

**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

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

MICHAEL WUNDER LSUC #:31551O
Tel: 416.860.6484
Fax: 416.640.3206
mwunder@casselsbrock.com

RYAN JACOBS LSUC #:59510J
Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@casselsbrock.com

JANE DIETRICH LSUC #:49302U
Tel: 416.860.5223
Fax: 416.640.3144
jdietrich@casselsbrock.com

Lawyers for Xinergy Ltd.

TO: THE SERVICE LIST

SERVICE LIST

TO: **DELOITTE RESTRUCTURING INC.**
Restructuring Services – Financial Advisory
181 Bay Street
Brookfield Place, Suite 1400
Toronto, ON M5J 2V1

Adam Bryk
Tel: 416.643.8252
abryk@deloitte.ca

Jim Robinson
Tel: 416.775.7448
jimrobinson@deloitte.ca

Proposed Information Officer

AND TO: **BENNETT JONES LLP**
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

S. Richard Orzy
Tel: 416.777.5737
Fax: 416.863.1716
orzyr@bennettjones.com

Sean Zweig
Tel: 416-777-6254
Fax: 416-863-1716
zweigs@bennettjones.com

Lawyers for Deloitte Restructuring Inc.

AND TO: **FASKEN MARTINEAU DUMOULIN LLP**
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto Ontario M5H 2T6

Stuart Brotman
Tel: 416.865.5419
Fax: 416.364.7813
sbrotman@fasken.com

Aubrey E. Kauffman
Tel: 416.868.3538
Fax: 416.565.6957

akauffman@fasken.com

Lawyers for the Prepetition Secured Lenders, Informal Group of Noteholders and DIP Lenders

AND TO: HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Tyler Brown
Tel: 804.788.8674
Fax: 804.788.8212
tpbrown@hunton.com

Henry P. Long
Tel: 804.787.8036
Fax: 804.343.4600
hlong@hunton.com

U.S. Lawyers for Xinergy Ltd.

AND TO: CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Michael Wunder
Tel: 416.860.6484
Fax: 416.640.3206
mwunder@casselsbrock.com

Ryan Jacobs
Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@casselsbrock.com

Jane Dietrich
Tel: 416.860.5223
Fax: 416.640.3144
jdietrich@casselsbrock.com

Natalie Levine
Tel: 416.860.6568
Fax: 416.640.3207
nlevine@casselsbrock.com

Canadian Lawyers for Xinergy Ltd.

AND TO: Wells Fargo Bank, National Association, as Collateral Trustee
45 Broadway, 14th Floor
New York, NY, 10006

AND TO: Wells Fargo Bank National Association
7000 Central Parkway NE Suite 550
Atlanta, GA 30328

Attention: Corporate Trust Services Administrator Xinergy Group

AND TO: DEPARTMENT OF JUSTICE CANADA
Suite 3400, Box 36, The Exchange Tower
130 King Street West
Toronto, ON M5X 1K6

Diane Winters
Tel: 416.973.3172
Fax: 416.973.0810
diane.winters@justice.gc.ca

Edward Park
Tel: 416.973.3746
edward.park@justice.gc.ca

Edward Harrison
Tel: 416.973.7126
edward.harrison@justice.gc.ca

Solicitors for Canada Revenue Agency

AND TO: Ontario Securities Commission
20 Queen St West
20th Floor
Toronto, ON M5H 3S8

Sonia Castano
scastano@osc.gov.on.ca

AND TO: Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2

Jennifer Wall
Tel: 416 814-8881
jennifer.wall@tsx.com

INDEX

I N D E X

DOCUMENT	TAB
Notice of Application issued April 14, 2015	1
Affidavit of Michael R. Castle sworn April 15, 2015	2
Exhibit "A" – Voluntary Petition filed by Xinergy Ltd.	A
Exhibit "B" – Declaration of Michael R. Castle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings	B
Exhibit "C" – Organizational Chart of Xinergy Ltd.	C
Exhibit "D" – 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	D
Exhibit "E" – Order Authorizing Xinergy Ltd. to Act as a Foreign Representative Pursuant to 11 U.S.C. § 1505	E
Exhibit "F" – Motion of the Debtors and Debtors in Possession for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507 and Bankruptcy Rules 2002 and 4001 (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Creditors and (III) Scheduling Final Hearing	F
Exhibit "G" – 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)	G
Exhibit "H" – 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	H
Exhibit "I" – Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors' Estates	I

DOCUMENT	TAB
Exhibit "J" – 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	J
Exhibit "K"– 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	K
Draft Initial Recognition Order	3
Draft Supplemental Order	4
Blackline of the Proposed Initial Recognition Order to the model order for same	5
Blackline of the Proposed Supplemental Order to the model order for same	6

TAB 1

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



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
Toronto, ON M5G 1E6

TO: THE SERVICE LIST

AND TO: BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

S. Richard Orzy
Tel: 416.777.5737
Fax: 416.863.1716
orzysr@bennettjones.com

Sean Zweig
Tel: 416-777-6254
Fax: 416-863-1716
zweigs@bennettjones.com

Lawyers for Deloitte Restructuring Inc.

AND TO: FASKEN MARTINEAU DUMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, Ontario M5H 2T6

Stuart Brotman
Tel: 416.865.5419
Fax: 416.364.7813
sbrotman@fasken.com

Aubrey E. Kauffman
Tel: 416.868.3538
Fax: 416.565.6957
akauffman@fasken.com

Lawyers for the Prepetition Secured Lenders, Informal Group of Noteholders and
DIP Lenders

AND TO: Wells Fargo Bank, National Association, as Collateral Trustee
45 Broadway, 14th Floor
New York, NY, 10006

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 Xinergy 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 Xinergy's Canadian solicitors, Cassels Brock & Blackwell LLP;
- (f) Xinergy's common shares are traded on the Toronto Stock Exchange;
- (g) All management, operations, employees and substantially all of the assets of Xinergy 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) Xinergy’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 Xinergy, 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 Xinergy, subject to any terms and conditions that this Court considers appropriate;
- (q) Certain assets of Xinergy, including a bank account, are located in Canada;
- (r) Xinergy 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

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Jane Dietrich LSUC 493020
T. 416.860.5223
F. 416 640 3144.

APR 23/15

Court File No. 15-10936-000CL

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	
CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2 MICHAEL WUNDER LSUC #: 315510 Tel: 416.860.6484 Fax: 416.640.3206 mwunder@casselsbrock.com RYAN JACOBS LSUC #: 59510J Tel: 416.860.6465 Fax: 416.640.3189 rjacobs@casselsbrock.com JANE DIETRICH LSUC #: 49302U Tel: 416.860.5223 Fax: 416.640.3144 jdietrich@casselsbrock.com	

Lawyers for Xinergy Ltd.

TAB 2

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

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. Xinerger 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 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.

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

10. Xinerger 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, Xinerger 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. Xinerger 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.

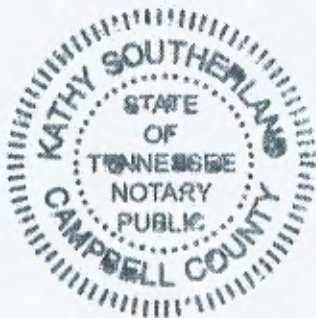
28. I make this affidavit in support of the within application and for no other or improper purpose.

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): Xinergy Ltd.			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): See Attachment A			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): 98-0653697			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): 8351 East Walker Springs Lane, Suite 400 Knoxville, TN <div style="text-align: right;">ZIP CODE 37923</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: Knox			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>					
Type of Debtor (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.)		Nature of Business (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		Chapter of Bankruptcy Code Under Which the Petition is Filed (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	
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:		Tax-Exempt Entity (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).		Nature of Debts (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.	
Filing Fee (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.			Chapter 11 Debtors Check one box: <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). Check if: <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;"/> Check all applicable boxes: <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).		
Statistical/Administrative Information <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.					THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <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					
Estimated Assets <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					
Estimated Liabilities <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					

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): Xinergy Ltd.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:		Case Number:	Date Filed:
Location Where Filed:		Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor: See Attachment B		Case Number:	Date Filed:
District: Western District of Virginia		Relationship:	Judge:
Exhibit A (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.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) 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). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C 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.			
Exhibit D (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.			
Information Regarding the Debtor - Venue (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.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (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;"> _____ (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)).			

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): Xinergy Ltd.
Signatures		
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (if not represented by attorney)</p> <p>_____ Date</p>	<p style="text-align: center;">Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>	
<p style="text-align: center;">Signature of Attorney*</p> <p>X <u>/s/ Tyler P. Brown</u> Signature of Attorney for Debtor(s) <u>Tyler P. Brown</u> Printed Name of Attorney for Debtor(s) <u>Hunton & Williams LLP</u> Firm Name <u>951 E. Byrd Street</u> <u>Richmond, VA 23219</u> Address <u>(804) 788-8200</u> Telephone Number <u>04/06/2015</u> Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>	<p style="text-align: center;">Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____ Signature</p> <p>_____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</i></p>	
<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X <u>/s/ Michael R. Castle</u> Signature of Authorized Individual <u>Michael R. Castle</u> Printed Name of Authorized Individual <u>Chief Financial Officer</u> Title of Authorized Individual <u>04/06/2015</u> Date</p>		

ATTACHMENT A

All Other Names used by the Debtor in the last 8 Years

Greenwich Global Capital, Inc.

ATTACHMENT B

Pending Bankruptcy Case Filed by any Partner or Affiliate of this Debtor

Concurrently herewith, each of the below-listed entities (collectively, the “Debtors”), each commenced a voluntary case under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Western District of Virginia and has filed a motion with the Court seeking joint administration of the Debtors’ respective chapter 11 cases.

ENTITY NAME	EIN	JURISDICTION OF DOMICILE
Big Run Mining, Inc.	80-0391585	Kentucky
Brier Creek Coal Company, LLC	45-1019999	West Virginia
Bull Creek Processing Company, LLC	45-1020894	West Virginia
High MAF, LLC	27-1895418	Delaware
Middle Fork Mining, Inc.	80-0391593	Kentucky
Pinnacle Insurance Group LLC	61-1626851	Tennessee
Raven Crest Contracting, LLC	20-4527796	Kentucky
Raven Crest Leasing, LLC	20-4527844	Kentucky
Raven Crest Minerals, LLC	20-4527746	Kentucky
Raven Crest Mining, LLC	20-4370122	Kentucky
Sewell Mountain Coal Co., LLC	37-1709737	West Virginia
Shenandoah Energy, LLC	20-4476770	Kentucky
South Fork Coal Company, LLC	27-4613113	West Virginia
Strata Fuels, LLC	27-1981559	Delaware
True Energy, LLC	27-2082894	Delaware
Whitewater Contracting, LLC	32-0397740	West Virginia
Whitewater Resources, LLC	36-4749929	West Virginia
Wise Loading Services, LLC	27-4367154	Delaware
Xinergy Corp.	26-1153865	Tennessee
Xinergy Finance (US), Inc.	27-1485692	Delaware
Xinergy Land, Inc.	26-2788121	Tennessee

ENTITY NAME	EIN	JURISDICTION OF DOMICILE
Xinergy Ltd.	98-0653697	Ontario
Xinergy Sales, Inc.	26-2788180	Tennessee
Xinergy Straight Creek, Inc.	26-2790071	Kentucky
Xinergy of Virginia, Inc.	45-2878046	Virginia
Xinergy of West Virginia, Inc.	27-4612401	West Virginia

**Declaration Under Penalty
of Perjury on Behalf of Xinergy Ltd.**

I declare under penalty of perjury that I have read the foregoing petition and attachments and they are true and correct to the best of my information and belief.

