



Dated: April 25, 2017

The following is ORDERED:

Sarah A Hall
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA**

_____)	
)	Chapter 11
In re:)	
)	
EATERIES, INC.; <i>et al.</i> ¹)	Case No. 17-11444
)	
Debtors.)	(Jointly Administered)
_____)	

**INTERIM AND PROPOSED FINAL ORDER PROVIDING
ADEQUATE ASSURANCE OF UTILITY PAYMENTS
[This Order Corresponds to the Motion at Docket No. 34]**

Upon the amended motion, dated April 19, 2017 (the “Motion”), of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), for entry of interim and final orders providing adequate assurance of utility payments; and upon the Affidavit of William C. Liedtke, III, Vice-President and Managing Member of Debtors, in Support of Debtors’ Chapter 11 Petitions and First Day Motions sworn to on April 17, 2017; and the Court having determined

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH.

that it has jurisdiction over the matters raised by the Amended Motion and that the relief requested in the Amended Motion is in the best interests of the Debtors, their estates and creditors; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein, and after due deliberation thereon, it is hereby

ORDERED, ADJUDGED, AND DECREED

1. The Amended Motion is granted on an interim basis.
2. Subject to the procedures described below, no Utility may (a) alter, refuse, terminate, or discontinue utility service to, or discriminate against, the Debtors on the basis of the commencement of these Cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving such utility services pending the entry of a Final Order or this order becoming a Final Order as set forth below.
3. A Utility shall be entitled to the Adequate Assurance Deposit provided that (a) it requests such a deposit in writing no later than thirty (30) days after the Petition Date (the "Request Deadline"); (b) such requesting Utility does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit for purposes of this Motion); and (c) such requesting Utility is not currently paid in advance for its services.
4. A Utility that requests and accepts an Adequate Assurance Deposit in accordance with the requirements of the Amended Motion shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility, and such Utility shall be deemed to have waived any right to seek additional adequate assurance

during the course of these Cases. Any adequate Assurance Deposit requested by, and provided to, any Utility pursuant to the procedures described herein shall be returned to the Debtors at the conclusion of these Cases, if not returned or applied earlier.

5. The following Adequate Assurance Procedures are approved in all respects:
 - i. Within two (2) business days after entry of the Interim Order, the Debtors will mail a copy of the Interim Order to the Utilities on the Utility Service List.
 - ii. If a Utility is not satisfied with the Proposed Adequate Assurance and seeks additional assurances of payment in the form of deposits, prepayments, or otherwise (an “Additional Assurance Request”), it must serve a request within 14 days of service of the Interim Order upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
 - iii. If a Utility is not satisfied with procedures outlined herein and wishes to object to such procedures, it must file an objection with the Court (the “Procedures Objection”) within 14 days of service of the Interim Order and serve such Procedures Objection upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
 - iv. Any Additional Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits, prepayments, or other security currently held by the requesting Utility; (iv) explain why the requesting Utility believes the Proposed Adequate Assurance is insufficient adequate assurance of future payment; and (v) identify, and explain the basis of, the Utility’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.
 - v. Upon the Debtors’ timely receipt of an Additional Assurance Request at the address noted above, the Debtors shall have the greater of either (i) 14 days from the receipt

of such Additional Assurance Request or (ii) 30 days from the Petition Date (collectively, the “Resolution Period”) to negotiate with the requesting Utility to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement between the parties.

- vi. The Debtors may resolve any Additional Assurance Request by mutual agreement with the requesting Utility and without further order of the Court and may, in connection with any such resolution, provide the requesting Utility with additional adequate assurance of future payment in a form satisfactory to the Utility, including, without limitation, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- vii. If the Debtors determine that an Additional Assurance Request is not reasonable, and are unable to resolve such request during the Resolution Period, the Debtors will request, during or immediately after the Resolution Period, a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility (the “Determination Hearing”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- viii. Pending the resolution of the Additional Assurance Request or a Procedures Objection outlined herein at a Determination Hearing, the requesting Utility shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- ix. Any Utility that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is forbidden from discontinuing, altering, or refusing service on account of any unpaid prepetition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order shall be deemed the Final Order vis-a-vis all Utilities that do not timely file and serve a Procedures Objection.

7. Any Utility that does not request an Adequate Assurance Deposit by the Request Deadline and does not file a Procedures Objection to the Adequate Assurance Procedures shall

be deemed to have adequate assurance that is satisfactory to it, within the meaning of section 366 of the Bankruptcy Code.

