

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

**PRELIMINARY REPORT OF THE PROPOSED INFORMATION OFFICER
DELOITTE RESTRUCTURING INC.
APRIL 21, 2015**

INTRODUCTION

1. On April 6, 2015 (the "**Petition Date**"), Xinergy Ltd., which is incorporated pursuant to the laws of the Province of Ontario ("**Xinergy**" or the "**Applicant**"), and 25 subsidiaries of Xinergy incorporated in the United States (the "**U.S. Subsidiaries**" and together with Xinergy, the "**Chapter 11 Debtors**") commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the Western District of Virginia (the "**U.S. Court**") by each filing a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). A listing of the Chapter 11 Debtors is attached as **Appendix A**.
2. Xinergy has no Canadian operations or Canadian employees. Xinergy's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, is listed on the Toronto Stock Exchange (the "**TSX**"), and has one bank account and four known creditors domiciled in Canada. Xinergy, as the ultimate parent of the U.S. Subsidiaries, determined that recognition of the Chapter 11 Proceedings in Canada is necessary so that, among other things, certain assets of Xinergy, including net operating loss carryforwards, will receive appropriate protection in Canada to the extent those assets may be subject to the Court's jurisdiction.
3. Beginning on the Petition Date and continuing until the following day, the Chapter 11 Debtors filed various motions for interim and/or final orders (the "**First Day Motions**") in the Chapter 11 Proceedings to permit the Chapter 11 Debtors to continue to operate their business in the ordinary course. The First Day Motions included a motion for entry of an order (the "**Foreign Representative Order**") authorizing Xinergy to act as foreign representative on behalf of the Chapter 11 Debtors' estates (the "**Foreign Representative**").
4. On April 7, 2015, the U.S. Court entered the Foreign Representative Order and on April 7, 2015 and April 8, 2015, the U.S. Court entered certain other orders in respect of the First Day Motions, certain of which are described in more detail below. Please refer to **Appendix B** for a listing of all Orders that have been entered in the Chapter 11 Proceedings as at April 20, 2015.
5. On April 14, 2015, Xinergy, as the proposed Foreign Representative for itself only (and not the other Chapter 11 Debtors, as discussed below), commenced, via a notice of application (the "**Notice of Application**"), an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to Part IV of the Companies' Creditors Arrangement Act ("**CCAA**") for the following relief and orders:
 - (a) An initial recognition order (the "**Initial Recognition Order**"), *inter alia*:
 - (i) Abridging the time for service and validating service of the Notice of Application and related application record (the "**Application Record**");
 - (ii) Declaring that the Applicant is the "foreign representative" as such term is defined in section 45 of the CCAA;
 - (iii) Declaring that the centre of main interests (the "**COMI**") for Xinergy is the United States, and declaring that the Chapter 11 Proceedings are recognized as a "foreign main proceeding" as such term is defined in section 45 of the CCAA;
 - (iv) Staying, until further Court order, all actions and proceedings against Xinergy in accordance with section 48 of the CCAA; and
 - (v) Prohibiting Xinergy from selling or otherwise disposing of (A) any of its property in Canada related to the business outside the ordinary course of its business, and (B) any of its other property in Canada.
 - (b) A supplemental order (the "**Supplemental Order**") pursuant to section 49 of the CCAA, *inter alia*:
 - (i) Recognizing in Canada and giving full force and effect the following orders of the U.S. Court made in the Chapter 11 Proceedings:

