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

**In re**

**BORDERS GROUP, INC., et al.,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-\_\_\_\_\_ (\_\_\_)**

**(Joint Administration Pending)**

**DEBTORS' MOTION PURSUANT TO 11 U.S.C §§ 105(a), 363(b) AND 366 FOR ENTRY  
OF AN ORDER ESTABLISHING ADEQUATE ASSURANCE PROCEDURES  
WITH RESPECT TO THEIR UTILITY COMPANIES  
AND GRANTING OTHER RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Borders Group, Inc. ("BGI") and its debtor subsidiaries, including Borders, Inc., as debtors and debtors in possession (collectively, the "Debtors"), submit this motion (the "Motion") and respectfully represent as follows:

**BACKGROUND**

1. On the date hereof (the "Commencement Date"), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

## **DEBTORS' BUSINESS**

### **A. Operations**

2. The Debtors are a leading operator of book, music and movie superstores and mall-based bookstores. At January 29, 2011, the Debtors operated 642 stores, under the Borders, Waldenbooks, Borders Express and Borders Outlet names, as well as Borders-branded airport stores in the United States, of which 639 stores are located in the United States and 3 in Puerto Rico. Two of Borders' flagship stores (along with other less prominent stores) are located in Manhattan. In addition, the Debtors operate a proprietary e-commerce web site, [www.Borders.com](http://www.Borders.com), launched in May 2008, which includes both in-store and online e-commerce components.

3. As of February 11, 2011, the Debtors employed a total of approximately 6,100 full-time employees, approximately 11,400 part-time employees, and approximately 600 contingent employees (who are required to work one shift per month, and usually do so at special events), all of whom are located in the United States and Puerto Rico. The Debtors' employees are not subject to any collective bargaining agreements.

### **B. Financials**

4. For the fiscal year ended January 29, 2011, the Debtors recorded net sales of approximately \$2.3 billion. As of December 25, 2010, the Debtors had incurred net year-to-date losses of approximately \$168.2 million.

5. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the *Declaration of Scott Henry*

*Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions (the “First Day Declaration”) filed contemporaneously herewith.*

### **JURISDICTION**

6. The Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**<sup>2</sup>

7. By this Motion, the Debtors request, pursuant to sections 105(a), 363(b) and 366 of the Bankruptcy Code, entry of an order substantially in the form of Exhibit A annexed hereto: (i) approving the Debtors’ proposed adequate assurance for postpetition Utility Services (the “Proposed Adequate Assurance”); (ii) approving the Debtors’ proposed Adequate Assurance Procedures; (iii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (iv) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of these chapter 11 cases, a debt that is owed by the Debtors for services rendered prior to the Commencement Date, or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance.

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<sup>2</sup> Capitalized terms used but not defined in this section shall have the meaning(s) ascribed to them in the balance of the Motion.

## **BASIS FOR RELIEF**

### **A. The Utility Companies**

8. The Debtors own and manage over 600 stores, distributions centers, and corporate office centers. These properties are located throughout the United States and its territories, and each requires the continuous provision of utility services -- such as electricity, natural gas, oil, water, sewer, telecom, trash collection, and/or other services (each, a “Utility Service” and, collectively, the “Utility Services”) -- from hundreds of local and/or regional utilities, as that term is used in section 366 of the Bankruptcy Code (each a “Utility Company” and, collectively, the “Utility Companies”). The Utility Companies that provide Utility Services to the Debtors as of the Commencement Date are those listed on Exhibit B attached hereto (the “Utility Service List”).<sup>3</sup> The Debtors estimate that their average monthly obligations to the Utility Companies total approximately \$4,576,421.92.

9. Given the large-scale nature of their retail operations, the Debtors employ two third-party processors, Cass Information Systems, Inc. (“Cass”) and Icomm Consulting, Inc. (“IComm”), to help aggregate and manage the utility payments for the Debtors’ various properties. Cass receives all invoices from the Debtors’ Utility Companies providing non-telecomm Utility Services, such as electricity, natural gas, oil, water, sewer, and trash collection. Cass then reconciles the invoices, submits them to the Debtors with a request for funding and a payment date, then disburses the funds to the Utility Companies. IComm provides identical services for the Debtors, but manages payment to the Debtors’ providers of telecomm Utility Services, such as telephone and internet. The services provided by both Cass and IComm (collectively, the “Payment Administrators”) are integral to the Debtors’ operations. The

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<sup>3</sup> The inclusion of any entity on, as well as any omission of any entity from, Exhibit B and the description thereof is not an admission or concession that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

Debtors paid Cass, on average, \$6,000 per month in 2010. As of the Commencement Date, the Debtors owe less than \$25,000 to Cass for prepetition accrued but unpaid service and administrative fees. The Debtors paid IComm, on average, \$20,000 per month in 2010. As of the Commencement Date, the Debtors owe less than \$50,000 to Icomm for prepetition accrued but unpaid service and administrative fees. By this Motion, the Debtors also seek authority from the Court to pay the Payment Administrators all prepetition accrued but unpaid service and administrative fees due to the Payment Administrators, and to continue such payments to the Payment Administrators in the ordinary course of the Debtors' business.

10. Interruption and/or termination of the Utility Services during these chapter 11 cases would severely hinder the Debtors' business operations and their ability to successfully reorganize as unplanned "dark" stores or unexpected delays in the processing of products at their distribution facilities could result in consumers and the market misinterpreting such business disruptions as indications of the Debtors' imminent liquidation. Accordingly, the Debtors seek to establish an orderly process for providing adequate assurance to their Utility Companies without jeopardizing the Debtors' business operations.

11. The Debtors intend to pay any postpetition obligations to the Utility Companies in a timely fashion and in the ordinary course, as they have substantially done prior to the Commencement Date. The Debtors will make the payments from their cash reserves as of the Commencement Date and through anticipated access to a debtor in possession financing facility. In addition, the Debtors have provided approximately \$1.5 million of surety bonds ("Bonds") or cash deposits to secure certain of the Debtors' obligations with respect to some of the Utility Companies. The Utility Service List identifies which of the Utility Companies are secured by these Bonds.

**B. The Adequate Assurance Deposit**

12. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor or the trustee adequate "assurance of payment" within thirty (30) days of the commencement of the debtor's chapter 11 case. Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtors propose to deposit, as adequate assurance, \$2,288,210.96 (the "Adequate Assurance Deposit"), into a newly created, segregated, interest-bearing escrow account (the "Adequate Assurance Account") within thirty (30) days of the Commencement Date, subject to the procedures set forth below. The Adequate Assurance Deposit equals approximately two weeks of the Debtors' estimated aggregate utility expenses.

13. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business, constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code. Nonetheless, if any Utility Company believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

**C. The Adequate Assurance Procedures**

14. To address the right of any Utility Company under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance satisfactory to it, the Debtors propose that the following procedures (the "Adequate Assurance Procedures") be adopted:

- a. The Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously send a copy of this Motion and order, which includes the proposed Adequate Assurance Procedures, to each Utility Company and the Payment Administrators within three (3) business days after entry of the order by the Court.

- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within three (3) business days of entry of the order granting this Motion; *provided, however*, that to the extent any Utility Company receives any value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- c. The portion of the Adequate Assurance Deposit attributable to each Utility Company shall be returned to the Debtors on the earlier of (i) the Debtors' termination of services from such Utility Company, and (ii) the conclusion of these chapter 11 cases, if not applied earlier.
- d. Any Utility Company desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received by the Debtors by no later than thirty (30) days after the Commencement Date (the "Request Deadline") at the following addresses: (i) Borders Group, Inc., 100 Phoenix Drive, Ann Arbor, Michigan 48108, Facsimile: (734) 477-1285 (Attn: Matt Chosid); and (ii) the attorneys for the Debtors and Debtors in Possession, Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York 10019, Facsimile: (212) 506-1800 (Attn: Jeffrey R. Gleit, Esq. and Alan Lungen, Esq.).
- e. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have twenty (20) days from the Request Deadline (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Debtors and the applicable Utility Company also may agree to extend the Resolution Period.
- g. If a Utility Company fails to file and serve a timely Additional Assurance Request, or file a Procedures Objection (defined below) it shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

- h. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- i. If the Debtors determine that an Additional Assurance Request is not reasonable, and are not able to resolve such request during the Resolution Period, the Debtors, during or promptly after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the “Determination Hearing”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- j. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtors.

**D. Objections to the Adequate Assurance Procedures**

15. Historically, chapter 11 debtors were able, under section 366 of the Bankruptcy Code, to put the onus on utility providers to argue that whatever form of adequate assurance proposed by the debtor was insufficient. Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the amendments to section 366 of the Bankruptcy Code arguably shift the burden onto the debtor to both provide adequate assurance that the utility providers find satisfactory and seek court review if a utility provider does not accept the proposed adequate assurance. This interpretation, if taken to the extreme, could be crippling for a debtor. For example, a Utility Company, on the 29th day following the Commencement Date, could announce that the Proposed Adequate Assurance is not acceptable, demand an unreasonably large deposit alleging payment risk from the Debtors, and threaten to terminate utility service the next day unless the Debtors complied with the demand. This would be an untenable result, leaving the Debtors with effectively no opportunity to challenge the



decision prior to their service being suspended. Consequently, the Debtors believe it is prudent to establish the Adequate Assurance Procedures and to require that Utility Companies raise any objections to the Adequate Assurance Procedures so that any such objections may be heard by the Court prior to the running of the 30-day period following the Commencement Date.

Therefore, the Debtors propose that any Utility Company that objects to the Adequate Assurance Procedures described above must file a written objection (a “Procedures Objection”) and serve such Procedures Objection on the Notice Parties (as defined below, but an objecting Utility Company shall not be required to serve Utility Companies and Payment Administrators), so that it is actually received by the objection deadline set by the Court for this Motion, which is well within the thirty (30) day period.

**E. Subsequent Modifications of Utility Service List**

16. The Debtors have made an extensive and good-faith effort to identify their Utility Companies and include them on the Utility Service List. Nonetheless, to the extent that the Debtors subsequently identify additional Utility Companies, the Debtors seek authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Company. The Debtors further request that the order approving this Motion be deemed to apply to any such subsequently identified Utility Company, regardless of when each Utility Company is added to the Utility Service List. Moreover, for those Utility Companies that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Motion and order on such Utility Company. Subsequently added entities shall have twenty (20) days from the date of service to make an adequate assurance request.

17. The Debtors request that all Utility Companies, including subsequently added Utility Companies, be prohibited from altering, refusing or discontinuing utility services to the Debtors absent further order of the Court.

**CAUSE EXISTS TO AUTHORIZE THE DEBTORS'  
TREATMENT OF THE UTILITY COMPANIES UNDER SECTION 366**

18. As stated, the relief requested herein is essential to assure the ongoing operations of the Debtors' business and the success of their reorganization efforts. Absent the continued service of the Utility Companies, the impact on the Debtors' business operations and revenues would be extremely harmful. Lights, heating or air conditioning, water, trash collection and other Utility Services are critical to the operation of the Debtors' retail and other business facilities. The Proposed Adequate Assurance has been tailored to ensure that the Debtors' needs to continue their business are balanced against the rights afforded to the Utility Companies under section 366 of the Bankruptcy Code.

19. Prior to the enactment of BAPCPA, it was well established by courts, commentators, and legislative history that section 366 of the Bankruptcy Code did not require, as a matter of course, that the debtor provide a deposit or other security to its utilities as adequate assurance of payment. *In Virginia Elec. & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 647 (2d Cir. 1997), the United States Court of Appeals for the Second Circuit affirmed the Bankruptcy Court's ruling that the debtor's prepetition payment history and its postpetition liquidity constituted adequate assurance of future performance. The Second Circuit rejected the argument that section 366(b) nevertheless required a "deposit or other security," holding that "a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under section 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.'" *Id.* at 650. *See also Shirey v. Philadelphia Elec. Co. (In re Shirey)*, 25 B.R. 247, 249 (Bankr. E.D. Pa. 1982) ("[S]ection 366(b) . . . does not permit a utility to request adequate assurance of payment for

continued services unless there has been a default by the debtor on a pre-petition debt owed for services rendered”).

20. However, under BAPCPA, section 366(c) of the Bankruptcy Code permits a utility company that provides service to a debtor in a chapter 11 case to alter, refuse, or discontinue utility service if, within thirty (30) days after the commencement of the chapter 11 case, the utility company does not receive adequate assurance of future payment in a form that is “satisfactory” to the utility company, subject to the Court’s ability to modify the amount of adequate assurance. 11 U.S.C. § 366(c). Furthermore, pursuant to section 366(c)(3)(B), in determining whether an assurance of payment is adequate, the court may not consider: (i) the absence of security before the petition date; (ii) the debtor’s history of timely payments; or (iii) the availability of an administrative expense priority. Nevertheless, in “deciding what constitutes adequate assurance, a bankruptcy court must focus on the utility’s need for assurance with the debtor’s scarce financial resources.” *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008).

