

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.,

Case No. 24-32426 KAC

Debtor.

Chapter 11 Cases

**NOTICE OF HEARING AND MOTION FOR AN ORDER (I) GRANTING
EXPEDITED HEARING; AND (II) ESTABLISHING PROCEDURES REGARDING
ADEQUATE ASSURANCE OF FUTURE PERFORMANCE FOR UTILITIES**

TO: THE OFFICE OF THE UNITED STATES TRUSTEE AND OTHER PARTIES-IN-INTEREST AS SPECIFIED IN LOCAL RULE 9013-3.

1. The above-named Debtor (“Debtor”), through its undersigned attorneys, move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 3:00 p.m. on Wednesday, September 25, 2024 before the Honorable Katherine A. Constantine, Courtroom 8, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Due to the request for expedited hearing, the Debtor will not object to the timeliness of any response that is filed and delivered to Debtor’s counsel at least two (2) hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. On September 20, 2024 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11. This case is currently pending before this Court.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This Motion requests relief under 11 U.S.C. §§ 105(a) and 366. This Motion is filed pursuant to Federal Rules of Bankruptcy Procedure 9013 and 6004 and Local Rules 9013-1 through 9013-3. The Debtor seeks an order establishing procedures regarding adequate assurance of future performance for utilities.

BACKGROUND

7. The Debtor owns and operates poultry processing facilities in Charles City, Iowa (the “Plant”). The Debtor presently employs 138 employees, as well as 123 part-time and/or temporary workers from various employment agencies. The Plant currently has a total of 206 workers (consisting of Debtor employees and part-time and/or temporary workers from various employment agencies).

8. The events precipitating the Debtor’s Chapter 11 filing are described in the Declaration of George Peichel, Chief Financial Officer of Debtor, filed on September 20, 2024.

9. On the Petition Date, the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business as a debtor in possession pursuant to Bankruptcy Code Sections 1107(a) and 1108. No trustee or examiner has been appointed in the Debtor’s Chapter 11 cases. No creditors committee or other official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code.

10. Without the requested relief, the Debtor’s business operations will be severely disrupted. The requested relief is consistent with the requirements imposed on the Debtor pursuant to any interim or final order authorizing, among other things, the Debtor’s entry into the post-

petition financing facility and use of cash collateral (the “DIP Orders”), including with respect to any budgets governing or relating to the post-petition financing.

RELIEF REQUESTED

11. Section 366 of the Bankruptcy Code prevents utility companies from discontinuing, altering or refusing service to a debtor during the first 30 days of a Chapter 11 case. However, after such 30-day period, a utility company has the option of terminating its services pursuant to § 366(c)(2) of the Bankruptcy Code if a debtor has not furnished adequate assurance of payment.

12. By this Motion, the Debtor seeks entry of an order (a) granting expedited relief, (b) determining that the Utilities (as defined below) have “adequate assurance of payment” within the meaning of Section 366, subject to the procedures set forth below for resolving requests by Utilities for additional or different assurances beyond those set forth in this motion, (c) prohibiting the Utilities from altering, refusing or discontinuing any utility services on account of any perceived inadequacy of the Debtor’s proposed adequate assurance, subject to the procedures set forth below for resolving requests by Utilities for additional or different assurances beyond those set forth in this Motion and (d) establishing procedures for the Utilities to seek to opt out of the Debtor’s proposed adequate assurance procedures.

13. In connection with the operation of its business, the Debtor obtains utility services for electricity, natural gas, water, sanitation services, internet, and information technology, software, and/or cloud computing services (the “Utility Services”) from the utility service providers (each a “Utility” and together the “Utilities”) listed on **Exhibit A**. The Debtor reserves the right to amend Exhibit A to add or remove utilities. Exhibit A also shows the current amounts owed to each of the Utilities. The Debtor reserves the right to amend the amounts set forth on

Exhibit A and reserves the right to contest any amounts asserted as being owed to any Utility. As indicated in Exhibit A, Debtor currently owes approximately \$955,473.70 for Utility Services as of the Petition Date. Pursuant to Debtor's 13-Week short term financing plan, Debtor intends to pay each Utility approximately 10% the amount currently outstanding, for a total of \$95,547.37 over this time period.

14. Uninterrupted utility services are essential to the Debtor's ongoing operations. The Debtor cannot operate its poultry processing facilities without uninterrupted access to the Utility Services. Should any Utility refuse or discontinue service, even for a brief period, the Debtor's operations will be severely disrupted. The impact of this disruption on the Debtor's business operations and revenue would be extremely harmful and would jeopardize the Debtor's efforts to maximize the value of their businesses for all parties in interest.