- A. *Order Authorizing Xinergy Ltd. to Act as Foreign Representative Pursuant to 11 U.S.C. §1505* (previously defined as the “**Foreign Representative Order**”);
 - B. *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)* (the “**Interim DIP Facility Order**”);
 - C. *Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Equity Interests in the Debtors’ estates* (the “**Interim Trading Order**”); and
 - D. *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* (the “**Interim Cash Management Order**”);
- (ii) Appointing Deloitte Restructuring Inc. (“**Deloitte**”) as the Information Officer in respect of this proceeding (the “**Information Officer**”);
 - (iii) Staying any claims, rights, liens, or proceedings against or in respect of Xinergy, the business and property of Xinergy, and Xinergy’s directors and officers;
 - (iv) Restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to Xinergy;
 - (v) Authorizing, *nunc pro tunc*, payment of retainers to the Information Officer and its counsel, Bennett Jones LLP, to be held by them as security for their professional fees and disbursements incurred in respect of this proceeding;
 - (vi) Granting the Information Officer and its counsel a super-priority first-ranking charge on the assets of Xinergy in Canada, which charge shall not exceed \$100,000, as security for their professional fees and disbursements incurred in respect of this proceeding (the “**Administration Charge**”);
 - (vii) Granting a super-priority second-ranking charge (subordinate only to the Administration Charge) in favour of the postpetition lender under the postpetition credit facility approved by the U.S. Court pursuant to the Interim DIP Facility Order; and
 - (viii) Requiring the Information Officer, on behalf of the Applicant, to publish notice of the proceeding pursuant to subsection 53(b) of the CCAA as soon as practicable.
- 6. Xinergy has scheduled with this Court a hearing on April 23, 2015, in respect of the application for the Initial Recognition Order and the Supplemental Order.
 - 7. Other than this proceeding (the “**CCAA Recognition Proceeding**”), there are currently no other foreign proceedings in respect of Xinergy or any of the other Chapter 11 Debtors.

TERMS OF REFERENCE

- 8. In preparing this Preliminary Report of the Proposed Information Officer (the “**Preliminary Report**”), Deloitte has been provided with, and has relied upon, unaudited financial information, declarations and affidavits of Xinergy executive officers, and financial information prepared by Xinergy, and public information available filed as part of the Chapter 11 Proceedings (collectively, the “**Information**”). Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided; however, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with

Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.

9. Any future oriented financial information referred to in this Preliminary Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.
10. Deloitte has requested that Xinerger bring to its attention any significant matters that were not addressed in the course of its specific inquiries. Accordingly, this report is based solely on the Information made available to Deloitte.
11. This Preliminary Report should be read in conjunction with the Affidavit of Michael R. Castle, Chief Financial Officer of Xinerger, sworn April 15, 2015 (the "**Castle Affidavit**"). The Castle Affidavit was included as part of the Application Record, and can also be found attached as **Appendix C** for reference.
12. All references to currency in this report are in United States dollars unless otherwise noted.

PURPOSE OF REPORT

13. The purpose of this Preliminary Report is to assist the Court in considering the Foreign Representative's request for the Initial Recognition Order and Supplemental Order, and to provide the Court with certain pertinent background and other information in order to do so which includes the following:
 - (a) Xinerger's business and operations, including its organizational structure, capital structure, Canadian operations, and cash management system;
 - (b) Xinerger's COMI;
 - (c) The events leading up to the Chapter 11 Proceedings and CCAA Recognition Proceeding;
 - (d) U.S. Court Orders entered in the Chapter 11 Proceedings;
 - (e) The proposed initial activities of the Information Officer;
 - (f) Deloitte's consent to act as Information Officer; and
 - (g) Conclusion.

BACKGROUND

Corporate overview and organizational structure

14. Xinerger and its 26 wholly-owned and integrated subsidiaries are a producer of metallurgical and thermal coal with mineral reserves, mining operations, and coal properties located in the Central Appalachian regions of West Virginia and Virginia. Operations include two active mining complexes known as South Fork and Raven Crest located in Greenbrier and Boone Counties, West Virginia, respectively, and mineral rights to properties located in Fayette, Nicholas and Greenbrier Counties, West Virginia and Virginia. In total, Xinerger controls approximately 72,000 acres of proven and provable coal reserves of approximately 77 million tons and additional estimated reserves of 40 million tons.
15. The primary customers for the metallurgical coal are steel producers, commodities brokers, and industrial customers, while electric utilities and industrial companies represent the primary customers of thermal coal.
16. The Chapter 11 Debtors' corporate headquarters and head office are located at 8351 E. Walker Springs Lane, Suite #400, Knoxville, Tennessee. All corporate and other major decision-

making powers for Xinergy are exercised on an integrated basis with all of its subsidiaries from this head office location.