21. In recognition of the effect of BAPCPA on the practice of debtors with respect to their utility companies, the adequate assurance procedures set forth herein are appropriate and have been adopted in other chapter 11 cases. *See, e.g., In re Beach House Prop., LLC*, No. 08-11761-BKC-RAM, 2008 Bankr. LEXIS 1091, at \*4 (Bankr. S.D. Fla. Apr. 8, 2008); *see also* ¶ 25 *infra*. In *Beach House Property*, the court interpreted section 366(c) to mean that “a debtor may comply with § 366 by proposing a means and amount of adequate assurance in a motion filed at the start of a case,” and that “[a]s long as the debtor then pays the Court ordered amount by the 30th day, the debtor will have complied with § 366 and the utility may not discontinue service.” *Id.* The court will generally “[set] an objection deadline and hearing date which allows

for any dispute to be resolved prior to the 30 day deadline in § 366(c)(2).” *Id.* Failure to object, respond, or make a counter-demand prior to this deadline can be interpreted as acquiescence on the part of the utility. *See In re Syroco Inc.*, 374 B.R. 60, 62 (Bankr. D.P.R. 2007).

22. BAPCPA clarified what does and does not constitute “assurance of payment” and what can be considered in determining whether such assurance is adequate. *In re Beach House Property, LLC*, 2008 Bankr. LEXIS 1091, at \*3 (citing 3 COLLIER ON BANKRUPTCY ¶ 366.03[2] (rev. 15th ed. 2006)). In enacting section 366(c) of the Bankruptcy Code, however, Congress did not divest the Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Company. *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 the amount of an assurance of payment . . .”). Under section 366(c), there is nothing to prevent a bankruptcy court from deciding, as courts have before the enactment of BAPCPA, that, on the facts of the cases before it, the amount required of the debtors to adequately assure payment to a utility company is nominal, or even zero.

23. Moreover, Congress has not changed the requirement that the assurance of payment only be “adequate.” Courts construing the meaning of “adequate” assurance of payment under section 366(b) of the Bankruptcy Code prior to BAPCPA held that it did not require an absolute guarantee of the debtor’s ability to pay, *see, e.g., 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. Virginia Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re Adelphia Bus. Solutions*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (same), and courts since BAPCPA have

held similarly. *See, e.g., In re New Rochelle Tel. Corp.*, 397 B.R. at 639 (“Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of non-payment.”) (citations omitted). Therefore, despite the language in section 366(c)(2) of the Bankruptcy Code allowing a utility to take action against a debtor should the debtor fail to provide adequate assurance of payment that is “satisfactory” to the utility, section 366 of the Bankruptcy Code does not require that the debtor satisfy whatever requests a utility may make on a postpetition basis, especially once the Court determines the appropriate amount of adequate assurance.

24. Based on the foregoing, the Debtors believe that the Proposed Adequate Assurance is reasonable and satisfies the requirements of section 366 of the Bankruptcy Code. The Proposed Adequate Assurance provides the Utility Companies with an amount equal to two (2) weeks’ worth of Utility Services to be held in the Adequate Assurance Account, with a fair and orderly procedure for requesting additional or different adequate assurance. Without the procedures sought herein, the Debtors could be forced to address numerous requests by Utility Companies in a disorganized manner at a critical period in these chapter 11 cases and during a time when the Debtors’ efforts could be more productively focused on the continuation of the Debtors’ operations for the benefit of all parties in interest. In addition, absent these procedures, if a Utility Company and the Debtors were unable to reach an agreement as to what constitutes adequate assurance, the risk that such Utility Company could unilaterally terminate the Debtors’ services is great and could have a detrimental impact on the value of their business.

25. Accordingly, the Adequate Assurance Procedures also seek to ensure that any disputes between the Debtors and the Utility Companies are resolved in a timely manner and, if necessary, with the assistance of this Court. Based on the foregoing, the Debtors believe that the

Proposed Adequate Assurance is reasonable and satisfies the requirements of section 366 of the Bankruptcy Code. The relief requested in this Motion is similar to the relief granted by courts in this district and other districts in other recent chapter 11 cases filed after BAPCPA became effective. *See, e.g., In re the Great Atl. & Pac. Tea Co., Inc., et al.*, Ch. 11 Case No. 10- 24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) (Docket No. 503); *In re Blockbuster, Inc.*, Ch. 11 Case No. 10- 14997 (BRL) (Bankr. S.D.N.Y. Oct. 21, 2010) (Docket No. 361); *In re Uno Rest. Holdings Corp.*, Ch. 11 Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Mar. 10, 2010) (Docket No. 357); *In re Finlay Enter., Inc.*, Ch. 11 Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009) (Docket No. 185); *In re Aleris Int’l, Inc.*, Ch. 11 Case No. 09-10478 (BLS) (Bankr. D. Del. Mar. 17, 2009) (Docket No. 291); *In re Tronox Inc.*, Ch. 11 Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009) (Docket No. 149); *In re Gen. Growth Props., Inc.*, Ch. 11 Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 11, 2009) (Docket No. 469); *In re Lehman Brothers Holding, Inc.*, Ch. 11 Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Oct. 16, 2008) (Docket No. 1096); *In re Stone Barn Manhattan, LLC (Steve and Barry’s I)*, Ch. 11 Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 31, 2008) (Docket No. 323); *In re Lexington Precision Corp.*, Ch. 11 Case No. 08-11153 (MG) (Bankr. S.D.N.Y. Apr. 22, 2008) (Docket No. 82); *In re PRC, LLC*, Ch. 11 Case No. 08-10239 (MG) (Bankr. S.D.N.Y. Feb. 13, 2008) (Docket No. 130); *Fortunoff Fine Jewelry and Silverware, LLC*, Ch. 11 Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008) (Docket No. 307); and *In re Movie Gallery, Inc.*, Ch. 11 Case No. 10-30696 (DOT) (Bankr. E.D.Va. Feb. 8, 2010) (Docket No. 122).<sup>4</sup>

26. 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

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<sup>4</sup> Because of the voluminous nature of the unreported orders cited herein, such orders are not annexed to the Motion. Copies of these orders are available upon request of Debtors’ counsel.

provisions of this title.” 11 U.S.C. § 105(a). The proposed procedures will ensure the Debtors’ Utility Services are continued without prejudicing the rights of the Utility Companies, because Utility Companies will have the opportunity to submit an Additional Assurance Request or object without waiving those Utility Companies’ rights to request additional adequate assurance later in these chapter 11 cases.