ADEQUATE ASSURANCE

15. The Debtor intends to pay all post-petition obligations owed to the Utilities in a timely manner, including with proceeds from any post-petition financing facility available to the Debtor.

16. The Debtor requests an order confirming that it is authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utilities to the Debtor after the Petition Date.

17. The Debtor proposes that, to provide adequate assurance of payment for future services to the Utilities, within fourteen (14) days after entry of the order granting this Motion, the Debtor will (i) establish a newly created, interest-bearing, segregated account with Bremer Bank, National Association (the "utility Deposit Account"), and (ii) upon request from any Utility, the Debtor will place in the Utility Deposit Account a deposit of an amount equal to

approximately 10% of the total amount owed for the Utility Services. The sum of all such Adequate Assurance Deposits shall be subject to an aggregate cap of \$95,547.37, which represents a sum equal to 10% of the approximate \$955,473.70 Debtor currently owes for outstanding Utility Services.

18. In recognition of the right of each of the Utilities to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtor proposes the following “Adequate Assurance Procedures”: (a) the Debtor will serve a copy of any order entered in relation to this Motion upon the Utilities within one week after entry of the order, (b) the Utilities shall have thirty (30) days to propose any alternative or additional adequate assurance of future performance, and (c) if the Debtor and a Utility cannot agree to the form of adequate assurance of future performance, the Utility must file a motion seeking alternative or additional adequate assurance of future performance no later than sixty (60) days after entry of the order.

REQUEST FOR EXPEDITED RELIEF AND WAIVER OF STAY

19. The Debtor requests expedited hearing on this Motion. The Debtor has scheduled, filed, and served a number of “first day” motions designed to facilitate an orderly transition to Chapter 11. The granting of this Motion on an expedited basis will ensure that the Debtor’s operations continue uninterrupted. If a disruption in Utility Services occurs, the negative impact on the Debtor’s business will be severe.

20. Additionally, by this Motion, the Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” As set forth herein, the Debtor requires immediate relief to continue ordinary business operations for the benefit of all

parties in interest. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent that it may apply.

21. No prior request for the relief sought in this Motion has been made by the Debtor to this or any other court.

22. Pursuant to Local Rule 9013-2(a), this Motion is verified and accompanied by a memorandum of law, proposed order, and proof of service.

23. Pursuant to Local Rule 9013-2(c), the Debtor gives notice that it may, if necessary, call George Peichel, Chief Financial Officer of Debtor, to testify on behalf of the Debtors about the factual matters raised in this Motion.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion, grant expedited relief, grant the relief requested herein, and grant such other relief as the Court deems just and equitable.

Dated: September 20, 2024

TAFT STETTINIUS & HOLLISTER LLP

By: /s/ James M. Jorissen

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PROPOSED COUNSEL FOR THE DEBTOR

VERIFICATION

I, George Peichel, Chief Financial Officer of the Debtor named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 20th day of September, 2024.


George Peichel

EXHIBIT A

City of Charles City
MidAmerican Energy
Jendro Sanitation Services
Mala Mills LLC
Heartland Natural Gas
Riverland Energy
Xcel Energy
Central MN Electric, Inc
Minnesota Power
East Central Energy
Farmers Feed & Grain Co.
Inc
Stacyville LP Gas Company
Power Pro Electric, LLC
Pehler LP Gas LLC
Win LLC
Pehler Oil LLC
Router 12 Networks LLC
Crow Wing Power
LJP Waste Solution
CallMultiplier
Centra Sota Energy
Hawkeye Alarm and Signal
Pierz Coop
Five Star Cooperative
AmeriGas
Alcivia
Federated Coops
MTech Systems USA LLC
WIN IT Services LLC
Parity Factory LLC
Linde Inc