17. Xinergy has a Canadian registered office at the location of its Canadian legal counsel, Cassels Brock & Blackwell LLP, located at 40 King Street West, Scotia Plaza, Suite #2100, Toronto, Ontario.
18. Further information and background on Xinergy's and the other Chapter 11 Debtors' operations can be found in the Castle Affidavit and the declaration filed by Michael R. Castle as part of the Chapter 11 Proceedings (the "**Declaration**"), which is attached for reference as **Appendix D**.
19. The Chapter 11 Debtors' corporate organizational chart is attached as **Appendix E**. Xinergy owns directly or indirectly 25 subsidiaries incorporated pursuant to the laws of several U.S. states including Tennessee, Kentucky, Virginia, West Virginia, and Delaware. Xinergy also owns one Canadian subsidiary, Xinergy Finance Canada Ltd., which was incorporated under the laws of the Province of Ontario.
20. As previously noted, all 25 of the wholly-owned subsidiaries incorporated in the United States filed voluntary petitions for relief under the Bankruptcy Code. The remaining Canadian subsidiary, Xinergy Finance Canada Ltd., holds no assets and is not an obligor with respect to any of the Chapter 11 Debtors' indebtedness. As a result, management has chosen not to commence proceedings at this time in the United States or Canada in relation to Xinergy Finance Canada Ltd.
21. In addition, the Foreign Representative is only seeking recognition for Xinergy (and not the other 25 Chapter 11 Debtors) at this time as the U.S. subsidiaries have no operations in Canada, no known Canadian creditors, or Canadian employees – effectively, no independent nexus to Canada at all. Deloitte understands that Xinergy believes this approach will assist with minimizing costs for the CCAA Recognition Proceedings. In accordance with the Foreign Representative Order, the Foreign Representative could seek recognition for any and all U.S. subsidiaries under the CCAA if necessary or desirable at a future date, but the Information Officer understands that there is no present intention to do so.
22. Since all of the subsidiaries are wholly-owned by Xinergy, which is the ultimate parent company and is also the Foreign Representative, Deloitte believes that it is not necessary to include the U.S. Subsidiaries as party to this application at this time, and that it can rely on the information provided by the Foreign Representative. If the Information Officer determines that it is not getting sufficient access to information or believes for any other reason that one or more of the U.S. Subsidiaries ought to be included in this proceeding, it will report to Court to seek advice and directions in that regard.
23. As of the Petition Date, Xinergy had approximately 178 employees working on a full- or part-time basis. Eight employees perform executive management, sales and general administration in Xinergy's corporate office located in Knoxville, Tennessee, but frequently work remotely or at Xinergy's mine locations. All other individuals are operational employees and work at Xinergy's mine locations. There are no outsourced employees and none of Xinergy's employees are currently unionized.
24. Xinergy has no employees in Canada and no offices (excluding its registered office) in Canada.

Capital structure – credit facilities

25. In May 2011, Xinergy issued \$200M of 9.25% Senior Secured Notes (the "**Second Lien Notes**") due May 15, 2019, which are guaranteed by the other Chapter 11 Debtors and collateralized by substantially all of Xinergy's assets. As of the Petition Date, approximately \$195M remained outstanding.

26. On December 21, 2012, Xinergy Corp. entered into a Credit Agreement (as amended, supplemented, modified, or amended and restated from time to time, the "**First Lien Term Loans**") with Bayside Finance LLC and the other Chapter 11 Debtors as guarantors. The First Lien Term Loans provided for two term loans in the amount of \$10M each with terms of four years secured by a first-priority lien on substantially all of the Chapter 11 Debtors' assets.
27. Deloitte understands that on April 1, 2015, the First Lien Term Loans were assigned to funds managed by Whitebox Advisors LLC ("**Whitebox**") and Highbridge Capital Management LLC ("**Highbridge**"). As of the Petition Date, the amount outstanding was approximately \$20M plus certain fees and expenses. Following the Petition Date, in accordance with the Interim DIP Facility Order, the First Lien Loans have been refinanced, as discussed below.
28. The Chapter 11 Debtors and holders of both the First Lien Term Loans and the Second Lien Notes are parties to a collateral trust agreement dated May 6, 2011 (the "**Collateral Trust Agreement**"). The Collateral Trust Agreement authorizes Xinergy to obtain credit in certain amounts and for certain purposes that would have a priority over the Second Lien Notes. The Collateral Trust Agreement also authorizes the holder of any authorized senior notes to provide debtor-in-possession ("**DIP**") financing to Xinergy that would be senior or *pari passu* to the senior liens and Second Lien Notes, and provides that the Second Lien Notes have waived any right to object to any DIP financing consented to by the senior lender.