Date: April 6, 2015

Signature: /s/ Michael R. Castle
Name: Michael R. Castle
Title: Chief Financial Officer

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**CONSOLIDATED LIST OF CREDITORS
HOLDING 30 LARGEST UNSECURED CLAIMS OF
XINERGY LTD., et al.**

The following is a consolidated list of the debtors' creditors holding the 30 largest unsecured claims. This list is being filed pursuant to 11 U.S.C. § 521 and Rule 1007(d) of the Federal Rules of Bankruptcy Procedure. The list does not include persons who come within the definition of "insider" set forth in 11 U.S.C. § 101.

Rank	Name of Creditor	Name, Telephone Number and Complete Mailing Address Including Zip Code of Employee, Agent, or Department of Creditor Familiar with Claim Who May be Contracted	Nature of Claim (Trade Debt, Bank Loan, Government Contract, etc.)	Indicate if Claim is Contingent, Unliquidated, Disputed, or Subject to Setoff	Amount of Claim
1	VIRGINIA DRILLING COMPANY, LLC	Virginia Drilling PO Box 1198 Vansant, VA 24656 Telephone: 800-258-8583 Facsimile: 276-597-7410 Contact: Virlo Stiltner virlo@vadrillco.com	Trade Debt		\$ 3,335,796
2	CECIL I. WALKER MACHINERY CO.	Walker Machinery 1400 E. DuPont Ave Belle, WV 25105 Telephone: 304-949-6400 Contact: Sheilah Lowe slowe@walker-cat.com	Trade Debt		\$ 2,571,742

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

3	WPP LLC	WPP LLC 5260 Irwin Road Huntington, WV 25705 Telephone: (304) 654-6887 Contact: Chad Mooney	Lessor		\$ 619,201
4	PENN VIRGINIA OPERATING CO., LLC	Penn Virginia Operating Co.,LLC One Carbon Center, Suite 100 Chesapeake, WV 25315 Telephone: (304) 949-5619 Contact: Gary Stover	Lessor		\$ 424,066
5	CASSELS BROCK & BLACKWELL LLP	Cassels Brock & Blackwell LLP Scotia Plaza, Suite 2100 40 King Street West Toronto, ON M5H 3C2 Telephone: (416) 860-6771 Contact: Alexander Pizale apizale@casselsbrock.com	Trade Debt		\$ 325,182
6	C&M GIANT TIRE, LLC	C & M Giant Tire 980 W. New Circle Rd. Lexington, KY 40511 Telephone: (859)-281-1320 Facsimile: (859) -281-1337 Contact: Cindy Devereux cindy@cmgianttire.com	Trade Debt		\$ 282,213
7	L. ADKINS OIL	L. Adkins Oil PO Box 190 Craigsville, WV 26205 Telephone: (304)742-3049 Contact: Mark Adkins	Trade Debt		\$ 258,711
8	WHAYNE SUPPLY COMPANY	Whayne Supply Company 2200 South Kentucky Ave. Corbin, KY 40701 USA Telephone: (606) 528-3140 Facsimile: (606) 523-5366 Contact: Amy Brock-Williams	Trade Debt		\$ 246,999
9	BRAKE SUPPLY CO., INC.	Brake Supply Co, Inc. 4280 Paysphere Circle Chicago, IL 60674 USA Telephone: (304) 673-0462 Facsimile: (304) 255-7503 Contact: Greg Browning	Trade Debt		\$ 185,567
10	SECURITY AMERICA, INC	Security America PO Box 4525 Charleston, WV 25364 Telephone: 304-925-4747 x101 Contact: Renee Shaffer rshaffer@securityamerica.com	Trade Debt		\$ 173,946
11	HARVEY TRUCKING INC.	Harvey Trucking, Inc 5383 Ashford Nellis Road Ashford, WV 25009 Telephone: (304) 836-5850 Contact: Wally Harvey	Trade Debt		\$ 160,014

12	M.G.C., INCORPORATED	M.G.C. Supply, Inc. PO Box 115 Bolt, WV 25817-0115 USA Telephone: (606) 433-0077 Facsimile: (606) 433-1344 Contact: Christy Meade	Trade Debt		\$ 155,921
13	THE DANIELS COMPANY	The Daniels Company PO Box 643951 Pittsburgh, PA 15264-3951 Telephone: (304) 327-8161 Facsimile: (304) 327-5118 Contact: Kay Gilbert	Trade Debt		\$ 147,768
14	AMERICAN EXPRESS	American Express PO Box 650448 Dallas, TX 75265 Telephone: (800) 528-2122	Trade Debt		\$ 130,763
15	JONES & ASSOCIATES	Jones & Associates PO Box 1989 Charleston, WV 25327 Telephone: (304) 343-9466 Contact: Forrest Jones EFJones@efjones.com	Trade Debt		\$ 123,335
16	MECURIA ENERGY TRADING INC.	Mercuria Energy Trading, Inc. 20 East Greenway Plaza, Suite 650 Houston, TX 77046 Office: 832.209.2315 Mobile: 606.585.5110 Contact: Alex Merritt amerritt@mercuria.com	Trade Debt		\$ 109,523
17	APPALACHIAN POWER COMPANY	Appalachian Power Company 1 AEP Way Hurricane WV 25526 Telephone: (304) 792-2379 Contact: Jerry Peyton jdpeyton@aep.com	Trade Debt		\$ 100,997
18	WISE COUNTY TREASURER	Wise County Treasurer PO Box 1308 Wise, VA 24293-1308 Telephone: (276) 328-3666	Trade Debt	Disputed	\$ 96,701
19	MOULDAGRAPH CORPORATION	Mouldagraph Corporation PO Box 99 Nitro, WV 25143 Telephone: (304) 759-2150	Trade Debt		\$ 92,449
20	MALLARD ENVIRONMENTAL SERVICES	Mallard Environmental PO Box 1298 Shady Spring, WV 25918-1298 Telephone: (304) 787-5550 Contact: Rhonda Lilly	Trade Debt		\$ 86,833

21	EASTERN KY EQUIPMENT SALES & SERVICES LLC	Mining Machinery 1512 North Big Run Road Ashland KY, 41102 Telephone: (606) 928-0490 Contact: Kathy Smith	Trade Debt		\$ 86,675
22	SHERIFF OF BOONE COUNTY	Sheriff of Boone County 200 State Street Madison, WV 25130 Telephone: (304) 369-7394	Trade Debt	Disputed	\$ 82,529
23	PLUM CREEK TIMBER COMPANY, INC	Plum Creek Timber Company, Inc Five Concourse Parkway, NE, Suite 1650 Atlanta, GA 30328 Telephone: (304) 520-3321 Contact: John Woodrum	Trade Debt		\$ 79,774
24	GARLOW INSURANCE AGENCY, INC.	Garlow Insurance Agency, Inc. 1217 Quarrier St Charleston, WV 25301 Telephone: (304) 347-8972 ext. 166 Facsimile: (304) 342-5969 Toll Free: (800) 238-5321 Contact: Mark Clark mclark@garlowinsurance.com	Trade Debt		\$ 75,718
25	GOULD'S ELECTRIC MOTOR REPAIR, INC	Gould's Electric Motor Repair, Inc PO Box 100 Indore, WV 25111-0100 Telephone: 304-587-4825 Facsimile: 304-587-4855 Contact: Arbutus Gould	Trade Debt		\$ 75,676
26	STUBBS ALDERTON & MARKILES, LLP	Stubbs Alderton 15260 Ventura Blvd. Sherman Oaks, CA 91403 Telephone:: (818) 444-4500 Facsimile: (818) 444-4520 Contact: David Tarica	Trade Debt		\$ 75,519
27	JMP COAL HOLDINGS, LLC	JMP Coal Holdings, LLC PO Box 1200 Robinson Creek, KY 41560 Telephone: (606) 639-9675 Facsimile: (606) 639-9685	Trade Debt		\$ 72,442
28	COULTER & JUSTUS, PC	Coulter & Justus, PC 9717 Cogdill Rd, Suite 201 Knoxville, TN 37932 Telephone: (865) 637-4161 Facsimile: (865) 524-2952 Contact: Conor O' Donoghue	Trade Debt		\$ 72,100

29	EXIGENT LEASING, LP	Exigent Leasing, LP 2202 Timberlock PL, #133 Spring, TX 77380 Telephone: (713) 503-5313 Contact: Ed Green	Trade Debt		\$ 70,745
30	HURBERRIES	Hurberries, Inc PO Box 210 Coeburn, VA 24230 Telephone: (276) 679-9877 Facsimile: (276) 395-8218 Contact: Amanda Hurley	Trade Debt		\$ 69,478

**Declaration Under Penalty of Perjury
on Behalf of a Corporation or Partnership**

I, Michael R. Castle, an officer of Xinery Ltd. and each of the other affiliated debtors in the above-captioned cases, declare under penalty of perjury that I have read the foregoing list of consolidated creditors holding the 30 largest unsecured claims and that it is true and correct to the best of my information and belief.

Xinery Ltd., et al
Debtors

April 6, 2015
Date

/s/ Michael R. Castle

SCHEDULE 1

(Debtor Entities)

- | | |
|--|---|
| 1. Xinery Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinery Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinery Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinery of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinery Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinery Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinery Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinery of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD.,

Debtor.

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**CORPORATE OWNERSHIP STATEMENT
PURSUANT TO RULE 7007.1 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Pursuant to Rule 7007.1 of the Federal Rules of Bankruptcy Procedure, Xinergy Ltd. hereby provides that there are no corporations that own 10% or more of any class of its equity interests.

Date: April 6, 2015

Signature: /s/ Michael R. Castle
Name: Michael R. Castle
Title: Chief Financial Officer

XINERGY LTD.

UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned being all of the Directors of XINERGY LTD., a company incorporated pursuant to the laws of the province of Ontario, Canada (the "Company"), hereby unanimously consent to the adoption of the following resolutions:

RESOLVED, that in the good faith business judgment of the Company's Directors, it is in the best interest of the Company, its creditors, stakeholders and other interested parties (including, without limitation, any and all direct and indirect subsidiaries of the Company), that (i) a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), be filed in the United States Bankruptcy Court for the Western District of Virginia (the "Bankruptcy Court") and (ii) a corresponding foreign recognition proceeding (the "Recognition Proceeding") be filed in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") under Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA") and the Company be appointed as the foreign representative in connection with the Recognition Proceeding (the "Foreign Representative"); and it is

RESOLVED FURTHER, that Gregory L. Mason and Michael R. Castle, in their capacity as officers of the Company (together, the "Officers"), be, and each is hereby, authorized, empowered and directed to execute and verify on behalf of and in the name of the Company, a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court in such form and at such time as the Officer executing said petition on behalf of the Company shall determine; and it is

RESOLVED FURTHER, that the Company shall be and is hereby, authorized, and empowered, to execute, verify and/or file, or cause to be filed and/ or executed or verified (or direct others to do so on its behalf as provided herein) all necessary documents and prosecute all actions necessary to the appointment of the Company as the Foreign Representative for purposes of the Recognition Proceeding; and it is

RESOLVED FURTHER, that the Company shall be and is hereby, authorized, and empowered, to execute, verify and/or file, or cause to be filed and or executed or verified (or direct others to do so on its behalf as provided herein) all necessary documents, including without limitation a plan of reorganization and disclosure statement, and all petitions, affidavits, schedules, motions, lists, applications, pleadings, and other papers, and in that connection to employ and retain all assistance by legal counsel or other professionals and to take any and all actions necessary and proper in connection with the chapter 11 case and the Recognition Proceeding contemplated hereby, with a view to the successful prosecution of such cases; and it is

RESOLVED FURTHER, that the Officers of the Company or any one of them be, and each is hereby, authorized, empowered and directed to (i) prepare, or cause to be prepared on the Company's behalf, the necessary documents, including without limitation a plan of reorganization and disclosure statement, and all petitions, affidavits, schedules, motions, lists, applications, pleadings, and other papers referred to in the foregoing resolution, and, (ii) in the express prior approval of the Directors (a) file and prosecute to a conclusion any such plan of reorganization, and (b) to take any and all actions necessary and proper in connection with the chapter 11 case and the Recognition Proceeding contemplated hereby, including without limitation incurring post-petition debt, with a view to the successful prosecution of such case; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized, empowered and directed to employ, on behalf of the Company, the law firm of Hunton & Williams LLP under a special retainer as general bankruptcy counsel to the Company and in other related matters on such terms and conditions as the Officers of the Company shall approve; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized, empowered and directed to employ, on behalf of the Company, Global Hunter Securities, a division of Seaport Global Securities LLC, under a special retainer as Financial Advisors to the Company on such terms and conditions as the Officers of the Company shall approve; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized, empowered and directed to employ, on behalf of the Company, Stubbs Alderton & Markiles, LLP under a special retainer as general corporate counsel to the Company and in other related matters on such terms and conditions as the Officers of the Company shall approve; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized, empowered and directed to employ, on behalf of the Company, Cassels Brock & Blackwell LLP under a special retainer as Canadian counsel for the Company and as counsel to represent and assist the Foreign Representative in carrying out its duties under the CCAA and to take any and all actions to advance the Foreign Representative's rights and obligations, including filing any pleadings in the Recognition Proceedings on such terms and conditions as the Officers of the Company shall approve; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized, empowered and directed to pay the proposed Canadian Court-appointed information officer, Deloitte Restructuring Inc. and its counsel on such terms and conditions as the Officers of the Company shall approve and as shall be approved by the Canadian Court; and it is

RESOLVED FURTHER, that the Company shall be and is hereby authorized and empowered to employ, on behalf of the Company, such other

counsel, financial advisors or other professionals as may be prudent and desirable in connection with the prosecution and/or administration of the restructuring of the Company under (i) the Bankruptcy Code and (ii) the CCAA, on such terms and conditions as the Officers of the Company shall approve; and it is

RESOLVED FURTHER, that all acts lawfully done or actions lawfully taken by any Officer to seek relief on behalf of the Company under (i) chapter 11 of the Bankruptcy Code and (ii) the CCAA be, and hereby are, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Company; and it is

RESOLVED FURTHER, that the effective date of the foregoing resolutions shall be April 2, 2015.

IN WITNESS WHEREOF, the undersigned Directors of the Company have executed this Consent effective as of the date first written above.

/s/ Gregory L. Mason
Gregory L. Mason

/s/ Joseph Groia
Joseph Groia

/s/ Todd Q. Swanson
Todd Q. Swanson

/s/ Robert J. Metcalfe
Robert J. Metcalfe

TAB B

Exhibit "B" 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



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**DECLARATION OF MICHAEL R. CASTLE IN SUPPORT OF THE DEBTORS'
CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

Michael R. Castle declares and says:

1. I am the Chief Financial Officer of Xinergy Ltd., a corporation headquartered in Knoxville, Tennessee. I have been employed in this position by Xinergy Ltd. since January 1, 2010. Prior to that, I held executive roles at National Coal Corp. and Quaker Coal Company. I am familiar with the day-to-day operations, business, and financial affairs of the Debtors (as defined below).

2. I submit this declaration (i) in support of the petitions of the Debtors for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), (ii) pursuant to

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached hereto.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Proposed Counsel to the Debtors
and Debtors in Possession*

28 U.S.C. 1746 in support of the Debtors' petitions and contemporaneously-filed requests for relief in the form of motions and applications (the "**First Day Motions**") and (iii) to assist the Court and other interested parties in understanding the circumstances giving rise to the commencement of these chapter 11 cases. I have reviewed the First Day Motions or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to the uninterrupted operation of the Debtors' business and to the Debtors' reorganization.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon my experience, knowledge and information concerning the operations of the Debtors and the coal industry as a whole. If called upon to testify, I would testify competently to the facts set forth in this declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis.

Commencement of Reorganization Proceedings

4. On April 6, 2015 (the "**Petition Date**"), Xinerger Ltd. and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**", "**Xinerger**" or the "**Company**"), each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. Part I of this declaration describes the Debtors' business, Part II describes the circumstances giving rise to the commencement of these chapter 11 cases, Part III describes the Debtors' prepetition restructuring initiatives and Part IV sets forth the relevant facts in support of the First Day Motions.

I.

The Debtors' Businesses

A. Coal Operations

6. Xinerger is 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. As of the Petition Date, Xinerger's operations principally include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia. Xinerger also leases or owns the mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Wise County, Virginia. Collectively, Xinerger leases or owns 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. Xinerger currently produces and ships coal from its South Fork mid-volatile metallurgical mine and its Raven Crest thermal operations. Xinerger's 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 U.S. and Europe are the principal customers for Xinerger's thermal coal.

8. South Fork is currently producing between 35,000 and 40,000 tons of mid-volatile metallurgical coal per month. Raven Crest currently produces between 55,000 and 60,000 tons of thermal coal per month. After being idled due to market conditions, Raven Crest restarted production in January 2014² with the completion of a \$9.5 million coal preparation plant. The recent improvements to the coal processing facility at Raven Crest have allowed Xinerger to increase the marketability of its low cost, high quality thermal coal to markets in the eastern U.S. and Europe. As of the nine months ending September 30, 2014, Xinerger had sold 734,129 tons of coal produced from its two active mining operations.³

9. Historically, Xinerger enters into both short-term contracts and contracts exceeding twelve months for the sale of its coal for a specified per ton amount at a negotiated price. Xinerger also quotes prices and sells coal on a one-day or one-shipment tonnage amount with prices directly correlated to the price per ton of coal quoted on the New York Mercantile Exchange or similar commodity exchanges, which is known as the "spot price." Coal sold pursuant to short-term contracts or at the spot price is subject to current market pricing that can be significantly more volatile than the pricing structure achieved through long-term negotiated supply agreements. Certain long-term agreements nonetheless may contain provisions that result in price adjustments, such as price reopener provisions, which reduce the protection from short-term price fluctuations traditionally offered by such agreements. While the quality and volume

² The underground mining operations at the Raven Crest complex known as Brier Creek remain idle as of the Petition Date.

³ The financial information contained in this Declaration has been prepared by the Debtors and their advisors and is provided for illustrative purposes only. Such information may not be audited and may be subject to material change. While the information is believed to be accurate, the Debtors cannot guarantee the accuracy of this information and expressly disclaim any obligation to update any information contained in this Declaration (including if new or different information is received and/or errors are discovered).

of coal to be supplied typically is stipulated in these agreements, their terms may vary significantly and in some cases buyers have the option to vary annual or monthly volumes. For the past two years, the majority of Xinerger's coal sales have occurred in the "spot" market or under short-term coal supply agreements.

10. In prior years, Xinerger's sales have been concentrated among a small number of customers. During 2013, 82% of Xinerger's coal sales revenue was derived from two customers, which accounted for 68% of total tons of coal sold by Xinerger during that period. More recently, Xinerger has attempted to broaden its customer base and reduce its dependence on a few customers. To assist in that effort, in July 2014, Xinerger partnered with one of the largest and most experienced commodity trading companies in the world to market Xinerger's thermal and metallurgical coal. During the third fiscal quarter of 2014, Xinerger's top two customers accounted for 28% and 27%, respectively, of Xinerger's revenues.

11. Xinerger's operational results are highly dependent on the costs of coal production and the costs of and ability to transport coal to customers. Primary mining-related expenses are wages and benefits, repairs and maintenance, diesel fuel, blasting and related supplies, coal transportation costs, freight and handling costs, royalties and taxes incurred in selling coal. The majority of Xinerger's coal is shipped via rail on CSX-controlled railways. The remaining coal is shipped via truck. Severe weather, rail stoppages, availability of equipment or other issues affecting CSX's operations could significantly impact the ability of Xinerger to ship its coal.

12. Since Xinerger's inception, substantially all of its revenues have resulted from the sale of coal and asset sales. For the fiscal year ending December 31, 2013, Xinerger had revenues from coal sales of approximately \$19 million and adjusted negative EBITDA of approximately

\$10.8 million. For the nine months ending September 30, 2014, Xinerger had revenue from coal sales of approximately \$50.8 million and adjusted negative EBITDA of approximately \$2.8 million. For the three months ending September 30, 2014, Xinerger had revenue from coal sales of approximately \$19.0 million and adjusted positive EBITDA of \$1.1 million.