ID	Name	Type of Product Supplied or Service	Critical Vendor	Balance	13-week Catch Up Payment
25030	City of Charles City	Water & Sewer Utility	Utility	\$ 395,548.48	\$ 39,554.85
25114	MidAmerican Energy	Electric Utility	Utility	\$ 218,020.29	\$ 21,802.03
25089	Jendro Sanitation Services	Garbage	Utility	\$ 16,567.80	\$ 1,656.78
25254	Mala Mills LLC	LP Supplier	Utility	\$ 12,550.50	\$ 1,255.05
25677	Heartland Natural Gas	Nat Gas Supplier	Utility	\$ 12,444.19	\$ 1,244.42
25495	Riverland Energy	Electric Utility	Utility	\$ 10,331.22	\$ 1,033.12
25278	Xcel Energy	Electric Utility	Utility	\$ 10,000.00	\$ 1,000.00
25565	Central MN Electric, Inc	Electric Utility	Utility	\$ 5,601.81	\$ 560.18
25453	Minnesota Power	Electric Utility	Utility	\$ 5,375.52	\$ 537.55
25437	East Central Energy	Electric Utility	Utility	\$ 4,098.98	\$ 409.90
25050	Farmers Feed & Grain Co. Inc	LP Supplier	Utility	\$ 4,003.04	\$ 400.30
25157	Stacyville LP Gas Company	LP Supplier	Utility	\$ 3,979.00	\$ 397.90
25792	Power Pro Electric, LLC	Electric Utility	Utility	\$ 1,567.15	\$ 156.72
25606	Pehler LP Gas LLC	LP Supplier	Utility	\$ 1,481.66	\$ 148.17
25834	Win LLC	Internet Services	Utility	\$ 1,035.92	\$ 103.59
25732	Pehler Oil LLC	LP Supplier	Utility	\$ 529.20	\$ 52.92
25151	Router 12 Networks LLC	Phone Services	Utility	\$ 343.50	\$ 34.35
25617	Crow Wing Power	Electric Utility	Utility	\$ 126.14	\$ 12.61
25220	LJP Waste Solution	Garbage	Utility	\$ -	\$ -
25314	CallMultiplier	Phone Services	Utility	\$ -	\$ -
25334	Centra Sota Energy	LP Supplier	Utility	\$ -	\$ -
25346	Hawkeye Alarm and Signal	Alarm Utility	Utility	\$ -	\$ -
25648	Pierz Coop	LP Supplier	Utility	\$ -	\$ -
25711	Five Star Cooperative	Fuel Supplier	Utility	\$ -	\$ -
25448	AmeriGas	LP Supplier	Utility	\$ (1,205.56)	\$ (120.56)
25007	Alcivia	LP Supplier	Utility	\$ 27,827.13	\$ 2,782.71
25052	Federated Coops	LP Supplier	Utility	\$ -	\$ -
25121	MTech Systems USA LLC	Cloud Software Provider for Live Production	Utility	\$ 47,716.66	\$ 4,771.67
25178	WIN IT Services LLC	Service Provider for IT	Utility	\$ 5,000.00	\$ 500.00
25134	Parity Factory LLC	Software Provider	Utility	\$ 73,979.80	\$ 7,397.98
25101	Linde Inc	Industrial Gases	Utility	\$ 98,551.27	\$ 9,855.13
TOTAL				\$ 955,473.70	\$ 95,547.37

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.

Debtor.

Case No. 24-32426 KAC

Chapter 11 Cases

**DEBTOR’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR AN ORDER (I) GRANTING EXPEDITED HEARING,
AND (II) ESTABLISHING PROCEDURES REGARDING
ADEQUATE ASSURANCE OF FUTURE PERFORMANCE FOR UTILITIES**

The above-named Debtor (collectively, the “Debtor”), by and through its undersigned counsel, submit this memorandum of law in support of their Motion in the above-entitled matter in accordance with Local Rule 9013-2(a).

FACTUAL BACKGROUND

The Debtor relies on the statement of facts set forth in the verified motion, the petition, schedules, statement of financial affairs, and the Declaration of George Peichel filed in Support of First Day Motions. The defined terms used in this Memorandum have the same meaning as in the accompanying Motion.

ARGUMENT

I. THE DEBTOR’S REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.

The Debtor requests expedited relief. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a motion “for cause shown.” Cause exists here to grant the Motion on an expedited basis. The Debtor’s business operations depend on reliable access to electricity, natural gas, water, sanitation services, internet, and information technology, software, and/or cloud computing services (the “Utility Services”) from the utility service providers (each a “Utility” and

together the “Utilities”). It is essential that the Utility Services continue uninterrupted. Without continuous Utility Services, the Debtor will be unable to continue operations and will be forced to liquidate, resulting in the loss of the Debtor’s going-concern value, the loss of 138 employees, as well as the termination of an additional 123 part-time and/or temporary workers from various employment agencies, and prejudice to creditors and other stakeholders. Expedited relief is necessary to avoid this immediate and irreparable harm.

