

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

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**DEBTOR'S MOTION FOR 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 Rochester, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor” or “Diocese”), hereby moves this Court (the “Motion”) for entry of interim and final orders in substantially the forms attached hereto as *Exhibits B* and *C*, respectively, (a) prohibiting utility companies from altering, refusing or discontinuing service on account of prepetition amounts due; (b) determining that the Debtor’s furnishing of deposits to utility companies listed on *Exhibit A*, upon their timely request for adequate assurance, in an amount equal to two weeks’ of the Debtor’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 Debtor respectfully represents as follows:

**BACKGROUND**

1. On September 12, 2019 (the “Petition Date”) the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is authorized to continue to operate its business and remain in possession of its property as a debtor in possession pursuant to sections 1107 and 1108 of the

Bankruptcy Code. No trustee or examiner has been requested or appointed in this chapter 11 case, and as of the date of this Motion, no official committee has been appointed or designated.

2. Information regarding the Diocese's history, business operations, operational structure, facts supporting this Motion and the events leading up to the chapter 11 case can be found in the *Affidavit of Daniel J. Condon in Support of Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Lisa M. Passero in Support of 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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code.

### **RELIEF REQUESTED**

5. The Debtor's ongoing operations require the Debtor 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 Debtor's operations and critical reorganization efforts.

6. The Debtor receives utility services from several different providers for multiple facilities. These facilities include the Pastoral Center, St. William's House, Siena Catholic Academy, Hispanic Migrant Ministry Center, and senior diocesan officials' residences. A list of the utility service providers (the "Utility Companies") and the service addresses are listed on

**Exhibit A** hereto.<sup>1</sup> The Debtor 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 Debtor proposes to provide the Utility Companies adequate assurance of payment as follows:

(a) Upon request, the Debtor will provide each Utility Company a cash deposit (the “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. The Deposit will be calculated using an average charge over the past year’s invoice. If a Utility Company provides the Debtor with services under multiple accounts, then the Debtor 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 Debtor’s accounts with that Utility Company. The Deposit shall be provided within 10 court days of the receipt by the Debtor 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 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, no later than 20 days following the entry of the interim order with respect to this Motion, the Utility Company must serve upon the Debtor and Debtor’s counsel, and file with the Court a specific request for adequate assurance (each, an “Assurance Request”). The Assurance Request must include: (i) the location and account number(s) for which utility services are

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<sup>1</sup> The Debtor reserves the right to amend or supplement the list of Utility Companies included on **Exhibit A**. Designation of a service provider as a Utility Company on **Exhibit A** shall not be intended, nor shall it be construed as, an admission or concession by the Debtor that such provider is a “utility” within the meaning of Bankruptcy Code section 366, and the Debtor reserves all rights and defenses with respect thereto.

provided; (ii) the outstanding balance (if any) on the account and a summary of the Debtor's payment history; (iii) the reasons why the 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 Debtor 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 the 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 Debtor 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 Debtor until, after a hearing on adequate assurance, the Court issues an order authorizing such action.

7. The Debtor 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**

8. In general, courts recognize that the continuation of utility services is a necessary minimum requirement for rehabilitation of a debtor in a chapter 11 case. *See Whittaker v. Phila. Elec. Co. (In re Whittaker)*, 882 F.2d 791, 794 (3d Cir. 1989).

9. 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).

10. 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 the debtor, if within 20 days after the petition date, it 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).

11. 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). However, subsection (c), while specifying the available forms “assurance of payment” may take, leaves to the bankruptcy court’s discretion the question of 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. *Marion Steel Co. v. Ohio Edison Co. (In re Marion Steel Co.)*, 35 B.R. 188, 195 (Bankr. N.D. Ohio 1983). The bankruptcy court’s authority is further supported by section 105, which allows for the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of Title 11. *See, e.g., In re George C. Frye Co.*, 7 B.R. 856, 857 n.2 (Bankr. D. Me. 1980). 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).

12. 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 Virginia Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646, 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.’”).