13. In addition to its active mining operations, the Debtors own or lease rights to significant coal reserves. In October 2012, Xinerger acquired approximately 12,500 acres located in Fayette, Nicholas and Greenbrier counties, West Virginia through Debtor Sewell Mountain Coal Company (“**Sewell Mountain**”). The acquisition included a site regionally known as the Meadow River Complex with existing permits and infrastructure. Xinerger has received all necessary permit transfers for this mining property including the underground mine, preparation plant, rail loadout and refuse area. Sewell Mountain has estimated reserves of 32.36 million tons of mid-volatile metallurgical coal and is in the planning and development stage.

14. Xinerger also leases approximately 1,000 acres of surface mining operations in Wise County, Virginia, through Debtor True Energy, LLC (“**True Energy**”).⁴ In response to market conditions, True Energy’s mining operations were idled in 2012. This site has proven and probable reserves of 2.3 million tons of high volatile metallurgical coal with estimated total reserves of 7 million tons based on recent additional land acquisitions.

15. As of the Petition Date, Xinerger has approximately 178 employees working in full or part-time positions. Eight employees perform executive management, sales and general administration functions and are assigned to Xinerger’s Knoxville, Tennessee corporate office, but frequently work remotely or at Xinerger’s mine locations. The remaining individuals are

⁴ True Energy transacts business in Virginia as True Energy Fuels, LLC.

operational employees and work at Xinerger's mine locations. All of Xinerger's coal processing and production is performed by its own employees. None of Xinerger's employees are currently unionized.

16. Xinerger provides healthcare and other benefits to primary insured full-time employees and beneficiaries. Xinerger is subject to the Federal Coal Mine Health and Safety Act of 1969 (the "**Black Lung Act**") and other workers' compensation laws in the states in which Xinerger operates. Under the Black Lung Act, Xinerger is required to provide benefits to its current and former coal miners suffering from pneumoconiosis or "black lung disease" and, in certain cases, the workers' beneficiaries. Xinerger maintains insurance sufficient to cover the cost of present and future claims. Xinerger believes that future costs associated with the Black Lung Act may increase as a result of the Patient Protection and Affordable Care Act, enacted in 2010, which provides for an automatic survivor benefit and a rebuttable presumption concerning a coal mine employee's disability in certain circumstances. Separately, Xinerger maintains cash deposits and/or bonds to secure obligations under federal and state workers' compensation laws.

B. Corporate Structure

17. Xinerger Corp. was incorporated in October 2007. On December 21, 2009, Xinerger Corp. completed a reverse takeover of Greenwich Global Capital, Inc. ("**GGC**"). GGC changed its name to "Xinerger Ltd." on December 21, 2009. Xinerger Ltd. is a Debtor and is the direct or indirect parent of each of the other Debtors. Xinerger Ltd.'s common stock trades on the Toronto Stock Exchange (TSX), the largest stock exchange in Canada, under the ticker "XRG." As of the Company's most recent quarterly public filing, there were 65,772,023 shares of Xinerger Ltd.'s common stock issued and outstanding. The Debtors intend to pursue recognition

of these chapter 11 cases in Canada so that certain assets of Xinergy Ltd. will receive appropriate protection in Canada to the extent those assets may be subject to the Canadian courts' jurisdiction.

18. All of Xinergy Ltd.'s direct and indirect subsidiaries are Debtors and debtors-in-possession in these proceedings except for Xinergy Finance Canada Ltd., a Canadian corporation that holds no assets and is not liable on any of the debt included in these chapter 11 cases. Xinergy's organization chart is attached to this Declaration as Exhibit A.

C. Capital Structure

19. In May 2011, Xinergy issued \$200 million of 9.25% Senior Secured Notes (the "**Second Lien Notes**") due May 15, 2019, which are guaranteed by the other Debtors and collateralized by substantially all of Xinergy's assets. Interest payments of \$9 million are due and payable semi-annually. Approximately \$72 million of the net proceeds from the issuance were used to retire existing debt and the remaining funds were used for capital expenditures, including construction of a preparation plant, purchase of mining equipment and construction of infrastructure, and for general corporate purposes. The current amount outstanding on the Second Lien Notes is approximately \$195 million.

20. Xinergy Corp. subsequently entered into a Credit Agreement, dated as of December 21, 2012 (as amended, supplemented, modified, or amended and restated from time to time, the "**First Lien Term Loans**"), with Bayside Finance LLC, as lender ("**Bayside**"), and the other Debtors as guarantors. The First Lien Term Loans facility provided for two term loans in the amount of \$10 million each with terms of four years. The first loan was drawn in December 2012 and the second loan was drawn in September 2013. The proceeds of the First Lien Term

Loans were used to fund transaction costs, to provide working capital and for Xinergy's general corporate purposes. The First Lien Term Loans are secured by a first-priority lien on substantially all of the Debtors' assets. On April 1, 2015, the First Lien Term Loans were validly assigned to funds managed on behalf of Whitebox Advisors LLC ("**Whitebox**") and Highbridge Capital Management, LLC ("**Highbridge**") from Bayside. The current amount outstanding on the First Lien Term Loans is approximately \$20 million plus certain fees and expenses.

21. The Debtors and holders of both the First Lien Term 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 Xinergy to obtain credit in certain amounts and for certain purposes that would have priority over the Second Lien Notes. The First Lien Term Loans became senior to the Second Lien Notes pursuant to that provision. The Collateral Trust Agreement, in Section 2.8, also authorizes the holder of any authorized senior notes to provide debtor-in-possession financing to Xinergy that would be senior to or on a parity with the senior liens, thus also having priority over the Second Lien Notes. That same provision provides that holders of the Second Lien Notes have expressly waived any right to object to any debtor-in-possession financing consented to by the senior lender pursuant to the Collateral Trust Agreement.

22. On March 31, 2014, Xinergy completed a private placement of 11.0 million common shares for total proceeds of \$4.9 million.

II.

Events Leading to the Chapter 11 Cases

23. Recently, domestic demand for thermal coal has fallen sharply in large part due to increasingly attractive alternative sources of energy, such as natural gas, and 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 Xinerge's cash position. Absent approval of additional borrowing capacity, Xinerge currently lacks the liquidity needed to maintain operations in the near term and to sustain its current capital structure. The confluence of these factors and Xinerge's substantial debt burden have taken Xinerge to the point of unsustainability absent the relief provided by chapter 11.

A. Macroeconomic Factors Impacting Demand for Coal

24. Prices for CAPP thermal coal fell sharply during the period between mid-2008 and mid-2009, corresponding with the severe global recession, and have failed to recover in the period since. Over the last several years, the coal industry's share of the U.S. energy market has declined appreciably as a result of abundant supply and historically low prices of natural gas. During 2012, data from the U.S. Energy Information Administration indicated that 7.9 gigawatts of coal fired generation was retired, representing 2.5% of installed coal capacity. Two-thirds of the coal capacity retired was in the Midwest and Southeast regions of the U.S., which had a disproportionate impact on CAPP coal producers due to geographic proximity. Declining

demand for coal has caused many producers in the coal industry to curtail production, idle mines and lay off workers. Nonetheless, 2013 ended with thermal coal stockpiles at multi-year lows and a firming of natural gas prices, in part due to an extremely cold winter. Thermal coal inventories continue to remain at unsustainably low levels, suggesting an increase in future demand. Recent prices appear to be firming and CAPP thermal coal should continue to have a significant presence in the domestic energy market for decades to come due to its high quality and proximity to customers. Global thermal coal consumption is predicted to increase by 27% by 2020 and by one billion tons by 2035.

25. The global market for metallurgical coal also has suffered from sharply-reduced demand in recent years. Demand for metallurgical coal generally is dependent on the strength of the global economy. Specifically, steel production, and thus the demand for metallurgical coal, is correlated with the economic climate in the U.S., Europe and certain developing countries such as Brazil, China and India. The market for metallurgical coal appeared to bottom in 2012 and resulted in production curtailments of 30 to 40 million metric tons on an annualized basis. The global market for metallurgical coal remained stagnant through 2013, with waning demand from China. Nonetheless, long term global growth trends point toward increasing demand for quality metallurgical coal. India steelmakers continue to bring on new coke plants and demand from Europe is steadily recovering. With its below-industry average operating costs and high quality mid-volatile metallurgical coal, Xinergy believes that it is well positioned to continue its recent growth and benefit from a recovering coal market.

B. Increased Competition

26. The mining business is highly competitive and the coal industry is becoming increasingly consolidated. Xinerger competes with numerous other companies in the acquisition, exploration, financing and development of coal properties. Many of the companies are larger, better capitalized and have longer operating track records. Xinerger's competitive position depends on its ability to successfully and economically explore, acquire and develop new and existing coal properties. Xinerger also competes with other mining companies for skilled mining engineers, geologists, geophysicists and other technical personnel. Competition recently has come from outside the coal industry as well in the form of alternative fuel sources, such as natural gas. These internal and external threats have contributed to a declining coal market.

27. Despite facing competitive challenges, Xinerger believes that it can grow and operate profitably in the CAPP region due to its relatively low transportation costs, diversity in production and coal customers' desire to purchase coal from a diversity of suppliers. In addition, Xinerger's mid-volatile metallurgical coal reserve at South Fork will increase the attractiveness of its product offerings and better position it to compete in the industry. Mid-volatile coal is one of the scarcest types of metallurgical coal mined globally. It is highly desirable to steel producers because it generally does not need to be blended. The quality advantage of mid-volatile metallurgical coal supports premium pricing. In the long-term, Xinerger believes that it is well positioned to operate profitably in the competitive environment, but has determined that short-term liquidity needs must be addressed.

C. Government Regulations and Costs of Compliance

28. Xinerger is subject to various federal, state and foreign regulatory and environmental laws. Increasingly stringent regulations and environmental protection laws have resulted in dramatically increased costs of compliance for coal producers. In addition, recent legislation has made it increasingly difficult for consumers of Xinerger's coal, such as electricity generators, to use coal as an energy source.

i. Regulation of the Coal Mining Industry

29. The coal industry is impacted by significant federal, state and local legislation governing employee health and safety, permitting and licensing requirements, water pollution, plant and wildlife protection, reclamation and restoration of mining properties, the discharge of materials into the environment, surface subsidence from underground mining, and the effects of mining on groundwater quality and availability.

30. The Federal Mine Safety and Health Act of 1977 significantly expanded enforcement of safety and health standards and imposed safety and health standards on all aspects of mining operations. Most states, including the states in which Xinerger operates, have programs for mine safety and health regulation and enforcement. Collectively, federal and state safety and health regulation in the coal mining industry is perhaps the most comprehensive and pervasive system for protection of employee health and safety affecting any segment of the U.S. industry. This regulation has had a significant impact on the operating costs for all domestic coal companies.