Capital structure – stockholder's equity

29. Xinergy is a publicly traded company on the TSX under the ticker symbol XRG. As at September 30, 2014, the date of Xinergy's most recent public filing, there were approximately 58.3M voting common shares issued and outstanding, and 7.5M common non-voting shares issued and outstanding – totaling approximately 65.8M common shares.
30. In a letter to Xinergy dated April 16, 2015 (the "**Wildeboer Letter**"), Wildeboer Dellelce LLP on behalf of a shareholder that claims to hold not less than 5% of the voting common shares requisitioned the directors of Xinergy pursuant to Section 105 of the *Business Corporations Act* to call a meeting of the shareholders to consider removing and appointing certain directors (the "**Requisition**"). The requisitioning shareholder is John Nix, who was the founder of Xinergy Corp. and served as Chairman and Chief Executive Officer from March 2008, until May, 2012. The Wildeboer Letter and the Requisition are attached for reference as **Appendix F** and **Appendix G**. We understand that Xinergy, and its counsel, are considering their response to the Requisition.

Overview of Xinergy's operations in Canada

31. As Xinergy Finance Canada Ltd. is an Ontario registered corporation that holds no assets and is not liable on any of the debt related to the First Lien Term Loans or Second Lien Notes, it has been excluded from the CCAA Recognition Proceeding and will not be discussed further in this Preliminary Report.
32. Since Xinergy has no Canadian operations, its only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, is listed on the TSX, and has one bank account and four known creditors domiciled in Canada.
33. Neither Xinergy nor any of the other Chapter 11 Debtors have any employees located in Canada. As a result, there are no wages, employee benefits, pension plan contributions, or any other amount owing in relation to Canadian employees.
34. Xinergy has two directors that are resident in Canada in order to satisfy the residency requirements for Ontario corporations. As of the Petition Date, CAD\$1,674.67 was owed to one of the Canadian directors, which is one of the four known creditors.

35. As of the Petition Date, Cassels Brock & Blackwell LLP, Xinerger's Canadian legal counsel, was owed CAD\$291,159.77, TMX Equity Transfer Services was owed approximately CAD\$4,000, and the TSX was owed CAD\$16,492.02. These amounts, in addition to the amount owed to a director referenced in the previous paragraph, represent the only known amounts owing to Canadian creditors.

Cash management

36. Xinerger maintains one bank account in Ontario with the Toronto-Dominion Bank of Canada (the "**Canadian Account**"). The Canadian Account is used to make deposits and issue payments to vendors that are denominated in Canadian dollars. This account is funded when additional funds are required exclusively by a U.S. operating account of Xinerger Corp., one of the U.S. Subsidiaries. The balance in the account as at the Petition Date was approximately CAD\$48,415.

CENTRE OF MAIN INTEREST

37. Based on the Castle Affidavit and other information provided by Xinerger or its counsel, Xinerger and the U.S. Subsidiaries are managed in the United States as an integrated group from a corporate, strategic, and management perspective. The following facts support this position:
- (a) Corporate and other major decision-making occurs from the head office located in Knoxville, Tennessee, and administrative employees frequently work remotely or from the mines of certain U.S. Subsidiaries in the United States;
 - (b) All senior executives of Xinerger are residents of the United States;
 - (c) Management duties for Xinerger and the U.S. Subsidiaries are shared;
 - (d) All centralized services for Xinerger and the U.S. Subsidiaries, including employee administration, human resource functions, marketing and communications decisions are located in the United States;
 - (e) Xinerger and the U.S. Subsidiaries share a cash management system that is funded by the U.S. subsidiaries, overseen by the employees of Xinerger and the U.S. subsidiaries, and managed in the United States;
 - (f) Xinerger is wholly dependent on the U.S. Subsidiaries located in the United States for all or substantially all of their funding; and,
 - (g) Other shared functions, including pricing decisions, business development, accounts payable, accounts receivable, and treasury functions, for Xinerger and the U.S. Subsidiaries are located and managed from the United States.
38. The preceding factors, among other things, collectively rebut the presumption that Xinerger's registered office in Canada represents its COMI. Furthermore, these factors indicate that the "nerve centre" or head office functions and the senior management of Xinerger are in the United States, which is also where their significant creditors appear to recognize the centre of operations to be located.
39. Based on the foregoing, the proposed Information Officer is of the view that Xinerger's COMI is in the United States and that the Chapter 11 Proceedings represent a "foreign main proceeding" as defined in section 45 of the CCAA.