II. THE PROCEDURES PROPOSED BY THE DEBTORS FOR ADEQUATE ASSURANCE OF PAYMENT TO THE UTILITIES SHOULD BE APPROVED.

Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services. A utility may not, during the first 30 days of a Chapter 11 case, alter, refuse, or discontinue services to, or discriminate against, a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a prepetition debt. 11 U.S.C. § 366(b). A utility may, however, alter, refuse, or discontinue service after such 30-day period if the debtor does not provide “adequate assurance” of payment for post-petition services in a form “satisfactory” to the utility, subject to court review and approval. In ruling on the adequacy of an assurance of payment, the court may not consider (a) the absence of security before the petition date, (b) the debtor’s history of timely payments, or (c) the availability of an administrative expense priority claim. 11 U.S.C. § 366(c)(3)(B).

Courts construing Section 366(b) recognize that the debtor is not required to give the utility a guaranty of payment, but must only ensure that the utility is not subject to an unreasonable risk of nonpayment for post-petition services. *See In re New Rochelle Telephone Corp.*, 397 B.R. 633, 639 (Bankr. E.D. N.Y. 2008) (“Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of nonpayment.”). Whether a utility is subject to an unreasonable risk of nonpayment must be determined from the

facts and circumstances of the case. *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002). While Section 366(c) limits the factors a court may consider, determinations of adequate assurance remain within the court's discretion. 280 B.R. at 80.

The Debtor's proposal for adequate assurance of payment to the Utilities as set forth in the accompanying Order satisfies Section 366(c)'s requirements. The process the Order envisions provides a mechanism of resolving disputes related to adequate assurance such that an aggrieved provider of Utility Services has a full and fair opportunity to be heard on the adequacy of the Debtor's assurances of payment. The Debtor believes that the proposed adequate assurance is sufficient and reasonable and constitutes adequate assurance within the meaning of Section 366(c).

CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court enter an order granting the relief requested in the Motion.

Dated: September 20, 2024

TAFT STETTINIUS & HOLLISTER LLP

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PROPOSED COUNSEL FOR THE DEBTOR

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.,

Debtor.

Case No. 24-32426 KAC

Chapter 11 Case

ORDER

This case is before the court on Debtor's Motion for an Order (I) Granting Expedited Hearing; and (II) Establishing Procedures Regarding Adequate Assurance of Future Performance for Utilities ("Motion"). Based on the Motion, and this court having determined that it is in the best interests of Debtor's estate to grant the Motion, and it appearing that due and proper notice of this Motion was given,

IT IS HEREBY ORDERED:

1. The Debtor's Motion is granted.
2. The Debtor's request for expedited relief is granted.
3. The Debtor is authorized, but not required, to pay on a timely basis, in accordance with their pre-petition practices, all undisputed invoices for utility services rendered by Utilities to the Debtor after the Petition Date.
4. The Debtor is authorized, within fourteen (14) days after the date of entry of this Order, to establish a newly created, interest-bearing, segregated account with Bremer Bank, National Association (the "Utility Deposit Account"). Upon request from any Utility, the Debtor is hereby authorized to place in the Utility Deposit Account a deposit for each such Utility (each an "Adequate Assurance Deposit") a deposit of an amount equal to approximately 10% of the

total amount owed and outstanding for the Utility Services as of the Petition Date; provided, that no Adequate Assurance Deposit will be made for any Utility that already holds a deposit or prepayment equal to or greater than approximately 10% of the amount owed and outstanding for Utility Services as of the Petition Date. The sum of all such Adequate Assurance Deposits shall be subject to an aggregate cap of **\$95,547.37**.

5. The Utilities are prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtor, or requiring additional adequate assurance except in compliance with the following procedures: (a) the Debtor will serve a copy of any order entered in relation to this Motion upon the Utilities within one week after entry of the Order, (b) the Utilities shall have thirty (30) days to propose any alternative or additional adequate assurance of future performance, and (c) if the Debtor and a Utility cannot agree to the form of adequate assurance of future performance, the Utility must file a motion seeking alternative or additional adequate assurance of future performance no later than sixty (60) days after entry of the Order.

6. Notwithstanding anything to the contrary herein, (a) any payments made or authorization contained hereunder, shall be subject to the requirements imposed on the Debtor pursuant to any interim or final order authorizing, among other things, the Debtor's entry into the post-petition financing facility and use of cash collateral (the "DIP Orders"), including any budgets governing or relating to the post-petition financing, and (b) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control.

7. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

9. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2024

United States Bankruptcy Judge