27. The Debtors submit, therefore, that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

**PAYMENT OF PREPETITION AMOUNTS TO THE PAYMENT ADMINISTRATORS  
IS AUTHORIZED UNDER SECTIONS 363(b)(1) AND 105(a)  
OF THE BANKRUPTCY CODE**

28. Section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” *Id.* § 105(a). A Bankruptcy Court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177).

29. Federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport R. Co.*, 106 U.S. 286, 312 (1882) (payment

of pre-receivership claim prior to reorganization permitted to prevent “stoppage of [crucial] business relations”); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied*, 325 U.S. 873 (1945) (Second Circuit extends doctrine for payment of prepetition claims beyond railroad reorganization cases); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed*, 838 F.2d 59 (2d Cir. 1988) (approving lower Court order authorizing payment of prepetition wages, salaries, expenses, and benefits); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’ continued operation).

30. As stated above, given the large-scale nature of the Debtors’ operations, Cass and Icomm provide valuable and necessary services to the Debtors. They are familiar with the Debtors’ invoicing and payment system, and allow for the Debtors to pay the Utility Companies in an efficient and orderly fashion, thereby ensuring that there is no interruption to the Debtors’ Utility Services. This is of particular importance postpetition, as the Debtors cannot afford any material disruptions of their business operations or present anything less than a “business as usual” appearance to the public. Payment of the prepetition amounts owed to the Payment Administrators is authorized under sections 363(b)(1) and 105(a) of the Bankruptcy Code.

### **RESERVATION OF RIGHTS**

31. Nothing in this Motion should be construed as impairing the Debtors’ right to contest the amount of any Utility Services that may be owed to any Utility Company, and the Debtors expressly reserve all of their rights with respect thereto.

### **NOTICE**

32. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the United States Trustee for the Southern



District of New York (Attn: Tracy Davis, Esq. and Linda Riffkin, Esq.); (ii) those creditors holding the thirty largest unsecured claims against the Debtors' estates; (iii) counsel for the DIP Agents: (x) Morgan, Lewis & Bockius LLP (Attn: Wendy Walker, Esq. and Sandra Vrejan, Esq.), counsel for the Working Capital Agent, (y) Riemer & Braunstein LLP (Attn: Donald E. Rothman, Esq.), counsel for GA Capital LLC; (iv) Kelley Drye & Warren LLP, attorneys for certain landlords (Attn: James S. Carr, Esq., Robert L. LeHane, Esq., and Benjamin D. Feder, Esq.); (v) Lowenstein Sandler PC, attorneys for certain trade vendors (Attn: Kenneth A. Rosen, Esq., Bruce D. Buechler, Esq., Bruce S. Nathan, Esq., and Paul Kizel, Esq.); (vi) Fried, Frank, Harris, Shriver & Jacobson LLP, attorneys for General Growth Properties, Inc. (Attn: Brad Eric Scheler, Esq.); and (vii) Bingham McCutchen LLP, attorneys for Bank of America, N.A. (Attn: Julia Frost-Davies, Esq. and Andrew Gallo, Esq.); and (vii) the parties listed on the Utility Service List and the Payment Administrators (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

33. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: February 16, 2011  
New York, New York

KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP

By: /s/ David M. Friedman  
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*Attorneys for Debtors  
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**EXHIBIT A**

**PROPOSED ORDER**

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

**In re**

**BORDERS GROUP, INC., *et al.*,<sup>1</sup>**

**Debtors.**

**Chapter 11**

**Case No. 11-\_\_\_\_\_ (\_\_\_)**

**(Joint Administration Pending)**

**ORDER PURSUANT TO 11 U.S.C §§ 105(a), 363(b) AND 366 ESTABLISHING  
ADEQUATE ASSURANCE PROCEDURES WITH RESPECT TO  
DEBTORS' UTILITY COMPANIES AND GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup>, dated February 16, 2011, of Borders Group, Inc. and its debtor-subsiidiaries as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for an order pursuant to sections 105(a), 363(b) and 366 of the Bankruptcy Code, requesting: (i) approval of the Debtors’ Proposed Adequate Assurance; (ii) approval of the Debtors’ proposed Adequate Assurance Procedures; and (iii) prohibiting Utility Companies from altering, refusing, or discontinuing service, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

provided notice of the Motion and Hearing (as defined below) to the Notice Parties; and the Court having held a hearing to consider the requested relief (the “Hearing”); and upon the record of the Hearing, and all of the proceedings before the Court, the Court finds and determines that the requested relief is in the best interests of the Debtors, their estates, creditors, and all parties in interest; the Debtors have provided due and proper notice of the Motion and Hearing and no further notice is necessary; the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the requested relief herein; **IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. The Debtors’ Proposed Adequate Assurance satisfies the requirements of section 366 of the Bankruptcy Code.
3. Subject to the procedures described below, no Utility Company may (a) alter, refuse, terminate or discontinue utility services to, and/or discriminate against, the Debtors on the basis of the commencement of these chapter 11 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.
4. The Debtors shall deposit, as adequate assurance, \$2,288,210.96 (the “Adequate Assurance Deposit”) into a newly created, segregated, interest bearing account (the “Adequate Assurance Account”) within twenty (20) days of the Commencement Date, *provided, however*, that to the extent any Utility Company receives any value from the Debtors on account of adequate assurance, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
5. The Debtors are authorized to pay Cass Information Systems, Inc. (“Cass”) and Icomm Consulting, Inc. (“Icomm” and, together with Cass, the “Payment Administrators”) all

prepetition accrued but unpaid service and administrative fees due to the Payment Administrators, and to continue such payments to the Payment Administrators in the ordinary course of the Debtors' business.

