

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.**

**APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION RECORD**

April 15, 2015

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# TAB 1



ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R S C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.  
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED



NOTICE OF APPLICATION

TO THE RESPONDENTS:

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing before a Judge presiding on the Commercial List on Thursday, April 23, 2015, at 10:00 a.m. or as soon after that time as the application can be heard at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 14, 2015

Issued By: \_\_\_\_\_

  
Local Registrar

Address of Court office:  
330 University Avenue  
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## APPLICATION

1. Xinergy Ltd. (the “**Applicant**” or “**Xinergy**”), in its capacity as proposed foreign representative for itself, makes this Application for relief and for orders substantially in the form included in the Application Record, including orders, *inter alia*:

### Initial Recognition Order

- (a) Abridging the time for service and validating service of this Notice of Application and Application Record and dispensing with further service thereof;
- (b) Declaring that the Applicant is a “foreign representative” as such term is defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”),
- (c) Declaring that the centre of main interests for Xinergy is the United States, and declaring that the proceeding commenced on April 6, 2015 (the “**Petition Date**”), by Xinergy in the United States Bankruptcy Court for the Western District of Virginia (the “**U.S. Court**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Case no. 15-70444 (PMB) (the “**Chapter 11 Proceeding**”) is recognized as a “foreign main proceeding” as such term is defined in section 45 of the CCAA; and
- (d) Staying, until further Court order, all proceedings against Xinergy in accordance with section 48 of the CCAA.

### Supplemental Order

- (a) Recognizing in Canada and enforcing the following orders of the U.S. Court made in the Chapter 11 Proceeding:

- (i) *Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. §1505;*
  - (ii) *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364 (c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c);*
  - (iii) *Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates; and*
  - (iv) *Interim Order (I) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (II) Granting Administrative Expense Status for Intercompany Claims; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code.*
- (b) Appointing Deloitte Restructuring Inc. ("**Deloitte**") as the Information Officer in respect of this proceeding (the "**Information Officer**");
  - (c) Staying any claims, rights, liens or proceedings against or in respect of Xinergy, the business and property of Xinergy and the directors and officers of Xinergy;
  - (d) Restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to Xinergy;

- (e) Authorizing, *nunc pro tunc*, payment of retainers to the Information Officer and its counsel and granting a super-priority charge up to the maximum amount of \$100,000 over Xinergy's property, in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings (the "**Administration Charge**");
  - (f) Granting a super-priority charge (subordinate only to the Administration Charge) in favour of the postpetition lender under the postpetition credit facility (the "**DIP Facility**") approved by the U.S. Court; and
  - (g) Requiring the Information Officer, on behalf of the Applicant, to publish notice of the proceeding pursuant to subsection 53(b) of the CCAA.
2. The Applicant also seeks such further and other relief as counsel may advise and this Honourable Court may permit
3. The grounds for the application are:

Corporate Overview

- (a) Xinergy, an Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States and have filed voluntary petitions for relief under the Bankruptcy Code;
- (b) Xinergy and the 25 U.S. subsidiaries (collectively, the "**Chapter 11 Debtors**") are a U.S. producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian ("**CAPP**") regions of West Virginia and Virginia;

- (c) The Chapter 11 Debtors' operations principally include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia;
- (d) The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia;
- (e) The corporate headquarters and head office of Xinerger is located at 8351 E. Walker Springs Lane, suite 400, Knoxville, Tennessee and the registered office is located at 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2, which is the office of Xinerger's Canadian solicitors, Cassels Brock & Blackwell LLP;
- (f) Xinerger's common shares are traded on the Toronto Stock Exchange;
- (g) All management, operations, employees and substantially all of the assets of Xinerger are located in the United States;