13. Moreover, Congress has not changed the requirement that the assurance of payment only 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 § 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 n.1 (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 Adelpia 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 § 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.

14. Here, the Debtor 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 Debtor believes that most, if not all, of the Utility Companies have adequate

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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).

assurance of payment even without the Debtor's proposed Deposit. When the offered Deposit is complemented by the Debtor'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 thus clearly “adequate.”

15. Moreover, under the procedure proposed by the Debtor, if a Utility Company disagrees with the Debtor's adequate assurance analysis, the Utility Company may file an Assurance Request and negotiate a resolution thereof with the Debtor or, if necessary, seek Court intervention without jeopardizing the Debtor'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 the Deposit as adequate assurance of payment under section 366. *See In re Syroco, Inc.*, 2007 WL 2404295, at \*2 (Bankr. D. P.R. 2007) (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).

16. The Debtor submits that it satisfies the requirements of section 366 by proposing the Deposit as an acceptable form of adequate assurance of payment. The Debtor 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 Debtor anticipates that in conjunction with the Debtor's proposed Deposits, the Debtor will maintain post-petition liquidity, and therefore, the Utility Companies will not suffer any prejudice.



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

17. Given the nature of the essential and critical relief requested herein, the Debtor respectfully requests a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a), and (b) the 14-day stay under Bankruptcy Rules 6004(h), 7062, 9014 or otherwise.

### **RESERVATION OF RIGHTS**

18. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does it waive its rights under the Code of Canon law, or any applicable State or Federal law.

### **NOTICE**

19. Notice of the hearing on this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims, (iii), all required governmental agencies, (iv) the Utilities, and (v) the Debtor's banks. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that further notice of this Motion is neither required nor necessary.

### **NO PRIOR REQUEST**

20. The Debtor has not previously sought the relief requested herein from this or any court.

**WHEREFORE**, for the reasons set forth above, the Debtor respectfully requests that this Court (i) enter an interim order substantially in the form annexed hereto as *Exhibit B*, 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 C*; and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: September 12, 2019

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Rochester*

# EXHIBIT A

## Utility Companies

Company	Address	Service	Service Address(s)	Proposed Deposit Amount
Cascades Recovery	1845 Emerson Street Rochester, NY 14606	Refuse Removal	1150 Buffalo Road Rochester, NY 14624	\$15
Frontier Communication Corp.	401 Merritt 7 Norwalk, CT 06851	Phone	1150 Buffalo Road Rochester, NY 14624	\$361
Frontier Telephone of Rochester	P.O. Box 740407 Cincinnati, OH 45274	Phone	2617 East Avenue Rochester, NY 14610	
Greenlight Networks	1255 University Ave., Suite 204 Rochester, NY 14607	Internet	1150 Buffalo Road Rochester, NY 14624	\$51
JC Fibers, Inc.	1801 Mt. Read Blvd. Rochester, NY 14615	Refuse Removal	18 Viennawood Dr. Rochester, NY 14618	\$49
K&D Disposal	5076 Route 31 Newark, NY 14513	Refuse Removal	2617 East Avenue Rochester, NY 14610	\$216
Monroe County Water Authority	475 Norris Drive P.O. Box 10999 Rochester, NY 14610	Water	1136 Buffalo Road Rochester, NY 14624	\$9
			3810 Union Street Marion, NY 14505	\$415
			1136 Buffalo Road Rochester, NY 14624	

Company	Address	Service	Service Address(s)	Proposed Deposit Amount
Rochester Gas & Electric	89 East Avenue Rochester, NY 14649	Gas & Electric	1150 Buffalo Road Rochester, NY 14624  1136 Buffalo Road Rochester, NY 14624  3810 Union Street Marion, NY 14505  3799 Union Street P10 Up Marion, NY 14505	\$3,150
Charter Communications (Spectrum)	4145 S. Falkenburg Rd. Riverview, FL 33578	Internet	1150 Buffalo Road Rochester, NY 14624  20 Kent Park, Apt. 1 Rochester, NY 14610  3810 Union Street Marion, NY 14505	\$1,311
Town of Marion	P.O. Box 260 Marion, NY 14505	Water/Sewer	3810 Union Street Marion, NY 14505  3799 Union Street Marion, NY 14505	\$66
Verizon Wireless	P.O. Box 489 Newark, NJ 07101	Cellular Telephone	1150 Buffalo Road Rochester, NY 14624	\$1,227