6. The Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

7. The following Adequate Assurance Procedures are approved in all respects:

- a. The Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously send a copy of this Motion and order, which includes the proposed Adequate Assurance Procedures, to each Utility Company and the Payment Administrators within three (3) business days after entry of the order by the Court.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within three (3) business days of entry of the order granting this Motion; *provided, however*, that to the extent any Utility Company receives any value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- c. The portion of the Adequate Assurance Deposit attributable to each Utility Company shall be returned to the Debtors on the earlier of (i) the Debtors' termination of services from such Utility Company, and (ii) the conclusion of these chapter 11 cases, if not applied earlier.
- d. Any Utility Company desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received by the Debtors by no later than thirty (30) days after the Commencement Date (the "Request Deadline") at the following addresses: (i) Borders Group, Inc., 100 Phoenix Drive, Ann Arbor, Michigan 48108, Facsimile: (734) 477-1285 (Attn: Matt Chosid); and (ii) the attorneys for the Debtors and Debtors in Possession, Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York 10019, Facsimile: (212) 506-1800 (Attn: Jeffrey R. Gleit, Esq. and Alan Lungen, Esq.).
- e. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be

satisfactory to the Utility Company; (iii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iv) describe any deposits, prepayments or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- f. Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have twenty (20) days from the Request Deadline (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Debtors and the applicable Utility Company also may agree to extend the Resolution Period.
- g. If a Utility Company fails to file and serve a timely Additional Assurance Request, or file a Procedures Objection (defined below) it shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- h. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- i. If the Debtors determine that an Additional Assurance Request is not reasonable, and are not able to resolve such request during the Resolution Period, the Debtors, during or promptly after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- j. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtors.

8. The Debtors are authorized, in their sole discretion, to amend the Utility Service List, attached to the Motion as Exhibit B, to add or delete any Utility Company, and this Order shall apply to any Utility Company that is subsequently added to the Utility Service List.

9. For those Utility Companies that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Order on the subsequently added Utility Company. Subsequently added entities shall have twenty (20) days from the date of service of the Order to make an adequate assurance request.

10. Any Utility Company who fails to request additional assurance in accordance with the procedures set forth herein shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by this Order.

11. Nothing herein constitutes a finding that any entity is or is not a Utility Company 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 Company listed on the Utility Service List within three (3) business days of the date this Order is entered.

13. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

14. This Court shall retain jurisdiction to hear and determine all matters if arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2011  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT B**

**UTILITY SERVICE LIST**

## UTILITY SERVICE LIST

VENDOR NAME  
ABCWUA  
AIRWAY CLEANERS LLC  
ALAMEDA COUNTY WATER DISTRICT  
ALAMEDA MUNICIPAL POWER  
ALLEGHENY POWER\*  
ALLEGHENY ENERGY  
ALLIANT ENERGY \*  
ALLIANT ENERGY WP&L  
AMEREN ILLINOIS \*  
AMEREN MISSOURI\*  
AMERICAN WATER & ENERGY SAVERS  
AMERICAN ELECTRIC POWER  
ANCHORAGE WTR & WASTEWTR UTIL  
APS  
AQUA OHIO INC  
AQUA PENNSYLVANIA  
AQUARION WATER CO OF CT  
ARKANSAS WESTERN GAS CO  
ARTESIAN WATER CO INC  
ASHWAUBENON WATER & SEWER UTIL  
ATLANTIC CITY ELECTRIC  
ATMOS ENERGY  
AUBURN WATER SEWERAGE DISTRICT  
AUGUSTA UTILITIES DEPT  
AUSTELL NATURAL GAS SYSTEM  
AUTORIDAD DE ENERGIA ELECTRICA\*  
AUTORIDAD DE ACUEDUCTOS Y  
AVISTA  
THE AVON WATER CO  
BANGOR HYDRO ELECTRIC CO  
BANGOR WATER DIST  
BCWSA  
BELMONT CO SANITARY SEWER DIST  
BEVERLY HILLS WATER DEPT  
BGE  
BLACK HILLS POWER  
BLACK HILLS ENERGY  
BOROUGH OF HANOVER  
BRAINTREE ELECTRIC LIGHT DEPT  
BRODHEAD CREEK REGIONAL AUTH  
CALIFORNIA AMERICAN WATER  
CALIFORNIA WATER SERVICE CO

CANTON TOWNSHIP WATER DEPT  
CARROLL ELECTRIC COOP CORP  
CARSON VALLEY CENTER LLC  
CASCADE NATURAL GAS CORP  
CASEYVILLE TOWNSHIP SEWER  
CDE  
CENTER TOWNSHIP WATER & SEWER  
CENTERPOINT ENERGY  
CENTRAL MAINE POWER CO\*  
CENTRAL HUDSON GAS & ELEC CORP\*  
CENTRAL PENN GAS  
CHARTER TOWNSHIP OF BLACKMAN  
CHESTER WATER AUTHORITY  
CHUGACH ELECTRIC ASSOCIATE INC  
CITIZENS GAS  
CITY OF HOLYOKE GAS & ELECTRIC  
CITY OF NEW LONDON  
CITY OF PEABODY  
CITY OF METHUEN W&S  
CITY OF MARLBOROUGH  
CITY OF KEENE  
CITY OF LEBANON  
CITY OF BANGOR WASTEWATER  
CITY OF BURLINGTON  
CITY OF SARATOGA SPRINGS  
CITY OF JAMESTOWN  
CITY OF DUBOIS BUREAU OF WATER  
CITY OF LEBANON AUTHORITY  
CITY OF LANCASTER PA  
CITY OF DOVER  
CITY OF WESTMINSTER  
CITY OF PLANTATION  
CITY OF FREDERICKSBURG  
CITY OF FAIRFAX  
CITY OF RICHMOND  
CITY OF VIRGINIA BEACH  
CITY OF MARTINSBURG  
CITY OF VIENNA  
CITY OF BRIDGEPORT  
CITY OF GREENSBORO  
CITY OF CONCORD  
CITY OF WINSTON SALEM  
CITY OF RALEIGH  
CITY OF SUMTER