The Recognition of the Chapter 11 Proceeding is Appropriate

- (h) On April 6, 2015, the Chapter 11 Debtors each filed petitions for relief with the U.S. Court;
- (i) Pursuant to an order granted on April 7, 2015, the Applicant has been appointed by the U.S. Court to act as the foreign representative of all the Chapter 11 Debtors in connection with their U.S. proceedings and, therefore, falls within the definition of "foreign representative" under subsection 45(1) of the CCAA;
- (j) Pursuant to subsection 46(1) of the CCAA, the Applicant may apply to the Court as foreign representative for recognition of the Chapter 11 Proceeding;

- (k) Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Proceeding if it is satisfied that the application relates to “foreign proceedings” and that the Applicant is a “foreign representative”;
- (l) The Chapter 11 Proceeding constitutes a “foreign proceeding” pursuant to subsection 45(1) of the CCAA;
- (m) Pursuant to subsection 47(2) of the CCAA, this Court shall specify in the order recognizing the Chapter 11 Proceeding whether it is a “foreign main proceeding” or “foreign non-main proceeding”;
- (n) Xinery’s centre of main interest is in the U.S. and therefore, the Chapter 11 Proceeding constitutes a “Foreign Main Proceeding” as defined in subsection 45(1) of the CCAA;
- (o) For the purposes of ensuring that all interested parties coordinate and cooperate in the restructuring proceedings of Xinery, the Applicant requests that the Chapter 11 Proceeding be recognized by this Court as a “foreign main proceeding” under the CCAA;

The Stay of Proceedings is Appropriate under the Circumstances

- (p) Pursuant to subsection 48(1) of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or continuance of any action, suit or proceeding against Xinery, subject to any terms and conditions that this Court considers appropriate;
- (q) Certain assets of Xinery, including a bank account, are located in Canada;
- (r) Xinery has issued US\$200 million (principal amount) in 9.25% Senior Secured Notes of which approximately US\$195 million in principal amount is outstanding;

- (s) As of the Petition Date, Xinergy was obligated under two term loans totalling US\$20 million, which have since been refinanced pursuant to the DIP Facility and subject to the terms of the order granted by the U.S. Court;
- (t) The stay of proceedings in Canada is essential to protect the efforts of Xinergy to proceed in the Chapter 11 Proceeding and to formulate, a restructuring plan;

The Appointment of the Information Officer is Appropriate

- (u) The appointment of the Information Officer will assist both the Court and Canadian stakeholders of Xinergy;
- (v) The proposed Administration Charge is required to obtain the participation of the Information Officer in these proceedings;

General

- (w) The provisions of the CCAA, including sections 9, 11, 11.02, 11.03 and 44 - 61;
  - (x) The *Rules of Civil Procedure*, including rules 2.03, 3.02 and 16;
  - (y) The *Courts of Justice Act*, R.S.O. 1990 c. C-43, including section 106; and
  - (z) Such further and other grounds as counsel may advise and this Court may permit.
4. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Michael R. Castle, to be sworn, and the exhibits referred to therein;
  - (b) The preliminary report of Deloitte in its capacity as proposed Information Officer, to be filed separately; and



- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

April 14/15

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APR 23/15

Court File No. 15-10936-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD.  
APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

NOTICE OF APPLICATION

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**TAB 2**

ONTARIO  
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(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
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AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES  
BANKRUPTCY COURT WITH RESPECT TO XINERGY LTD

APPLICATION OF XINERGY LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R S.C. 1985, c. C-36, AS AMENDED

AFFIDAVIT OF MICHAEL R. CASTLE  
(sworn April 15, 2015)

I, Michael R Castle, of the City of Knoxville in the state of Tennessee, MAKE OATH  
AND SAY that:

