

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

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 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”)¹; and it appearing that this Court has jurisdiction to consider the Motion and request to be heard 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;

¹ 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 10, 2019 at 1:00/p.m. prevailing Eastern Time (the "Final Hearing"). Any objections or responses to the Motion shall be filed on or before October 4, 2019 at 4:00 p.m. and served on parties in interest as required by the Federal Rules of Bankruptcy Procedure. 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. Notwithstanding anything contained in the Motion or this Interim Order, if a Deposit is less than \$100, the Debtor is not required to provide such Deposit to a Utility, and that Utility is deemed to be adequately assured, unless the Utility objects prior to the Final Hearing.

6. 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.

7. 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.

8. 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 one business day 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.

9. 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.

10. 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.

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

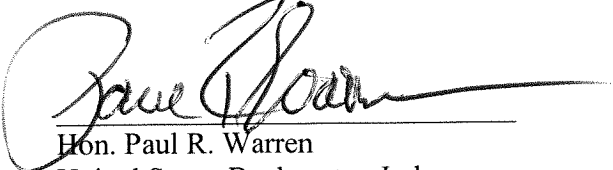
12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

14. 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.

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

Dated: September 19, 2019
Rochester, New York


Hon. Paul R. Warren
United States Bankruptcy Judge

Notice Recipients

District/Off: 0209-2
Case: 2-19-20905-PRW

User: admin
Form ID: pdforder

Date Created: 9/19/2019
Total: 4

Recipients of Notice of Electronic Filing:

aty	Ingrid S. Palermo	ipalermo@bsk.com
aty	Stephen A. Donato	sdonato@bsk.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	The Diocese of Rochester	1150 Buffalo Road	Rochester, NY 14624
smg	Office of the U.S. Trustee	100 State Street, Room 6090	Rochester, NY 14614

TOTAL: 2

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

The Diocese of Rochester
aka The Roman Catholic Diocese of
Rochester

Case No.: 2-19-20905-PRW
Chapter: 11

Tax ID: 16-0755765

Debtor(s)

NOTICE OF ENTRY

PLEASE TAKE NOTICE of the entry of the Order referenced below, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on **September 19, 2019**. The Clerk of Court of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Docket #44: 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. Section 366, And (C) Establishing Procedures For Determining Adequate Assurance Of Payment (RE: related doc(s) 13 Motion Re: Chapter 11 First Day Motions). Signed on 9/19/2019. NOTICE OF ENTRY. (Lawson, L.)

Date: September 19, 2019

Lisa Bertino Beaser
Clerk of Court

Form ntcentry/Doc 44
www.nywb.uscourts.gov

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