determining adequate assurance of payment (the “Motion”)<sup>1</sup>; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and an interim order with respect to the Motion having been entered on \_\_\_\_\_, 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Diocese, its estate, its creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth herein.
2. All Objections to the Motion or the relief requested therein that have not been made, withdrawn, waived or settled, and all reservations of rights included therein, are overruled and disallowed on the merits.
3. Upon request, the Diocese will provide each Utility Company a cash deposit (each, a “Deposit”) in an amount equal to two weeks of the estimated cost of its utility consumption from each Utility Company, rounded to the nearest dollar. A Deposit will be calculated using an average charge over the past year’s invoices. If a Utility Company provides the Diocese with services under multiple accounts, then the Diocese may provide that Utility Company with separate Deposits or with one Deposit that equals two weeks of the aggregate estimated usage under all of the Diocese’s accounts with that Utility Company. A Deposit shall be provided within 10 business days of the receipt by the Diocese or its bankruptcy counsel of a written request from a Utility Company for adequate assurance under the Bankruptcy Code.
4. Subject to the terms of any adequate assurance agreements between the Diocese and any Utility Companies or any future determination hearings with respect to any timely filed Assurance Request, no Utility Company may: (a) alter, refuse, terminate or discontinue utility services to, and/or discriminate against, the Diocese on the basis of the commencement of this Chapter 11 Case or on account of outstanding prepetition amounts due; or (b) require additional assurance of payment beyond a Deposit as a condition to the Diocese receiving such utility services.

5. Subject to the terms of any adequate assurance agreements between the Diocese and any Utility Companies, pending further order of the Court each Utility Company is deemed to be adequately assured of future payment for purposes of section 366 of the Bankruptcy Code.

6. The Diocese is authorized in its sole discretion, to amend Schedule 1 to the Motion to add or delete any Utility Company, and this Final Order shall apply to any entity that is subsequently designated as a Utility Company. Any subsequently added Utility Company shall have 20 days from the date of such designation to file and serve an Assurance Request.

7. The Diocese's service of the Motion or this Final Order upon an entity or the designation of an entity as a Utility Company for purposes of the Motion shall not constitute an admission or concession by the Diocese that such entity is a utility within the meaning of Bankruptcy Code section 366 and all of the Diocese's rights and defenses with respect thereto are fully reserved.

8. The Diocese shall serve a copy of this Final Order each of the Utility Companies, within three (3) business days of the date this Final Order is entered, and shall also serve this Final Order on each entity subsequently designated by the Diocese as a Utility Company.

9. Nothing in this Final Order, nor any action taken by the Diocese in furtherance of the implementation hereof, shall be deemed an approval of the assumption or rejection of any executory contract or unexpired leases pursuant to Bankruptcy Code section 365.

10. Nothing in the Motion or this Final Order shall be construed as impairing the Diocese's right to contest the validity, priority or amount of any claim pursuant to applicable law or otherwise dispute, contest, setoff or recoup any claim, or assert any right, claim or defenses related thereto.

11. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

12. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

13. The Diocese is authorized and empowered to take all actions it determines are necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

14. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Final Order.

Dated: \_\_\_\_\_, 2020  
Buffalo, New York

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Hon. Carl L. Bucki  
United States Bankruptcy Judge