Company	Address	Service	Service Address(s)	Proposed Deposit Amount
Wayne County Water & Sewer	3377 Dansen Road Walworth, NY 14568	Water/Sewer	3810 Union Street Marion, NY 14505	\$42
Windstream Communications	P.O. Box 3177 Cedar Rapids, IA 52406	Phone	3799 Union Street Marion, NY 14505 18 Viennawood Dr. Rochester, NY 14618	\$2

**EXHIBIT B**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

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**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 Rochester, Inc. (the “Debtor”), 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 Debtor, 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. A final hearing on the Motion shall be held on October \_\_, 2019 at \_\_\_\_:\_\_\_\_ a.m./p.m. prevailing Eastern Time (the "Final Hearing"). Any objections or responses to the Motion shall be filed on or before \_\_\_\_\_, 2019 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.
3. The Utility Companies are prohibited from altering, refusing or discontinuing service to the Debtor on account of prepetition amounts due.
4. 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 Debtor will provide each Utility Company a cash deposit (the "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. The Deposit will be calculated using an average charge over the past year's invoices. If a Utility Company provides the Debtor with services under multiple accounts, then the Debtor 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 Debtor's accounts with that Utility Company. The Deposit shall be provided within 10 court days of the receipt by the Debtor 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 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, no later than 20 days following the entry of this Interim Order, the Utility Company must serve upon the Debtor and Debtor’s counsel, and file with the Court a specific request for adequate assurance (each, an “Assurance Request”). The 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 Debtor’s payment history; (iii) the reasons why the 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 Debtor 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 the 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 Debtor 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 Debtor until, after a hearing on adequate assurance, the Court issues an order authorizing such action.

5. The Debtor is authorized in its sole discretion, to amend the ***Exhibit A*** 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.

6. The Debtor'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 Debtor that such entity is a utility within the meaning of Bankruptcy Code section 366 and all of the Debtor's rights and defenses with respect thereto are fully reserved.

7. The Debtor shall serve a copy of the Motion, this Interim Order and notice of the Final Hearing on the Debtor's 20 largest unsecured creditors as listed in the Debtor'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 Debtor as a Utility Company.

8. Nothing in this Interim Order, nor any action taken by the Debtor 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.

9. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtor'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.

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

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

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

13. 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.

14. The Debtor 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: September \_\_, 2019  
Rochester, New York

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Hon. Paul R. Warren  
United States Bankruptcy Judge

**EXHIBIT C**

**Proposed Final Order**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

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**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 Rochester, Inc. (the “Debtor”), 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 \_\_\_\_\_, 2019; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, 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;

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<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 Debtor will provide each Utility Company a cash deposit (the “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. The Deposit will be calculated using an average charge over the past year’s invoices. If a Utility Company provides the Debtor with services under multiple accounts, then the Debtor 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 Debtor’s accounts with that Utility Company. The Deposit shall be provided within 10 court days of the receipt by the Debtor 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 Debtor 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 Debtor 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 the Deposit as a condition to the Debtor receiving such utility services.

5. Subject to the terms of any adequate assurance agreements between the Debtor 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 Debtor is authorized in its sole discretion, to amend **Exhibit A** 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 Debtor'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 Debtor that such entity is a utility within the meaning of Bankruptcy Code section 366 and all of the Debtor's rights and defenses with respect thereto are fully reserved.

8. The Debtor 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 Debtor as a Utility Company.

9. Nothing in this Final Order, nor any action taken by the Debtor 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 Debtor'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 Debtor 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: October \_\_, 2019  
Rochester, New York

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Hon. Paul R. Warren  
United States Bankruptcy Judge