31. Xinerger also is subject to extensive federal, state and foreign environmental laws, including the Surface Mining Control and Reclamation Act, the Clean Air Act, and the Clean

Water Act and their state counterparts. These laws impact Xinerger's operations by requiring the Company to undertake the costly and time-consuming process of obtaining permits, to comply with stringent reporting and operating requirements, and to employ expensive pollution control technology.

ii. Regulation of Power Plants

32. The coal industry is indirectly impacted by environmental legislation restricting the ability of power plants to purchase coal as an energy source. The Clean Air Act and similar state laws impose stringent regulation on air emissions from coal-fired power plants, which are the largest end user of Xinerger's coal. Coal-fired power plants have expended considerable resources to install emission control equipment and take other steps to achieve regulatory compliance. In addition, government agencies have been offering incentives to entities that are developing or selling alternative energy sources with lower greenhouse gas emissions. The combination of these incentives and the increased cost of compliance with new emissions standards have contributed to power plant closures and conversion to alternative fuels, resulting in decreased demand for coal.

D. Recent Continued Weakness in Coal Prices and Inclement Weather

33. During the 1st quarter of 2015, thermal coal prices further deteriorated very quickly and unexpectedly. In addition, inclement weather in CAPP region during the months of February and March hindered the company's mining operations and caused delays in truck-based shipments of coal, which is the method of delivery for one of the company's more lucrative offtake arrangements. These factors delayed the launch of a new high wall miner at South Fork, an important event, which should save roughly \$5 -\$10 per ton on costs (that amount will vary

with the mine plan, due to recovery and high wall mining mix). The combination of these factors with the macroeconomic and regulatory factors discussed above have created immense challenges for the company to continue operations absent the relief afforded by chapter 11.

III.

Prepetition Restructuring Efforts

34. Xinerger's management team has taken various courses of action to attempt to meet the challenges described above. In the third quarter of 2012, in response to poor market conditions for the sale of thermal and metallurgical coal, Xinerger idled its thermal coal mining operations at Raven Crest (including the Brier Creek underground mines) and its high-volatile mining operations at True Energy. Surface and high-wall mining operations at Raven Crest resumed in January 2014 with the completion of the Bull Creek coal preparation plant. The adjacent underground mining operations at Brier Creek and the high-volatile mining at True Energy remain idled. During this time, Xinerger continued its mining operations at South Fork.

35. On February 1, 2013, Xinerger entered into an asset purchase agreement for a cash sale of its mining operations located in Kentucky known as Straight Creek and Red Bird for \$47.2 million. The sale also included the assumption of all of Xinerger's related asset retirement obligations, which were valued at \$7.2 million. The purchaser of the assets was an investment fund majority owned by Bayside, the former holder of the First Lien Term Loans. The Kentucky sale proceeds were held as restricted cash until used for certain capital expenditures in accordance with the terms of the Second Lien Notes. As of September 30, 2014, Xinerger held approximately \$1.07 million in restricted cash relating to the Kentucky sale proceeds.

36. On March 31, 2014, Xinergy received \$4.95 million from the sale of common shares pursuant to a private placement.

37. On November 6, 2014, Xinergy entered into a commitment for a secured second lien credit agreement for convertible debt with Aries Energy Group Venture Investor, LLC, in the principal amount of \$25 million (the “**Aries Loan**”). The proceeds of the proposed Aries Loan would have provided Xinergy additional liquidity necessary to, among other things, make the semi-annual interest payment on the Second Lien Notes in the amount of \$9 million due on November 17, 2014. Through no fault of Xinergy, the Aries Loan failed to close. Nevertheless, the company was able to make the November interest payment from cash from operations prior to the expiration of the cure period.

38. As the risk that the Aries Loan would not close became apparent, Xinergy began to anticipate a likely need to pursue a restructuring under chapter 11. In December 2014, Xinergy retained Global Hunter Securities, a division of Seaport Global Securities LLC, as its financial advisor to pursue financial and strategic alternatives, including raising capital and other strategic transactions focused on providing additional liquidity for the Company.

39. With the assistance of their professional advisors, Xinergy searched for an alternative source of financing, including DIP financing. Xinergy and its advisors approached more than sixty high quality institutional firms as potential sources of financing, of which fifteen executed confidentiality agreements with Xinergy. Ultimately, Xinergy secured commitment for a \$40 million DIP financing facility from certain funds managed on behalf of Whitebox and Highbridge. Approximately \$20 of the DIP facility will be used to pay all amounts outstanding under the First Lien Term Loan. The balance of the DIP facility, net of certain fees and expenses,

will provide Xinergy additional liquidity to continue operations and pursue a successful restructuring in chapter 11.

40. Accordingly, the Debtors have determined, in the prudent exercise of their business judgment, that the commencement of these chapter 11 cases at this time is the best course of action to preserve liquidity, gain access to DIP financing, and pursue reorganization through a chapter 11 plan. The Debtors believe that, despite its costs, chapter 11 provides the tools necessary for Xinergy to maximize value for the Debtors' estates and emerge with a stronger capital structure. For the duration of the chapter 11 process, in reliance on the First Day Motions described below, the Debtors will devote all of their resources toward continuing and growing their profitable operations in the ordinary course, honoring valuable customer and vendor relationships and leveraging Xinergy's competitive advantage as the market recovers.

IV.

First Day Motions

41. The Debtors filed the First Day Motions concurrently with the filing of their chapter 11 petitions. The Debtors requests that each of the First Day Motion be granted, as each constitutes a critical element in achieving a successful transition to chapter 11.

42. For a more detailed description of the relief requested in the First Day Motions, the Debtors respectfully refer the Court, creditors and other parties in interest to the respective First Day Motions. To the extent that there are any inconsistencies between this Declaration and the First Day Motions, the First Day Motions should control. Capitalized terms that are used in this Part IV but not otherwise defined herein shall have the meanings ascribed to them in the relevant First Day Motion.

A. Administrative Motions

i. *Motion of Debtors and Debtors in Possession for an Order Directing Joint Administration of their Related Chapter 11 Cases (the “Joint Administration Motion”)*

43. The Debtors seek entry of an order directing joint administration of these cases for procedural purposes only, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Rules of the United States Bankruptcy Court for the Western District of Virginia (the “**Local Bankruptcy Rules**”). Specifically, the Debtors request that the Court maintain one file and one docket for all of the chapter 11 cases under the lead case, Xinergy Ltd. Further, the Debtors request that an entry be made on the docket of each of the chapter 11 cases of the Debtors to indicate the joint administration of the estates.

44. Given the provisions of the Bankruptcy Code and the Debtors’ affiliation, joint administration of these cases is warranted. Joint administration will avoid the preparation, replication, service and filing, as applicable, of duplicative notices, applications and orders, thereby saving the Debtors considerable expense and resources. The Debtors’ financial affairs and business operations are closely related. Many of the motions, hearings and orders in these chapter 11 cases will affect each Debtor and their respective estates. The rights of creditors will not be adversely affected, as this Motion requests only administrative, and not substantive, consolidation of the estates. Moreover, each creditor can still file its claim against a particular estate. In fact, all creditors will benefit by the reduced costs that will result from the joint administration of these chapter 11 cases. The Court also will be relieved of the burden of entering duplicative orders and maintaining duplicative files. Finally, supervision of the

administrative aspects of these chapter 11 cases by the United States Trustee for the Western District of Virginia will be simplified.

45. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be granted.

ii. *Motion of Debtors and Debtors in Possession for Entry of an Order Approving the Form and Manner of Notice of Commencement of the Chapter 11 Cases (the "Notice of Commencement Motion")*

46. The Debtors seek entry of an order approving the Debtors' proposed form and manner of the notice of commencement of the Debtors' chapter 11 cases.

47. I believe that the relief requested in the Notice of Commencement Motion will provide adequate notice of these cases to the Debtors' creditors and all other parties in interest and is critical to achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Notice of Commencement Motion should be granted.

iii. *Motion of Debtors and Debtors in Possession for Entry of an Order Appointing American Legal Claims Services, LLC as Claims, Noticing and Balloting Agent (the "Claims Agent Retention Application")*

48. The Debtors seek entry of an order appointing American Legal Claims Services, LLC ("ALCS") to act as the claims and noticing agent in order to assume full responsibility for, among other things, the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors' chapter 11 cases. I believe that ALCS's rates are

competitive and reasonable given ALCS's quality of services and expertise. Accordingly, on behalf of the Debtors, I respectfully submit that the Claims Agent Retention Application should be granted.

- iv. *Motion of the Debtors and Debtors in Possession For Entry of an order Authorizing Debtors to (i) Prepare a List of Creditors in Lieu of Submitting a Formatted Mailing Matrix and (ii) File a Consolidated List of Debtors' 30 Largest Unsecured Creditors (the "**Consolidated Creditors List Motion**")*

49. The Debtors seek entry of an order authorizing the Debtors to: (a) prepare a list of creditors in lieu of submitting a formatted mailing matrix as required by Rule 1007-1 of the Local Bankruptcy Rules and (b) file a consolidated list of the Debtors' 30 largest unsecured creditors.

50. I believe that the relief requested in the Consolidated Creditors List Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Consolidated Creditors List Motion should be granted.

- v. *Motion of the Debtors and Debtors in Possession for Entry of an Order Establishing Notice, Case Management and Administrative Procedures (the "**Case Management Motion**")*

51. The Debtors seek entry of an order to implement certain procedures in connection with the administration of the chapter 11 cases, including procedures to: (i) establish requirements for the filing and service of notices, motions, applications, documents filed in support thereof and objections and responses thereto; (ii) delineate standards for notices of hearing and agendas; (iii) articulate mandatory guidelines for the scheduling of hearings

(including periodic omnibus hearings), objection deadlines, reply deadlines and evidentiary hearings; (iv) limit matters that are required to be heard by the Court; (v) authorize electronic service of documents; and (vi) authorize the Debtors to establish a website (to provide interested parties with access to certain documents filed in these chapter 11 cases).

52. The Debtors believe that the requested relief will maximize the efficiency and orderliness of the administration of these chapter 11 cases and reduce the costs associated with traditional case management procedures. The Debtors also believe that granting the relief requested will limit the administrative burdens and costs associated with preparing for hearings and serving and mailing documents. In addition, the relief requested will assist the Debtors and their personnel and professionals in organizing and prioritizing the numerous tasks attendant to these cases.