CITY OF ATLANTA  
CITY OF BUFORD  
CITY OF TALLAHASSEE\*  
CITY OF PANAMA CITY BEACH  
CITY OF ALTAMONTE SPRINGS  
CITY OF WINTER PARK  
CITY OF KEY WEST  
CITY OF TAMPA UTILITIES  
CITY OF CLEARWATER  
CITY OF FT LAUDERDALE  
CITY OF SARASOTA  
CITY OF OCOEE  
CITY OF LAVERGNE WATER DEPT  
CITY OF BRENTWOOD  
CITY OF FLOWOOD  
CITY OF COLUMBUS  
CITY OF LIMA UTILITIES  
CITY OF CUYAHOGA FALLS  
CITY OF NILES OHIO  
CITY OF TROY WATER DEPARTMENT  
CITY OF CARMEL  
CITY OF FT WAYNE UTILITIES  
CITY OF BLOOMINGTON UTILITIES  
CITY OF DEARBORN  
CITY OF LIVONIA  
CITY OF GROSSE POINTE  
CITY OF STERLING HEIGHTS WATER  
CITY OF BRIGHTON  
CITY OF BIRMINGHAM WATER  
CITY OF NOVI WATER  
CITY OF ANN ARBOR WATER UTIL  
CITY OF UTICA  
CITY OF AUBURN HILLS  
CITY OF AMES MUNIE UTILITIES  
CITY OF DUBUQUE  
CITY OF DAVENPORT  
CITY OF JANESVILLE  
CITY OF MADISON  
CITY OF EAU CLAIRE  
CITY OF WOODBURY  
CITY OF COON RAPIDS  
CITY OF BOZEMAN  
CITY OF KALISPELL MONTANA  
CITY OF MCHENRY

CITY OF DEKALB  
CITY OF GENEVA  
CITY OF ST CHARLES  
CITY OF WHEATON  
CITY OF NAPERVILLE  
CITY OF EVANSTON  
CITY OF AURORA  
CITY OF CHICAGO  
CITY OF ROCHESTER HILLS WATER  
CITY OF ROCKFORD  
CITY OF PERU  
CITY OF MATTOON  
CITY OF EDWARDSVILLE  
CITY OF QUINCY  
CITY OF DECATUR  
CITY OF LAWRENCE  
CITY OF OLATHE  
CITY OF WICHITA  
CITY OF DURANGO  
CITY OF PAPILLION  
CITY OF STOCKTON  
CITY OF NORMAN  
CITY OF OKLAHOMA CITY  
CITY OF TULSA  
CITY OF ALLEN UTILITIES  
CITY OF PLANO UTILITIES  
CITY OF MESQUITE  
CITY OF DALLAS  
CITY OF BURLESON  
CITY OF FORT WORTH  
CITY OF HOUSTON WATER DEPT  
CITY OF WEBSTER  
CITY OF SELMA  
CITY OF AUSTIN  
CITY OF AURORA  
CITY OF NORTHGLENN  
CITY & COUNTY OF BROOMFIELD  
CITY OF LONGMONT  
CITY OF DURANGO  
CITY OF COEUR D'ALENE  
CITY OF LOGAN  
CITY OF PHOENIX  
CITY OF LAS VEGAS SEWER  
CITY OF CHANDLER

CITY OF MESA  
CITY OF GLENDALE  
CITY OF AVONDALE  
CITY OF TUCSON  
CITY OF SANTA FE NEW MEXICO  
CITY OF HENDERSON  
CITY OF RENO  
CITY OF ORANGE  
CITY OF GLENDALE  
CITY OF THOUSAND OAKS  
CITY OF CERRITOS WATER BILLING  
CITY OF LAKEWOOD  
CITY OF LONG BEACH  
CITY OF PASADENA  
CITY OF EL SEGUNDO  
CITY OF LA HABRA  
CITY OF CHINO  
CITY OF RANCHO CUCAMONGA  
CITY OF MONTCLAIR  
CITY OF EL CAJON  
CITY OF RIVERSIDE PUBLIC UTIL  
CITY OF BREA  
CITY OF OXNARD  
CITY OF SANTA BARBARA  
CITY OF BAKERSFIELD  
CITY OF FRESNO  
CITY OF SUNNYVALE  
CITY OF FOLSOM  
CITY OF PALO ALTO UTILITIES  
CITY OF MILPITAS  
CITY OF ROSEVILLE  
CITY OF MODESTO  
CITY OF TURLOCK  
CITY OF SANTA ROSA  
CITY OF EUREKA \*  
CITY OF VACAVILLE  
CITY OF PORTLAND  
CITY OF SALEM  
CITY OF CORVALLIS  
CITY OF KLAMATH FALLS  
CITY OF PUYALLUP UTILITIES  
CITY OF LYNNWOOD  
CITY OF SEATTLE  
CITY OF GIG HARBOR

CITY OF TACOMA  
CITY OF OLYMPIA UTIL BILLING  
CITY OF VANCOUVER  
CITY TREASURER  
CITY UTILITIES  
CLARKSVILLE GAS & WATER  
CLARKSVL WSTWTR TREATMENT DEPT  
CLARK PUBLIC UTILITIES  
CLEVELAND HEIGHTS WATER DEPT  
CL&P  
COACHELLA VALLEY WATER DIST  
COBB COUNTY WATER SYSTEM  
COBB EMC \*  
COLORADO SPRINGS UTILITIES \*  
COLUMBUS CITY TREASURER  
COLUMBIA GAS OF VIRGINIA  
COLUMBIA GAS OF PENNSYLVANIA  
COLUMBIA GAS OF OHIO  
COLUMBIA GAS OF MARYLAND  
COLUMBIA GAS OF KENTUCKY  
COLUMBIA GAS OF MA  
COLUMBUS CITY UTILITIES  
COMED  
CONCORD TWP SEWER AUTHORITY  
CON EDISON \*  
CONEDISON SOLUTIONS  
CONNECTICUT NATURAL GAS CORP  
CONNECTICUT LIGHT & POWER  
CONNEXUS ENERGY  
CONSOLIDATED EDISON CO OF NY  
CONSUMERS ENERGY  
CONTRA COSTA WATER DISTRICT  
COPLAY-WHITEHALL SEWER AUTH  
COUNTY OF STAFFORD  
COUNTY OF HENRICO  
COWLITZ COUNTY PUD  
CP&L  
CPS ENERGY  
CPWA  
CTWSA  
DAYTON POWER & LIGHT CO \*  
DELMARVA POWER  
DISH NETWORK  
DOMINION PEOPLES