1. I am the Chief Financial Officer of Xinergy Ltd (the "**Applicant**" or "**Xinergy**"), a corporation formed under the laws of Ontario. As such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and verily believe it to be true.
2. On April 6, 2015 (the "**Petition Date**"), Xinergy commenced a proceeding (the "**Chapter 11 Proceeding**") by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Western District of Virginia (the "**U S. Court**") A copy of the petition filed by Xinergy is attached as Exhibit "A" to my affidavit.
3. On the same date, 25 subsidiaries of Xinergy, which are incorporated in the United States, (the "**U S. Subsidiaries**" and together with Xinergy, the "**Chapter 11 Debtors**") also filed voluntary petitions for relief under the Bankruptcy Code with the U.S Court The only other

subsidiary, Xinergy Finance Canada Ltd., is an Ontario corporation that holds no assets, is not liable on any of the debt in the Chapter 11 Proceedings and has not commenced proceedings in the United States. I have filed a declaration in the Chapter 11 Proceeding (the "**Declaration**"), which provides further background on the Chapter 11 Debtors and the nature of their financial troubles and outlines the various types of relief sought from the U.S. Court in certain first day motions (collectively, the "**First Day Motions**"). A copy of my Declaration is attached as Exhibit "B" to my affidavit.

4. This Affidavit is filed in support of Xinergy's application for an order, *inter alia*, recognizing its Chapter 11 Proceeding as a "foreign main proceeding" pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**").

5. I am not aware of any other foreign recognition or insolvency proceedings involving Xinergy.

#### **Background on the Company**

6. The Chapter 11 Debtors are a U.S. based producer of metallurgical and thermal coal with mineral reserves, mining operations and coal properties located in the Central Appalachian ("**CAPP**") regions of West Virginia and Virginia. The Chapter 11 Debtors' operations principally include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. The Chapter 11 Debtors also lease or own the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, the Chapter 11 Debtors lease or own mineral rights to approximately 72,000 acres with proven and probable coal reserves of approximately 77 million tons and additional estimated reserves of 40 million tons.

7. The Chapter 11 Debtors currently produce and ship coal from the South Fork mid-volatile metallurgical mine and the Raven Crest thermal operations. The Chapter 11 Debtors'

primary customers for metallurgical coal—used in a chemical process that yields coke for the manufacture of steel—are steel producers, commodities brokers and industrial customers throughout North America, Europe and South America. Electric utilities and industrial companies in the southeastern United States and Europe are the principal customers for the Chapter 11 Debtors' thermal coal.

8. Xinerge is incorporated pursuant to the laws of the Province of Ontario. The U.S. Subsidiaries are incorporated under the laws of various U.S. states including Tennessee, Kentucky, Virginia, West Virginia and Delaware. The corporate headquarters and head office of Xinerge is located at 8351 E. Walker Springs Lane, suite 400, Knoxville, Tennessee and the registered office is located at 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2, which is the office of Xinerge's Canadian solicitors, Cassels Brock & Blackwell LLP.

9. The common shares of Xinerge are traded on the Toronto Stock Exchange. As shown on the organization chart attached as Exhibit "C" to my Affidavit, Xinerge is the majority shareholder of the Xinerge Corp., which is incorporated under the laws of Tennessee.

10. Xinerge has issued US\$200 million in 9.25% Senior Secured Notes (the "**Second Lien Notes**"), of which approximately US\$195 million (principal amount) is outstanding. As of the Petition Date, Xinerge was also obligated under two term loans totalling US\$20 million in principal amount (the "**First Lien Loans**"). On April 1, 2015, the First Lien Loans were validly assigned to the DIP Lenders (as defined below). As described below, the First Lien Loans have been refinanced in connection with the postpetition financing and subject to the terms of the order granted by the U.S. Court

11. Xinerge maintains a bank account with TD Bank of Canada (the "**Canadian Account**") in Ontario. The Chapter 11 Debtors use the Canadian Account to make Canadian denominated deposits and to pay for Canadian services. When additional funds are required, a transfer is

made from the U.S. operating account at Xinergy Corp. Xinergy is dependent on the U.S. Subsidiaries for substantially all of its funding requirements.