53. I believe that the relief requested in the Case Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Case Management Motion should be granted.

vi. *Motion of the Debtors and Debtors in Possession for Entry of an Order (i) Extending the Time to File Schedules and Statements of Financial Affairs and (ii) Extending the Time to Schedule the Meeting of Creditors (the "Schedules Extension Motion")*

54. The Debtors seek entry of an order granting additional time to file their schedules and statements of financial affairs and additional time to schedule the meeting of creditors. Due to the complexity of their operations, the large number of contracts to which the Debtors are party and the numerous other matters that the Debtors must attend to in connection with filing these cases, the Debtors will not be able to complete the schedules of assets and liabilities,

schedules of current income and expenditures, statements of executory contracts and unexpired leases and statements of financial affairs in the fourteen days provided under Bankruptcy Rule 1007(c). The Debtors request a sixty day extension. To facilitate this extension, the Debtors also seek entry of an order authorizing the U.S. Trustee to schedule the Section 341 meeting after the 40-day deadline imposed by Bankruptcy Rule 2003(a).

55. Given the many critical operational matters that the Debtors' accounting and legal personnel must address in the early days of these chapter 11 cases, I believe that with the extension requested, the Debtors will be able to focus their attention to business operations to maximize the value of the Debtors' estates during the first critical post-petition months. I believe this will help the Debtors make a smooth transition into chapter 11 and, therefore, maximize the value of the Debtors' estates to the benefit of creditors and all parties in interest.

56. I believe that the relief requested in the Schedules Extension Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Schedules Extension Motion should be granted.

B. Operational Motions Requesting Immediate Relief

- i. *Motion of Debtors and Debtors in Possession for Entry of an Order (i) Authorizing Debtors To Pay Prepetition Wages, Salaries and Benefits; (ii) Authorizing Debtors to Continue Employee Benefit Programs in the Ordinary Course of Business; (iii) Authorizing Current and Former Employees to Proceed with Workers' Compensation Claims; and (iv) Directing Applicable Financial Institutions to Honor and Process Related Checks and Transfers (the "Wages and Benefits Motion")*

57. The Debtors seek entry of an order (a) authorizing, but not requiring, them to pay or cause to be paid, in their sole discretion, all or a portion of the amounts owing (and associated costs) under or related to health benefits, vacation pay, paid holidays, paid sick time and other earned time off, and reimbursement of certain business expenses and the other Employee Benefit Programs, (b) unless otherwise set forth in the Wages and Benefits Motion, authorizing, but not requiring, them to continue, in their sole discretion, those Employee Benefit Programs that were in effect as of the Petition Date and as may be modified, terminated, amended or supplemented from time to time in the ordinary course of the Debtors' businesses, (c) permitting current and former Employees holding claims under the Workers' Compensation Programs to proceed with such claims in the appropriate judicial or administrative fora and to permit insurers to continue to access collateral and security provided by the Debtors pursuant to the Workers' Compensation Programs, and (d) authorizing applicable banks and other financial institutions to receive, process and pay any and all checks drawn on the Debtors' payroll and general disbursement accounts and automatic payroll and other transfers to the extent that those checks or transfers relate to any of the foregoing.

58. If the requested relief is not granted, the Debtors' relationships with their Employees would be adversely impacted and there could well be irreparable harm to the Employees' morale, dedication, confidence and cooperation. The Debtors' businesses hinge on their relationships with their customers, and the ability to provide superior services is vital. The Employees' support for the Debtors' efforts is critical to the success of these chapter 11 cases. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that

would inevitably attend any decline in their Employees' morale attributable to the Debtors' failure to pay wages, salaries, benefits and other similar items.

59. I believe that the relief requested in the Wages and Benefits Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Wages and Benefits Motion should be granted.

- ii. *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 (the "Cash Management Motion")*

60. The Debtors seek entry of an order authorizing the Debtors to (a) continue to operate their prepetition cash management system with respect to intercompany cash management and obligations, including the continuation of the investment of their cash in accordance with their investment guidelines, (b) fund the operations of affiliates and subsidiaries, (c) maintain the Debtors' existing bank accounts, and (d) maintain the Debtors' existing business forms. Without the requested relief, the Debtors would have great difficulty maintaining their operations, which could cause grievous harm to the Debtors and their estates.

61. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be granted.

- iii. *Debtors' Motion for Entry of an Order (i) Prohibiting Utilities from Altering, Refusing or Discontinuing Service, (ii) Deeming Utility Companies Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Requests for Additional Adequate Assurance (the "Utilities Motion")*

62. The Debtors seek entry of an order (i) determining that the Debtors' proposed offer of deposits, as set forth in the Utilities Motion, provides Utility Companies with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, (ii) approving procedures for resolving requests by Utility Companies for additional or different assurances beyond those set forth in the Utilities Motion, and (iii) prohibiting the Utility Companies from altering, refusing or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance. Uninterrupted Utility Services are essential to the Debtors' ongoing operations. Should any Utility Company refuse or discontinue service, even for a brief period, the Debtors' operations could be severely disrupted. The impact of this disruption on the Debtors' day-to-day business operations and revenue would be extremely harmful and could jeopardize the value of the Debtors' assets.

63. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Utilities Motion should be granted.

- iv. *Motion of Debtors and Debtors in Possession for Entry of Interim and Final Orders Authorizing (i) Payment of Certain Prepetition Claims of Critical Vendors, (ii) Payment of 503(b)(9) Claims to Certain Critical Vendors and (iii) Financial Institutions to Honor and Process Related Checks And Transfers (the "Critical Vendors Motion")*

64. The Debtors seek an entry of interim and final orders: (a) granting them the authority in their sole discretion, but not requiring them, to pay all or a portion of their prepetition obligations to certain Critical Vendors up to the Critical Vendor Claim Cap, (b) granting them the authority in their sole discretion, but not requiring them, to pay certain claims of Critical Vendors for the value of goods received by the Debtors in the ordinary course of their businesses during the 20-day period prior to the Petition Date, which are likely entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code, and (c) authorizing financial institutions to receive, process, honor and pay checks or wire transfers used by the Debtors to pay the foregoing.

65. The Debtors operate in a highly specialized, highly regulated and highly competitive industry. The unique nature of the coal mining industry leaves coal mining companies with few options (and often no practical alternatives) when shopping for vendors. Certain suppliers and service providers at various venues are the only option available to the Debtors. As a result, if the requested relief is not granted and certain essential trade vendors refuse to continue to supply goods and services to the Debtors post-petition, the Debtors may be unable to continue portions of their operations, thereby endangering the Debtors' successful reorganization and substantially harming all creditors. I spent considerable time developing the Critical Vendors list and believe that each vendor included provides a critical service or product the Debtors could not obtain in the marketplace at equal or lesser price and for which cooperation is unlikely absent payment of the sums included in the Critical Vendor Cap.

66. I believe that the relief requested in the Critical Vendors Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a

critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Critical Vendors Motion should be granted.

v. *Motion of Debtors and Debtors in Possession for Entry of an Order Authorizing (i) Debtors to Continue and Renew Their Liability, Property, Casualty and Other Insurance Programs and Honor All Obligations in Respect Thereof and (ii) Financial Institutions to Honor and Process Related Checks and Transfers (the "Insurance Program Motion")*

67. The Debtors seek entry of an order authorizing (i) the Debtors to maintain, continue and renew, in their sole discretion, the Insurance Programs on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date and (ii) their banks and other financial institutions to receive, process, honor and pay related checks or wire transfers. This relief requested in the Insurance Motion includes (a) paying all Insurance Obligations, including, but not limited to, any Broker's Fees, whether due and payable before or after the Petition Date and (b) renewing or obtaining new insurance policies as needed in the ordinary course of business.

68. The Debtors maintain various liability, casualty, property and other insurance and reinsurance and risk control programs through several private insurance carriers in the ordinary course of the Debtors' businesses. If the requested relief is not granted and the Insurance Programs lapse or terminate, the Debtors may well be unable to continue large portions of their operations, thereby endangering the value of the Debtors' assets and substantially harming all creditors. The Debtors believe that all material amounts related to the Insurance Programs that were due and payable on or prior to the Petition Date have been fully paid but, out of an abundance of caution and to avoid irreparable harm to their businesses, the Debtors seek authority to satisfy any such prepetition obligations through the Insurance Motion.

69. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be granted.

vi. *Motion of Debtors and Debtors in Possession for Entry of an Order Authorizing (i) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (ii) Financial Institutions to Honor and Process Related Checks And Transfers (the "Prepetition Taxes Motion")*

70. The Debtors seek entry of an order (i) authorizing, but not requiring, the Debtors, in their sole discretion, to pay any Covered Taxes and Fees, whether asserted prior to or after the Petition Date, and (ii) authorizing the Debtors' financial institutions to receive, process, honor and pay checks or wire transfers used by the Debtors to pay such Covered Taxes and Fees.

71. In connection with the normal operations of their businesses, the Debtors collect, withhold and incur production taxes, excise taxes, environmental and safety fees and assessments, sales taxes, use taxes, employment taxes, franchise taxes and fees and property taxes, as well as other taxes, fees and charges described in the Taxes and Fees Motion. The Debtors remit Covered Taxes and Fees to various federal, state and local governments, including taxing and licensing authorities. Covered Taxes and Fees are remitted by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions.

72. I believe that the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Taxes and Fees Motion should be granted.

vii. *Debtors' Motion for Entry of Interim and Final Orders Authorizing (i) Debtors to Continue and Renew Surety Bond Program and (ii) Financial Institutions to Honor and Process Related Checks And Transfers (the "Surety Bonds Motion")*

73. The Debtors seek entry of an interim and final orders authorizing the Debtors to maintain, continue and renew, in their sole discretion, their Surety Bond Program on an uninterrupted basis and in accordance with the same practices and procedures, including, but not limited to, the maintenance of cash collateral, as were in effect before the Petition Date. This authority would include permitting the Debtors (i) to pay all amounts arising under the Surety Bond Program due and payable after the Petition Date and (ii) to renew or obtain new surety bonds as needed, including, but not limited to, as may be required by law or judicial authority. If the requested relief is not granted and the Surety Bond Program lapses or terminates, the Debtors' operations could be severely affected, thereby endangering the Debtors' restructuring process and substantially harming all creditors.

74. I believe that the relief requested in the Surety Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Surety Motion should be granted.

viii. *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 (the "NOL Carry Forward Motion")*

75. The Debtors seek to enforce the automatic stay by implementing court-ordered procedures intended to protect the Debtors' estates against the possible loss of valuable tax benefits that could flow from inadvertent stay violations. The Debtors seek entry of an order

authorizing the Debtors: (i) to establish and implement restrictions and notification requirements regarding the Tax Ownership and certain transfers of common stock of Xinergy Ltd., and (ii) to notify holders of Stock of the restrictions, notification requirements and procedures. The Debtors also seek approval of a form of notice, which will notify holders of Stock whose actions could adversely affect the Debtors' tax assets that the Procedures have been established by order of this Court.