EVENTS LEADING UP TO THE CHAPTER 11 PROCEEDING AND THE CCAA RECOGNITION PROCEEDING

40. Per the Castle Affidavit and Declaration, several factors when combined have resulted in the need for relief afforded by the Chapter 11 Proceedings and the contemplated CCAA Recognition Proceeding, including, among others:

- (a) The Chapter 11 Debtors' lack of liquidity negatively impacted their ability to maintain operations in the near-term and to sustain its current capital structure;
- (b) Demand and prices for thermal coal fell sharply in 2008 and 2009, and have not fully recovered in the period since;
- (c) Demand has also fallen sharply due to increasingly attractive alternative sources of energy, such as natural gas;
- (d) Demand globally for metallurgical coal primarily used for steel production, as a result of a depressed global economy, has reduced sharply in recent years;
- (e) The Chapter 11 Debtors compete with numerous other companies that are larger, better capitalized, and possess longer operating track records, which impacts the Chapter 11 Debtors' ability to compete with its competitors in the acquisition, exploration, financing, and development of coal properties;
- (f) Increasingly stringent regulations and environmental protections have significantly increased the costs of compliance for coal producers, and legislation has decreased the appetite of the Chapter 11 Debtors' power generating customers to buy coal and utilize coal for power generation; and,
- (g) Inclement weather of the past winter negatively impacted the Chapter 11 Debtors' ability to ship coal, and install new equipment that would reduce its mining costs and improve mining contribution margins.

41. To counteract the effects of the detrimental factors noted above, Xinerger communicated that the management team took several actions to improve the Chapter 11 Debtors' financial position and profitability, including the following:

- (a) Due to poor market conditions from 2012 to present, the Chapter 11 Debtors idled their mining operations to reduce costs at its Raven Crest, Brier Creek and True Energy mines, and only restarted mining operations at Raven Crest in January 2014;
- (b) On February 1, 2013, the Chapter 11 Debtors entered into an asset purchase agreement for a cash sale of its Straight Creek and Red Bird mining operations located in Kentucky for \$47.2M, which provided additional liquidity;
- (c) On March 31, 2014, Xinerger received additional liquidity in the form of proceeds from sale of \$4.95M due to the issuance of common shares pursuant to a private placement;
- (d) On November 6, 2014, the Chapter 11 Debtors entered into a commitment for a secured second lien credit agreement for convertible debt in the principal amount of \$25M, however, the proposed loan failed to close further straining the Chapter 11 Debtors' financial position and liquidity; and,
- (e) In December 2014, the Chapter 11 Debtors hired a financial advisor to pursue financial and strategic alternatives including securing DIP financing that would provide additional liquidity to Xinerger. In that regard:
 - (i) The Chapter 11 Debtors and their advisor approached more than sixty high-quality institutional firms;
 - (ii) Fifteen parties executed confidentiality agreements; and
 - (iii) A commitment for a \$40M DIP financing facility was secured from affiliates of Whitebox and Highbridge (the "**DIP Facility**"), which may under certain conditions be increased to \$50M.

42. As noted in the Castle Affidavit, approximately \$20M of the funds received from DIP Facility were designated for repayment of the First Lien Term Loan with the remainder, net of fees and expenses, being available to provide additional liquidity to continue operations and pursue a successful restructuring of the Chapter 11 Debtors through the Chapter 11 Proceedings.

43. The Chapter 11 Debtors determined that the commencement of the Chapter 11 Proceedings represented the best course of action to preserve liquidity, gain access to the DIP Facility, maximize value for the Chapter 11 Debtors' estates, and improve its overall capital structure.

U.S. COURT ORDERS

44. Several interim and final Orders have been entered by the U.S. Court. At this time, Xinergy is seeking recognition of only the following four Orders:

- (a) The Foreign Representative Order;
- (b) The Interim DIP Facility Order;
- (c) The Interim Trading Order; and,
- (d) The Interim Cash Management Order.