12 Xinergy has no employees in Canada and no offices (other than its registered office) in Canada. The Chapter 11 Debtors operate on an integrated basis, with corporate and other major decision-making occurring from the consolidated offices in Knoxville, Tennessee. In particular:

- (a) Corporate and other major decision-making occurs from the consolidated offices in Knoxville, Tennessee, although administrative employees frequently work remotely or from the Chapter 11 Debtors' mines in the United States,
- (b) All of the senior executives of the Chapter 11 Debtors, including Xinergy, are residents of the United States;
- (c) In order to fulfil the Canadian residency requirements of Ontario corporations, Xinergy Ltd has two Canadian directors;
- (d) The majority of the management of the Chapter 11 Debtors, including Xinergy, is shared;
- (e) Employee administration, human resource functions, marketing and communications decisions are made, and related actions taken, on behalf of all of the Chapter 11 Debtors, including Xinergy, in the United States;
- (f) The Chapter 11 Debtors, including Xinergy, share a cash management system that is largely funded by the U.S. Subsidiaries, overseen by employees of the United States-based Chapter 11 Debtors and located primarily in the United States; and

- (g) Other functions shared between the Chapter 11 Debtors, including Xinergy, are managed from the United States including: pricing decisions, business development decisions, accounts payable, accounts receivable and treasury functions.

13. In essence, the Chapter 11 Debtors are managed in the United States as an integrated group from a corporate, strategic and management perspective.

### **Financial Difficulties**

14. Recently, U.S. demand for thermal coal has fallen sharply in large part due to

- (i) increasingly attractive alternative sources of energy, such as natural gas, and
- (ii) burdensome environmental and governmental regulations impacting end users.

Simultaneously, the increasingly stringent regulatory environment in which coal companies operate has driven up the cost of mining and processing coal. Continued weakness in the market for metallurgical and thermal coal, combined with an extremely cold and snowy winter that impacted the mining and shipment of coal, has continued to erode Xinergy's cash position. Prior to approval by the U.S. Court of the postpetition financing (the "**DIP Financing**"), Xinergy lacked the liquidity needed to maintain operations in the near term and to sustain its current capital structure. The confluence of these factors and Xinergy's substantial debt burden has taken Xinergy to the point of unsustainability absent the relief provided by the Chapter 11 Proceeding.

### **Security Search Results**

15. I have been advised by Cassels Brock & Blackwell LLP ("**CBB**"), Canadian counsel to the Chapter 11 Debtors, including the Applicant, that the following searches were conducted against Xinergy on April 10, 2015 pursuant to the:



- (a) *Bankruptcy and Insolvency Act* (Office of the Superintendent of Bankruptcy) (Canada);
- (b) *Bank Act* – section 427 (Ontario);
- (c) *Execution Act* – section 10 (Writs of Execution, Orders or Certificates of Liens) (City of Toronto); and
- (d) *Personal Property Security Act* in Ontario (the “**PPSA Search**”).

The PPSA Search revealed a registration in favour of Wells Fargo Bank, National Association, as collateral trustee.

#### **Chapter 11 Proceeding**

16. By operation of the Bankruptcy Code, Xinergy obtained the benefit of a stay upon filing a voluntary petition with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of Xinergy to proceed in the Chapter 11 Proceeding with, and formulate, a restructuring plan.

17. Beginning on April 6, 2015 and continuing until April 7, 2015, the Chapter 11 Debtors filed 17 First Day Motions with the U.S. Court. On April 7, 2015, the U.S. Court held a hearing and on April 8, 2015, entered the orders requested. At this time, Xinergy is seeking recognition of four of the orders granted by the U.S. Court.

18. One of the First Day Motions was the *Motion of the Debtors and Debtors in Possession For Entry of an Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505*, which sought entry of an order appointing the Applicant as Foreign Representative of Xinergy. A copy of the motion is attached as Exhibit “D” to my affidavit. The requested order was entered by the U.S. Court on April 7, 2015 and a copy is attached as

Exhibit "E" to my affidavit. I understand that the certified copy of the order appointing the foreign representative and a certified copy of the voluntary petition will be provided to the Court.