DOMINION HOPE  
DOMINION EAST OHIO  
DOMINION VIRGINIA POWER  
DTE ENERGY  
DUKE ENERGY  
DUPAGE COUNTY PUBLIC WORKS  
DUQUESNE LIGHT CO  
EASTON SUBURBAN WATER AUTH  
EBMUD  
ELIZABETHTOWN GAS  
ENERGY MANAGEMENT SYSTEMS  
ENERGYWORKS LANCASTER LLC  
THE ENERGY COOPERATIVE  
ENSTAR  
ENERGY \*  
EQUITABLE GAS  
ERIE COUNTY WATER AUTHORITY  
ERIE COUNTY SEWER & WATER  
ERIE WATER WORKS  
EUGENE WATER & ELECTRIC BOARD  
EVANSVILLE IN WATERWORKS DEPT  
FAIRFAX WATER  
FIRST UTILITY DIST OF KNOX CO  
FLATHEAD ELECTRIC COOP  
FLINT TOWNSHIP  
FLORIDA KEYS AQUEDUCT AUTH  
FORT BEND CO WCID #2  
FOX METRO  
FPL  
FRADES DISPOSAL INC  
FREDERICK CO DIV OF UTILITIES  
FRUITLAND MUTUAL WATER CO  
GAINESVILLE REGIONAL UTILITIES  
THE GAS CO  
GDS BOONE #685  
GEORGIA NATURAL GAS  
GEORGIA POWER CO\*  
GRAND TRAVERSE COUNTY DPW  
GREEN MOUNTAIN POWER CORP  
GULF POWER \*  
GWINNETT CO DEPT WTR RESOURCES  
HAWAIIAN ELECTRIC CO INC  
HELCO  
HELIX WATER DISTRICT



HERITAGE VILLAGE WATER CO  
HERMITAGE SEWER  
HIGHLAND UTILITIES DEPARTMENT  
HILLSBOROUGH CO WTR RESRC SRVC\*  
HOWARD COUNTY  
HRSD  
HUDSON ENERGY NY  
HUDSON ENERGY SERVICES  
HYANNIS WATER SYSTEM  
IDAHO POWER  
ILLINOIS AMERICAN WATER  
THE ILLUMINATING CO  
INDIANAPOLIS POWER & LIGHT CO  
INDIANAPOLIS WATER  
INDIANA AMERICAN WATER  
INLAND US MANAGEMENT LLC  
INSIGHT COMMUNICATIONS  
INTERMOUNTAIN GAS CO  
IOWA AMERICAN WATER  
IRVINE RANCH WATER DISTRICT  
ISTA NORTH AMERICA  
JACKSON EMC  
JACKSON WATER COLLECTION  
JCP&L  
JEA  
JEFFERSON PARISH DEPT OF WATER  
JOHNSON COUNTY WASTEWATER  
KANSAS GAS SERVICE  
KAUAI ISLAND UTILITY COOP  
KCP&L  
KENTUCKY AMERICAN WATER  
KEYS ENERGY SERVICES  
KU  
KUB  
LACKAWANNA RIVER BASIN SEWER  
LACLEDE GAS CO  
LA DEPARTMENT OF WTR AND PWR  
LAKEHAVEN UTILITY DISTRICT  
LA PLATA ELEC COOPERATIVE ASSC  
LENOIR CITY UTILITIES BOARD  
LG&E \*  
LIPA  
LONG ISLAND AMERICAN WATER  
LOUDOUN WATER

LOUISVILLE WATER CO  
LOWER SWATARA TOWNSHIP AUTH  
LOWER PAXTON TOWNSHIP AUTH  
MADISON GAS & ELECTRIC  
MADISON MUNICIPAL SVCS  
MAINE NATURAL GAS  
MAINE ENERGY INC  
MARIETTA POWER WATER \*  
MARIN MUNICIPAL WATER DISTRICT  
MARTIN COUNTY UTILITIES  
MATANUSKA ELECTRIC ASSOC INC  
MAWC  
MECO  
MEDINA COUNTY SANITARY ENG  
MEMPHIS LIGHT GAS & WATER DIV  
MERRILLVILLE CONSERVANCY DIST  
MESA CONSOLIDATED WATER DIST  
MET ED  
METRO WASTE SVC CO  
METROPOLITAN ST LOUIS SWR DIST  
METROPOLITAN UTILITIES DIST  
METRO TECHNOLOGY INC  
MIAMI DADE WATER SEWER DEPT  
MIDAMERICAN ENERGY CO  
MIDDLESEX WATER CO  
MIDDLE TENNESSEE ELEC MBRSP  
MIDDLE TENNESSEE ELECTRIC  
MIDWAY SERVICES INC  
MILLCREEK TOWNSHIP  
MISHAWAKA UTILITIES  
MISSOURI AMERICAN WATER  
MISSOURI GAS ENERGY  
MODESTO IRRIGATION DIST  
MONROEVILLE MUNICIPAL AUTH  
MONTANA DAKOTA UTILITIES CO  
MONTE VISTA WATER DISTRICT  
MONTGOMERY COUNTY  
MOULTON NIGUEL WATER  
MOUNT LAUREL TWP MUA  
MOUNTAINEER GAS CO  
MRWPCA  
MTMSA  
MURRAY CITY CORP  
NARRAGANSETT RUBBISH REMOVAL

NASHUA WASTE WATER SYSTEM  
NASHVILLE ELECTRIC SERVICE  
NATIONAL GRID\*  
NATIONAL FUEL  
NATIONWIDE ENERGY PARTNERS  
NBMA  
NEW CASTLE COUNTY  
NEW ENGLAND GAS COMPANY  
NEW HAMPSHIRE ELEC COOP  
NEW JERSEY AMERICAN WATER  
NEW MEXICO GAS CO  
NEWPORT NEWS WATERWORKS  
NEW RIVER LIGHT & POWER CO  
NEW YORK STATE ELEC & GAS CORP  
NH GAS CORP  
NICOR GAS  
NIPSCO\*  
NJ NATURAL GAS CO  
NORTH ATTLEBOROUGH ELECTRIC  
NORTH COVENTRY WATER AUTHORITY  
NORTH COVENTRY MUNICIPAL AUTH  
NORTHERN VIRGINIA ELEC COOP  
NORTHEAST OHIO REGIONAL  
NORTHWESTERN ENERGY  
NORTH SHORE GAS  
NSTAR ELECTRIC  
NSTAR GAS  
NV ENERGY  
NW NATURAL  
NWWA  
OCWRC  
OFALLON WATER & SEWER DEPT  
OGE  
OHIO EDISON  
OKLAHOMA NATURAL GAS  
OKLAHOMA ELECTRIC COOP  
OMAHA PUBLIC POWER DIST  
ORANGE & ROCKLAND  
ORLANDO UTILITIES COMMISSION  
OWASA  
PACIFIC GAS & ELECTRIC CO\*  
PACIFIC POWER  
PALM BEACH COUNTY WTR UTIL DPT  
PASCO COUNTY UTILITIES SERVICE