8. All payments of Adequate Assurance Deposits, prepayments, or other payments contemplated herein shall be subject to the terms of any orders authorizing debtor-in-possession financing and the use of cash collateral entered by the Court and budgets submitted by the Debtors with respect to the same.

9. If necessary, a final hearing to resolve any Procedures Objection shall be conducted on May 12, 2017, at 9:30 a.m., Central Time.

10. A Utility shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors agree to (i) an Adequate Assurance Request, (ii) an Additional Assurance Request, or (iii) an alternative assurance of payment with the Utility during the Resolution Period; or (b) this Court enters an order at the Final Hearing or any Determination Hearing requiring that additional adequate assurance of payment be provided.

11. The Debtors are authorized to amend the Utility Service List to add or to delete any Utility, and this Order shall apply to any such Utility that is subsequently added to the Utility Service List. Any newly identified Utility added to the Utility Service List shall have until the later of fourteen (14) days from the date of service or thirty (30) days from the date of this Order to serve an Additional Assurance Request or Procedures Objection in compliance with the Adequate Assurance Procedures. The Debtors shall have the periods specified in the Adequate Assurance Procedures to seek to resolve any such request by mutual agreement with the Utility without further order of the Court or to request a Determination Hearing with the Court to determine the adequacy of assurance of payment with respect to such Utility in accordance with such procedures. Nothing herein constitutes a finding that an entity is or is not a Utility

hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

12. The Debtors shall serve a copy of this Order on each Utility listed on the Utility Service List within two (2) business days of the date this Order is entered. The Debtors shall also serve this Order on each Utility subsequently added by the Debtors to the Utility Service List as soon as practicable.

13. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry. This order shall be deemed a Final Order to any Utility that does not file a Procedures Objection as described herein.

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

####

APPROVED FOR ENTRY:

CROWE & DUNLEVY

/s/Lysbeth George

Lysbeth L. George, OBA No. 30562

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

Braniff Building

324 North Robinson Avenue, Suite 100

Oklahoma City, OK 73102-8273

Telephone: (405) 234-3245

Facsimile: (405) 272-5203

lysbeth.george@crowedunlevy.com

and

Mark A. Craige, OBA #1992

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

500 Kennedy Building

321 South Boston Avenue

Tulsa, Oklahoma 74103-3313

Telephone: 918.592.9800

Facsimile: 918.592.9801

mark.craige@crowedunlevy.com

PROPOSED COUNSEL FOR DEBTORS

Notice Recipients

District/Off: 1087-5

User: tkan

Date Created: 4/25/2017

Case: 17-11444

Form ID: pdf003

Total: 15

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Eateries, Inc.	14504 Hertz Quail Springs Parkway	Oklahoma City, OK 73134	
ust	United States Trustee	United States Trustee	215 Dean A. McGee Ave., 4th Floor	Oklahoma City, OK 73102
cr	SpiritBank	c/o Blaney Tweedy & Tipton, PLLC	P.O. Box 657	Oklahoma City, OK 73101
cr	Fresh Capital, LLC	14504 Hertz Quail Springs Parkway	Oklahoma City, OK 73134	
cr	Fiesta Holdings, Inc.	1101 West Waterloo Road	Edmond, OK 73025	
aty	J. Dillon Curran	Conner & Winters LLP	1700 One Leadership Square	211 N Robinson Oklahoma City, OK 73102
aty	Jared Dwain Giddens	Conner & Winters	211 N. Robinson, Suite 1700	One Leadership Square Oklahoma City, OK 73102
aty	Kevin Blaney	Blaney Tweedy & Tipton, PLLC	P.O. Box 657	Oklahoma City, OK 73101-0657
aty	Lysbeth L George	Crowe & Dunlevy	Braniff Building	324 North Robinson Avenue, Suite 100 Oklahoma City, OK 73102
aty	Marjorie J. Creasey	US Trustee Office	215 Dean A McGee Avenue	Oklahoma City, OK 73102
aty	Mark A. Craige	Crowe & Dunlevy	500 Kennedy Building	321 S. Boston Tulsa, OK 74103
aty	William H. Hoch	Crowe & Dunlevy	324 North Robinson Avenue, Suite 100	Oklahoma City, OK 73102
smg	Jolene M. Wise	Securities and Exchange Commission	175 W. Jackson Blvd., Suite 900	Chicago, IL 60604
smg	Internal Revenue Service	55 N Robinson Stop 5024	Oklahoma City, OK 73102	
smg	Oklahoma Employment Security Commission	PO Box 53039	Oklahoma City, OK 73152-3039	

TOTAL: 15