19. The Chapter 11 Debtors also filed the *Motion of Debtors and Debtors in Possession, Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) for Entry of Interim and Final Orders (i) Authorizing Debtors (A) To Obtain Postpetition Financing and (B) to Utilize Cash Collateral, (ii) Granting Adequate Protection to Prepetition Secured Lenders and (iii) Scheduling Final Hearing* (the "**DIP Motion**") for, *inter alia*, an order authorizing Xinergy to:

- (a) borrow from affiliates of Whitebox Advisors LLC and Highbridge Capital Management, LLC (collectively, the "**DIP Lenders**") an aggregate of US\$40 million (which may, under certain conditions be increased to US\$50 million) pursuant to a postpetition credit facility on a superpriority, administrative claim and first-priority priming lien basis;
- (b) use the cash collateral of the prepetition secured lenders on the terms set forth in the order; and
- (c) grant adequate protection to the prepetition secured lenders on the terms set forth in the order.

A copy of the DIP Motion (including the exhibits) is attached as Exhibit "F" to my affidavit.

20. Of the US\$40 million available pursuant to the DIP Financing, US\$20,745,048.52 was designated for repayment of the First Lien Loans (including accrued and unpaid fees, costs and expenses) (the "**Refinancing**"). The requested interim order sought immediate access to the Refinancing, plus US\$7.5 million for operational purposes.

21. The holders of the First Lien Loans (who are also the DIP Lenders) and the trustee for the Second Lien Notes were served with the DIP Motion. The Chapter 11 Debtors and holders of both the First Lien Loans and the Second Lien Notes are parties to a Collateral Trust Agreement, dated as of May 6, 2011 (the "**Collateral Trust Agreement**"), which authorizes the Chapter 11 Debtors to obtain credit in certain amounts and for certain purposes that would have priority over the Second Lien Notes. The First Lien Loans became senior to the Second Lien Notes pursuant to that provision. The Collateral Trust Agreement, in Section 2.8, permits the Chapter 11 Debtors to obtain debtor-in-possession financing that would be senior to or on a parity with the senior liens, thus also having priority over the Second Lien Notes, upon the consent of the holders of the First Lien Loans. That same provision provides that holders of the Second Lien Notes have expressly waived any right to object to any debtor-in-possession financing to which the holder of the First Lien Loans consents, provided that the holders of the Second Lien Notes are provided adequate protection in the form of replacement liens, coextensive with those provided to the Lenders, but subordinate in all respects to the rights of the DIP Lenders.

22. On April 7, 2015, the U.S. Court entered an interim order providing the relief requested in the DIP Motion and allowed the U.S. Debtors to borrow \$7.5 million, plus the Refinancing. A copy of the order granted is attached as Exhibit "G" to my affidavit.

23. The Chapter 11 Debtors also filed the *Debtors' Motion for Entry of Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates*, seeking to enforce the automatic stay by implementing court-ordered procedures intended to protect the Chapter 11 Debtors' estates against the possible loss of valuable tax benefits that could flow from inadvertent stay violations (the "**NOL Motion**"). A copy of the NOL Motion is attached as Exhibit "H" to my affidavit. By the motion, Chapter 11 Debtors requested entry of an order authorizing the Chapter 11 Debtors: (i) to

establish and implement restrictions and notification requirements regarding the tax ownership and certain transfers of common stock of Xinergy; and (ii) to notify holders of stock of the restrictions, notification requirements and procedures. The Debtors also sought approval of a form of notice, which will notify holders of stock whose actions could adversely affect the Chapter 11 Debtors' tax assets that the procedures have been established by order of the U.S. Court. In light of the rules under the Internal Revenue Code in the United States, transfers of the stock may, through no fault of the Chapter 11 Debtors, deprive the Chapter 11 Debtors of important tax benefits. The order requested is a well established method for protecting against this potential harm to debtors in chapter 11 proceedings.

24. On April 7, 2015, the U.S. Court entered an interim order providing the relief requested in the NOL Motion. A copy of the order (the "**NOL Order**") entered is attached as Exhibit "I" to my affidavit. Xinergy requires enforcement of the NOL Order because the stock of Xinergy trades on the TSX and certain of the shareholders may be subject to the jurisdiction of this Court. If shareholders in Canada were not required to comply, the Xinergy's tax attributes would be put at risk.