PEABODY MUNICIPAL LIGHT PLANT  
PECO ENERGY  
PENELEC  
PENINSULA LIGHT COMPANY  
PENNICHUCK  
PENN POWER  
PENNSYLVANIA AMERICAN WATER  
PEOPLES NATURAL GAS  
PEOPLES GAS  
PEPCO  
PG&E  
PGE\*  
PIEDMONT NATURAL GAS  
PITTSFIELD CHARTER TOWNSHIP  
PNM  
THE PORT AUTHORITY OF NY & NJ  
PORTLAND WATER DISTRICT  
PORT OF SEATTLE  
PPL ELECTRIC UTILITIES CORP  
PP&L INC  
PPL UTILITIES  
PROGRESS ENERGY CAROLINAS INC  
PROGRESS ENERGY FLORIDA INC  
PROMENADE DELAWARE LLC  
PROVIDENCE WATER  
PROVO CITY UTILITIES  
PSE&G CO  
PSNC ENERGY  
PSNH  
PUGET SOUND ENERGY  
PWCSA  
QUESTAR GAS\*  
RAINIER VIEW WATER CO INC  
RAPID CITY UTILITY BILLING  
RELIANT ENERGY  
RG&E  
ROCKAWAY TWSP MUNICIPAL UTIL  
ROCKLAND ELECTRIC CO  
ROGERS WATER UTILITIES  
ROSS TOWNSHIP  
RRWRD  
RUMPKE  
SACRAMENTO COUNTY UTILITIES  
SAN ANTONIO WATER SYSTEM

SAN DIEGO GAS & ELECTRIC  
SANDY TOWNSHIP MUNICIPAL AUTH  
SAN JOSE WATER CO  
SELCO  
SEMINOLE COUNTY  
SEWERAGE & WTR BD NEW ORLEANS  
SHEBOYGAN WATER UTILITY  
SHENANDOAH VALLEY ELEC COOP  
SMUD  
SMYRNA UTILITIES\*  
SNOHOMISH COUNTY PUD  
SOUTHERN CONNECTICUT GAS CO\*  
SOUTH JERSEY GAS CO  
SOUTHERN MD ELECTRIC COOPERATV  
SOUTHWEST GAS CORP  
SOUTHERN CALIFORNIA EDISON\*  
SPECTRUM NORTHWEST SQ #597  
SPRWS  
SRP \*  
STAMFORD WPCA  
STARK CO SANITARY ENGR DEPT  
SUBURBAN PROPANE  
SUFFOLK CO WATER AUTHORITY  
SWANSEA WATER DISTRICT  
TAMPA ELECTRIC  
TAUBMAN CHERRY CREEK CNTR LLC  
TECO PEOPLES GAS  
TEMUA  
TEXAS GAS SERVICE  
THTMA  
TOLEDO EDISON  
TOWN OF SHREWSBURY  
TOWN OF MANSFIELD  
TOWN OF SWAMPSCOTT  
TOWN OF MANSFIELD  
TOWN OF BRAINTREE  
TOWN OF MANCHESTER  
TOWN OF HEMPSTEAD DEPT OF WTR  
TOWN OF SMITHTOWN GENERAL FUND  
TOWN OF WATERTOWN  
TOWN OF VICTOR  
TOWN OF WARRENTON  
TOWN OF APEX  
TOWN OF CARY

TOWN OF SOUTHERN PINES  
TOWN OF BOONE  
TOWN OF NORMAL  
TOWN OF DILLON  
TOWNSHIP OF FREEHOLD  
TOWNSHIP OF PALMER UTIL BILL  
TWSP OF LOWER MERION TREASURER  
TRICO DISPOSAL INC  
TRMUA  
TRUMBULL COUNTY WATER & SEWER  
TUALATIN VALLEY WATER DISTRICT  
TUCSON ELECTRIC POWER CO\*  
TURLOCK IRRIGATION DIST  
TW PHILLIPS GAS AND OIL CO  
TYSONS ROCK CENTER  
UGI PENN NATURAL GAS  
UGI UTILITIES INC  
THE UNITED ILLUMINATING CO  
UNITED WATER RHODE ISLAND  
UNITED WATER TOMS RIVER  
UNITED WATER IDAHO  
UNITED WATER DELAWARE  
UNITED WATER PENNSYLVANIA  
UNITED WATER NEW JERSEY  
UNITIL  
UNITIL ME  
UNIVERSAL UTILITIES INC  
UPPER MERION SEWER REVENUE  
URBANA CHAMPAIGN SANITARY DIST  
VALENCIA WATER CO  
VECTREN ENERGY DELIVERY  
VERMONT GAS SYSTEMS INC  
VICTOR SEWER DISTRICT  
VILLAGE OF LANSING  
VILLAGE OF BIRCH RUN  
VILLAGE OF GREENDALE  
VILLAGE OF FOX POINT  
VILLAGE OF SHOREWOOD HILLS  
VILLAGE OF DEERFIELD  
VILLAGE OF MOUNT PROSPECT  
VILLAGE OF CHICAGO RIDGE  
VILLAGE OF MATTESON  
THE VILLAGE OF GURNEE  
VILLAGE OF LA GRANGE

VILLAGE OF WILMETTE  
VILLAGE OF LOMBARD  
VILLAGE OF ORLAND PARK  
VILLAGE OF SCHAUMBURG  
VILLAGE OF NORRIDGE WATER DEPT  
VILLAGE OF FORSYTH  
VIRGINIA NATURAL GAS INC\*  
WALTON EMC  
WAREHAM FIRE DIST WATER DEPT  
WASHINGTON GAS  
WASHINGTON GAS SHENANDOAH  
WASHINGTON GAS FREDERICK DIV  
WASHINGTON SUBURBAN SANITARY C  
WASTE MGMT OF MARYLAND INC  
WATERS PLACE LLC  
WATER DIST NO 1 OF JOHNSON CTY  
WE ENERGIES  
WESTAR ENERGY  
WEST DES MOINES MUNICIPAL SERV  
WESTERN MARYLAND WASTE  
WEST VIEW WATER AUTHORITY  
WEST VIRGINIA AMERICAN WATER  
WISCONSIN PUBLIC SERVICE CORP  
WRIGHT HENNEPIN COOP ELECTRIC  
XCEL ENERGY  
YANKEE GAS SERVICES CO  
YANKEE GAS  
YORBA LINDA WATER DISTRICT

**\*Secured by cash deposit, surety bond or letter of credit.**