76. I believe that the relief requested in the NOL Carry Forward Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the NOL Carry Forward Motion should be granted.

ix. *Motion of the Debtors and Debtors in Possession For Entry of Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 (the "Foreign Representative Motion")*

77. The Debtors seek appointment of Xinergy Ltd. as Foreign Representative of the Debtors in the Canadian Proceedings. As Foreign Representative, Xinergy Ltd. intends to seek emergency ancillary relief in Canada on behalf of the Debtors pursuant to Part IV of the *Companies' Creditors Arrangement Act* (Canada) R.S.C. 1985, c. C-36, as amended. The purpose of the ancillary proceeding is to request that the Canadian Court recognize these chapter 11 cases as a "foreign main proceeding" in order to, among other things, protect the assets of the Debtors that may be located in Canada.

78. I believe that the relief requested in the Foreign Representative Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and

constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the Foreign Representative Motion should be granted.

V.

79. I respectfully request that all of the relief requested in the First Day Motions, and such other further relief as may be just and proper, be granted.

[Signature Page Follows.]

I, the undersigned Chief Financial Officer of Xinergy Ltd., declare under penalty of perjury that the foregoing is true and correct.

Dated: April 6, 2015

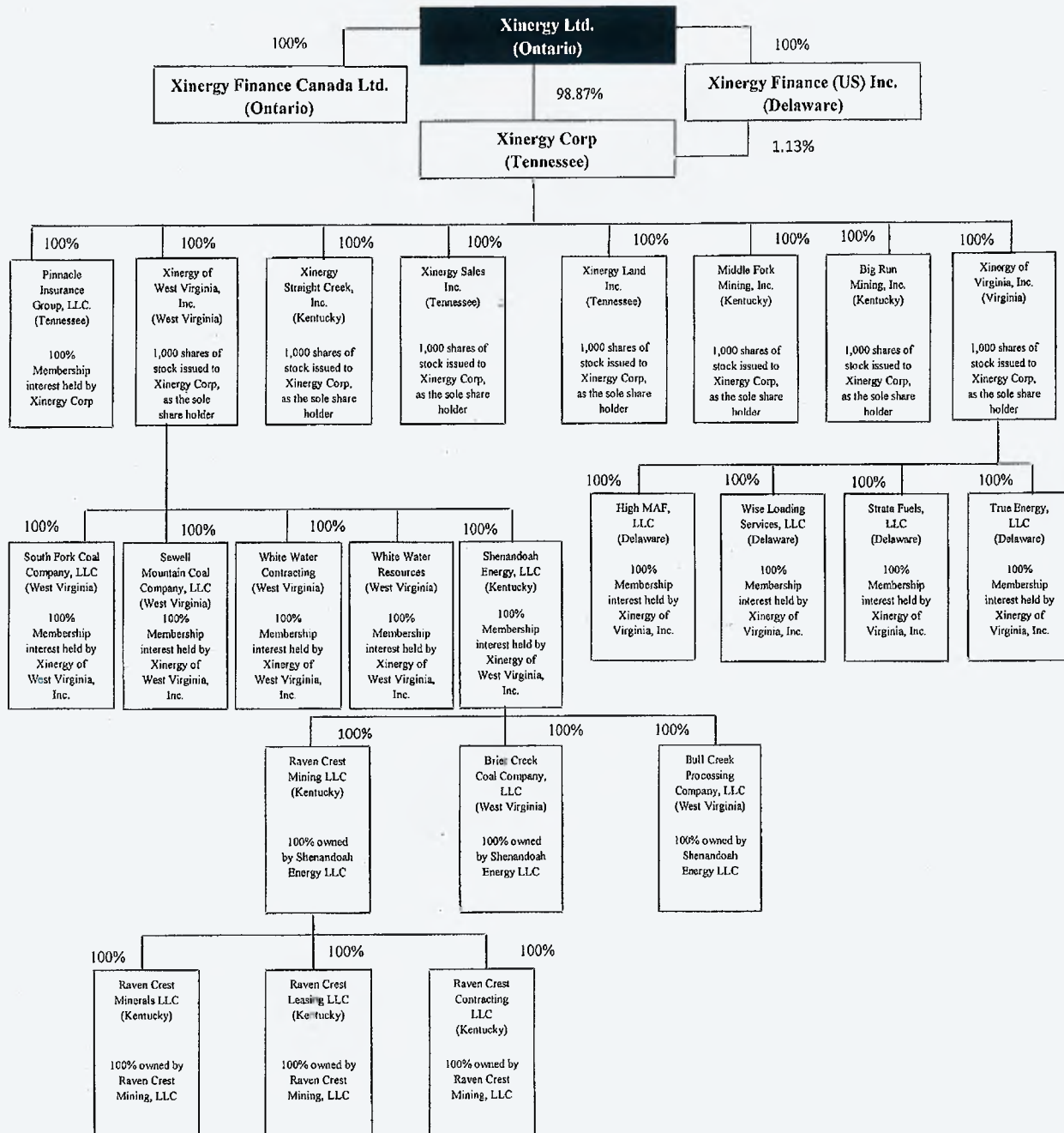
A handwritten signature in black ink, appearing to read "Michael R. Castle", written over a horizontal line.

Michael R. Castle
Chief Financial Officer
Xinergy Ltd.

SCHEDULE 1
(Debtor Entities)

- | | |
|--|---|
| 1. Xinery Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinery Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinery Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinery of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinery Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinery Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinery Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinery of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

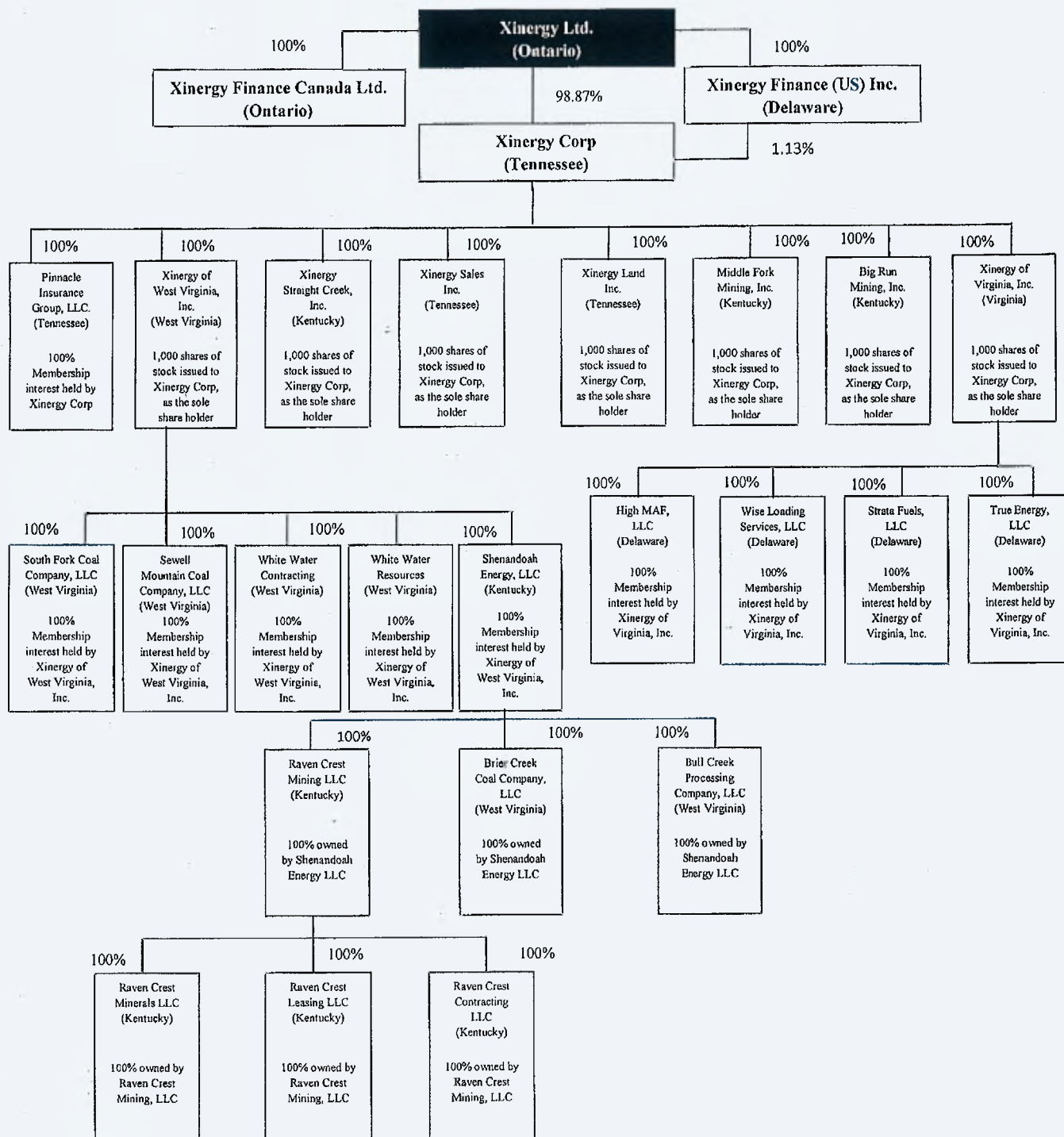


TAB C

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

Kathy Southerland
A Notary for the State of Tennessee

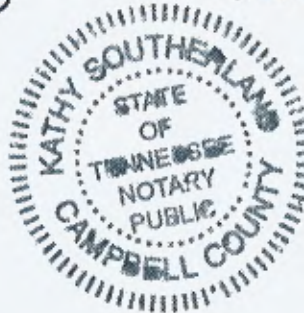




TAB D

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

Kathy Southerland
A Notary for the State of Tennessee



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

MOTION OF 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

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned counsel, file this motion (the “Motion”) for entry of an order, the proposed form of which is attached as Exhibit A (the “Order”), pursuant to sections 105(a), 1107(a) and 1505 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”), authorizing Xinergy Ltd. to act as the foreign representative (the “Foreign Representative”) on behalf of the Debtors’ estates in the Canadian Proceedings (as defined herein). In support of this Motion, the Debtors rely on the Declaration of Michael R. Castle in

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached hereto.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Proposed Counsel to the Debtors
and Debtors in Possession*

support of the Chapter 11 Petitions and Related Motions (the “Castle Declaration”). In further support of this Motion, the Debtors submit as follows:

I. Jurisdiction, Venue and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).

2. The predicates for the relief requested herein are sections 105(a), 1107(a) and 1505 of the Bankruptcy Code.

II. Background

3. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court their respective voluntary petitions for relief under chapter 11 of Title 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No creditors’ committee has been appointed in these cases. No trustee or examiner has been appointed.

5. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases.

6. A full description of the Debtors’ business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Castle Declaration, which was filed contemporaneously with this Motion and which is incorporated herein by reference. Additional facts in support of the specific relief sought herein are set forth below.

III. Relief Requested

7. By this Motion, the Debtors seek entry of the Order authorizing Xinergy Ltd. to act as the Foreign Representative on behalf of the Debtors' estates in the Canadian Proceedings.

Appointment of Foreign Representative

8. As further described in the Castle Declaration, Debtor Xinergy Ltd., the direct or indirect parent of each of the other Debtors, is incorporated in Ontario, Canada and may otherwise become subject to the jurisdiction of the Canadian courts.² In particular, Xinergy Ltd.'s common stock trades on the Toronto Stock Exchange (TSX), the largest stock exchange in Canada, under the ticker "XRG." As of Xinergy Ltd.'s most recent quarterly public filing, there were 65,772,023 shares of Xinergy Ltd.'s common stock issued and outstanding.

9. Xinergy Ltd., as the proposed Foreign Representative, shortly will seek ancillary relief in Canada, pursuant to the *Companies' Creditors Arrangement Act* (Canada) R.S.C. 1985, c. C-36 as amended (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in Toronto, Ontario, Canada. The purpose of the ancillary proceedings (the "Canadian Proceedings") is to request that the Canadian Court recognize the chapter 11 case of Xinergy Ltd. as a "foreign main proceeding" under the applicable provisions of the CCAA in order to, among other things, provide Xinergy Ltd. and/or its assets protection from judicial process in Canada.

² All of Xinergy Ltd.'s direct and indirect subsidiaries are Debtors and debtors-in-possession in these proceedings except for Xinergy Finance Canada Ltd., a Canadian corporation that holds no assets and is not liable on any of the debt included in these chapter 11 cases.

10. To commence the Canadian Proceedings, the Debtors need authority for a Debtor entity to act as the Foreign Representative³ on behalf of the Debtors' estates and, therefore, the Debtors seek to appoint Xinergy Ltd. as such Foreign Representative.⁴ Specifically, section 46 of the CCAA provides:

- 1) **Application for recognition of a foreign proceeding.** – A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
- 2) **Documents that must accompany application.** -- . . . the application must be accompanied by . . . (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity

CCAA, R.S.C. Ch. C-36, § 46 (1985) (Can.).

11. For Xinergy Ltd. to be recognized as the Foreign Representative of the Debtors in the Canadian Proceedings, and thereby have these chapter 11 cases recognized by the Canadian Court as a "foreign proceeding", the Debtors respectfully submit that they need this Court to enter the Order authorizing Xinergy Ltd. to act as the Foreign Representative. If the Order is granted, Xinergy Ltd. will be able to file the Order with the Canadian Court as the instrument

³ A foreign representative is defined in section 45(1) of the CCAA to mean "a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding [with] respect of a debtor company, to

(a) monitor the debtor company's business and financial affairs for the purpose of reorganization;
or
(b) act as a representative in respect of the foreign proceeding."

⁴ Xinergy Ltd. is the only Debtor that is anticipated to be a party to the Canadian Proceedings. However, it may become necessary in the Canadian Proceedings, or in another foreign proceeding, for representations to be made to the Canadian Court, or to another foreign court, on behalf of the estates of some or all of the other Debtors. To this end, the Debtors request that Xinergy Ltd. be authorized to act as Foreign Representative on behalf of all of the Debtors' estates for the purposes of coordinating the Canadian Proceedings, or any other foreign proceedings, with these chapter 11 cases.

authorizing Xinery Ltd. to act as the Foreign Representative pursuant to section 46 of the CCAA.⁵

IV. Basis for Relief Requested

12. Section 1505 of the Bankruptcy Code provides that:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505.

13. Further, section 1107(a) of the Bankruptcy Code provides, in relevant part:

Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the rights to compensation under section 330 of this title, and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter.

11 U.S.C. § 1107(a).

14. The Debtors respectfully submit that section 1107 of the Bankruptcy Code confers upon Xinery Ltd., as a debtor in possession, sufficient rights, powers and duties to act as a Foreign Representative of the Debtors' estates.⁶ To avoid any possible confusion or doubt regarding this authority and to comply with the requirements of section 46 of the CCAA, the

⁵ The Debtors intend to propose that Deloitte Restructuring Inc. be appointed by the Canadian Court as information officer in the Canadian Proceedings (the "Information Officer"). The Information Officer will serve as an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing of the initial application) on the status of these chapter 11 cases, the proposed restructuring of the Debtors, the Canadian Proceedings and any other information that may be material to the Canadian Court. The Information Officer and its counsel will be compensated by Xinery Ltd. in accordance with the terms of an order entered by the Canadian Court. The Information Officer will not file fee applications or be subject to the compensation procedures for professionals in these chapter 11 cases.

⁶ Section 105(a) of the Bankruptcy Code also empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

Debtors seek entry of the Order explicitly authorizing Xinergy Ltd. to act as the Foreign Representative of the Debtors' estates in the Canadian Proceedings.

15. Authorizing Xinergy Ltd. to act as the Foreign Representative on behalf of the Debtors' estates in the Canadian Proceedings will allow coordination of these chapter 11 cases and the Canadian Proceedings, and provide an effective mechanism to protect and maximize the value of the Debtors' assets and estates. In other large chapter 11 cases where a debtor has foreign assets and/or operations requiring a recognition proceeding, bankruptcy courts have granted relief similar to that requested herein. *See, e.g., In re Satcon Technology Corp.*, Case No. 12-12869 (KG) (Bankr. D. Del. Oct. 18, 2012); *In re Lightsquared Inc.*, Case No. 12-12080 (SCC) (Bankr. S D N.Y. June 1, 2012); *In re TerreStar Networks Inc.*, Case No. 10-15446 (SHL) (Bankr. S D N.Y. Oct. 20, 2010); *In re MES Int'l, Inc.*, Case No. 09-14109 (PJW) (Bankr. D. Del. April 7, 2010); *In re TLC Vision (USA) Corp.*, Case No. 09-14473 (KG) (Bankr. D. Del. Dec. 22, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (REG) (Bankr. S.D N.Y. Aug 9, 2010); *In re Japan Airlines Corp.*, Case No. 10-10198 (JMP) (Bankr. S.D.N.Y. Feb. 17, 2010); *Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Aug. 27, 2009).

16. Accordingly, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interest of their estates and creditors, and should be granted in all respects.

V. Request for Waiver of Stay

17. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

VI. Notice

18. The Debtors have served notice of this Motion on (a) the U.S. Trustee; (b) the attorneys for an informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing; (c) all known creditors holding secured claims against the Debtors' estates; (d) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis; (e) the Internal Revenue Service; (f) Canadian Revenue Agency; (g) the Ontario Securities Commission; (h) the Securities and Exchange Commission; and (i) the United States Environmental Protection Agency.

VII. No Previous Request

19. 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 is just and proper.

DATED: April 6, 2015

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77979)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Email: tpbrown@hunton.com
hlong@hunton.com
jpaget@hunton.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

- | | |
|---|---|
| 1. Xinerger Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinerger Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinerger Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinerger of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinerger Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinerger Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinerger Land, Inc. (8121) | 21. Raven Crest Mining, LLC (0122) |
| 9. Middle Fork Mining, Inc. (1593) | 22. Brier Creek Coal Company, LLC (9999) |
| 10. Big Run Mining, Inc. (1585) | 23. Bull Creek Processing Company, LLC (0894) |
| 11. Xinerger of Virginia, Inc. (8046) | 24. Raven Crest Minerals, LLC (7746) |
| 12. South Fork Coal Company, LLC (3113) | 25. Raven Crest Leasing, LLC (7844) |
| 13. Sewell Mountain Coal Co., LLC (9737) | 26. Raven Crest Contracting, LLC (7796) |

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-[] ()

(Joint Administration Requested)

**ORDER AUTHORIZING XINERGY LTD. TO ACT AS
FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 1107(a) and 1505 of the Bankruptcy Code, authorizing Xinergy Ltd. to act as the Foreign Representative on behalf of the Debtors’ estates in the Canadian Proceedings; the Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Proposed Counsel to the Debtors
and Debtors in Possession*

the Motion is in the best interest of the Debtors, their estates and creditors, and is necessary to avoid immediate and irreparable harm to the Debtors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. Xinergy Ltd. hereby is authorized to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceeding in a foreign country, including in the Canadian Proceedings. As a Foreign Representative, Xinergy Ltd. shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including, but not limited to, (a) seeking recognition of these chapter 11 cases in the Canadian Proceedings, (b) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates, and (c) seeking any other appropriate relief from the Canadian Court that Xinergy Ltd. deems just and proper in the furtherance of the protection of the Debtors' estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize these chapter 11 cases as a "foreign main proceeding" and Xinergy Ltd. as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.
4. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. The requirements of Bankruptcy Rule 6003 are satisfied.

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

Dated: _____, 2015

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown, Esquire (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

*Proposed Counsel to the Debtors
and Debtors in Possession*

TAB E

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

Kathy Southerland
A Notary for the State of Tennessee



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

In re:

XINERGY LTD., *et al.*,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**ORDER AUTHORIZING XINERGY LTD. TO ACT AS
FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 1107(a) and 1505 of the Bankruptcy Code, authorizing Xinergy Ltd. to act as the Foreign Representative on behalf of the Debtors’ estates in the Canadian Proceedings; the Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors, and is necessary to avoid immediate and irreparable harm to the Debtors; (d) proper and adequate notice of the

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule I attached to the Motion.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Proposed Counsel to the Debtors
and Debtors in Possession*

Motion and the hearing thereon has been given and that no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. Xinergy Ltd. hereby is authorized to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceeding in a foreign country, including in the Canadian Proceedings. As a Foreign Representative, Xinergy Ltd. shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including, but not limited to, (a) seeking recognition of these chapter 11 cases in the Canadian Proceedings, (b) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates, and (c) seeking any other appropriate relief from the Canadian Court that Xinergy Ltd. deems just and proper in the furtherance of the protection of the Debtors' estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize these chapter 11 cases as a "foreign main proceeding" and Xinergy Ltd. as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.
4. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. The requirements of Bankruptcy Rule 6003 are satisfied.
6. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: April 7, 2015


UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III

Tyler P. Brown, Esquire (VSB No. 28072)

Henry P. (Toby) Long, III (VSB No. 75134)

Justin F. Paget (VSB No. 77949)

HUNTON & WILLIAMS LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, VA 23219

Tel: (804) 788-8200

Fax: (804) 788-8218

*Proposed Counsel to the Debtors
and Debtors in Possession*