25. In addition, the Chapter 11 Debtors filed the *Motion of the Debtors and Debtors in Possession for Entry of an Order (i) Authorizing Debtors to Maintain Existing Bank Accounts and Business Forms and Continue to Use Existing Cash Management System; (ii) Granting Administrative Expense Status for Intercompany Claims; and (iii) Waiving the Requirements of Section 345(b) of the Bankruptcy Code* seeking, *inter alia*, an order approving the continued use of the bank accounts and cash management system of the Chapter 11 Debtors and granting administrative expense status to postpetition intercompany claims (the "**Cash Management Motion**"). A copy of the Cash Management Motion is attached as Exhibit "J" to my affidavit

26. The relief requested in the Cash Management Motion will provide Xinergy with the ability to continue to use the same systems for cash management as used prior to the Chapter 11

Proceedings, including access to the Canadian Bank Account. On April 8, 2015, the U.S. Court entered an interim order providing for the relief requested in the Cash Management Motion. A copy of the order entered on April 8, 2015 is attached as Exhibit "K" to my affidavit.

**Relief Sought**

27. For the purposes of ensuring that all interested parties coordinate and cooperate in the restructuring, the Applicant is seeking recognition of the Chapter 11 Proceeding as a "foreign main proceeding" under the CCAA.

28. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN BEFORE ME, this 15th day of April, 2015.

Kathy Southland  
Notary Public  
My commission expires 3/28/17

Michael R. Castle  
Michael R. Castle



**TAB A**

Exhibit "A" to the Affidavit of Michael R. Castle sworn  
before me this 15th day of April, 2015.

*Kathy Southland*  
A Notary for the State of Tennessee





B1 (Official Form 1) (04/13)

UNITED STATES BANKRUPTCY COURT Western District of Virginia		VOLUNTARY PETITION
Name of Debtor (if individual, enter Last, First, Middle): <b>Xinergy Ltd.</b>		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): <b>See Attachment A</b>		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): <b>98-0653697</b>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): <b>8351 East Walker Springs Lane, Suite 400 Knoxville, TN</b> <div style="text-align: right;">ZIP CODE <b>37923</b></div>		Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right;">ZIP CODE</div>
County of Residence or of the Principal Place of Business: <b>Knox</b>		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>		Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>
Location of Principal Assets of Business Debtor (if different from street address above): <div style="text-align: right;">ZIP CODE</div>		
<b>Type of Debtor</b> (Form of Organization) (Check one box.)  <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<b>Nature of Business</b> (Check one box.)  <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box.)  <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:	<b>Tax-Exempt Entity</b> (Check box, if applicable.)  <input type="checkbox"/> Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	<b>Nature of Debts</b> (Check one box.)  <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
<b>Filing Fee</b> (Check one box.)  <input checked="" type="checkbox"/> Full Filing Fee attached.  <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.  <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b>  <b>Check one box:</b> <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).  <b>Check if:</b> <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4/01/16 and every three years thereafter). <hr style="border-top: 1px dashed black;"/> <b>Check all applicable boxes:</b> <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
<b>Statistical/Administrative Information</b>  <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		<b>THIS SPACE IS FOR COURT USE ONLY</b>
<b>Estimated Number of Creditors</b> <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000		
<b>Estimated Assets</b> <input checked="" type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input checked="" type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		



<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): XInergy Ltd.	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet.)			
Name of Debtor: See Attachment B	Case Number:	Date Filed:	
District: Western District of Virginia	Relationship:	Judge:	
<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<p style="text-align: center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X _____ Signature of Attorney for Debtor(s) (Date)</p>	
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
<b>Exhibit D</b>			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D, completed and signed by the debtor, is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box.)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="text-align: right; margin-right: 100px;">           _____            (Name of landlord that obtained judgment)         </div> <div style="text-align: right; margin-right: 100px; margin-top: 10px;">           _____            (Address of landlord)         </div> <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			