For copies of all Orders entered by the U.S. Court in connection with the Chapter 11 Proceedings, please refer to the following website: <https://www.americanlegal.com/xinergy>.

45. The Foreign Representative Order, *inter alia*, authorizes Xinergy to act as the Foreign Representative on behalf of itself in any judicial proceeding in any foreign country, including the CCAA Recognition Proceeding.

46. The Interim DIP Facility Order, *inter alia*:

- (a) Authorizes Xinergy Corp. to obtain postpetition financing pursuant to the DIP Facility up to an aggregate principal amount of \$40M;
- (b) Authorizes Xinergy and the other Chapter 11 Debtors to unconditionally guarantee all obligations arising under the DIP Facility;
- (c) Authorizes the Chapter 11 Debtors to use proceeds of the DIP Facility to pay in full the First Lien Term Loans; and
- (d) Grants first priority superpriority claims in connection with the DIP Facility.

47. The Interim DIP Facility Order contains a "rollup" provision, whereby the DIP Facility was used to refinance the prior existing First Lien Term Loans. The proposed Information Officer notes that such a provision might not be permissible in a plenary proceeding under the CCAA as a result of section 11.2 of the CCAA which provides that a DIP charge may not secure an obligation that existed before the initial order is made. However, section 49 of the CCAA provides that in recognizing an order of a foreign court, the Court may make any order that it considers appropriate, provided the Court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.

48. The proposed Information Officer, having considered the circumstances of this case, believes that recognition of the Interim DIP Facility Order appears to be reasonable. Among other reasons, given that Xinergy has only four creditors in Canada and the largest of the four known Canadian creditors is Xinergy's Canadian counsel, the proposed Information Officer is of the view that there will be no material prejudice to Canadian creditors if the Court recognizes the Interim DIP Facility Order.

49. The Interim Trading Order, *inter alia*:

- (a) Finds the following to be true:
 - (i) The Chapter 11 Debtors consolidated net operating loss ("**NOL**") carryforwards are property of the Chapter 11 Debtors' estates and are protected by the automatic stay prescribed in section 362 of the Bankruptcy Code; and
 - (ii) Unrestricted trading in equity interests in the Chapter 11 Debtors before their emergence from chapter 11 could severely limit the ability to utilize their NOL carryforwards and certain other tax attributes for U.S. federal income tax purposes pursuant to the rules under section 382 of the Internal Revenue Code;
- (b) Orders on an interim basis the following:
 - (i) Certain restrictions and procedures for trading in stock; and
 - (ii) Sanctions for noncompliance of stated restrictions and procedures for trading in stock.

50. The Interim Cash Management Order, *inter alia*:

- (a) Authorizes, but does not direct, the Chapter 11 Debtors to continue to maintain, continue, operate, and make transfers under their cash management system;
- (b) Authorizes, but does not direct, the Chapter 11 Debtors to continue to maintain the bank accounts with the same names and account numbers as existed immediately prior to the Petition Date; and
- (c) Authorizes and directed all banks with which the Chapter 11 Debtors maintain the bank accounts to continue to maintain, service and administer the bank accounts.

51. For the reasons set out above, the proposed Information Officer believes that it is reasonable for the Court to recognize these orders at this time.

PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER

52. The proposed initial activities of the Information Officer following its appointment would include the following:

- (a) Coordinating publication of a notice of the Chapter 11 Proceedings and the CCAA Recognition Proceedings in The Globe and Mail, National Edition, as soon as practicable, once a week for two consecutive weeks, in accordance with section 53(b) of the CCAA and the proposed Supplemental Order;
- (b) Establishing a website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/Search-Insolvencies.aspx> under "Xinergy Ltd." to make available copies of the Orders granted in the CCAA Recognition Proceedings as well as other relevant motion materials and reports;
- (c) Responding to any creditor inquiries received regarding the Chapter 11 Proceedings or CCAA Recognition Proceedings;
- (d) Providing such assistance to the Foreign Representative in the performance of its duties as may reasonably be requested; and,
- (e) Providing the Court with periodic reports, at least once every six months, on the status of the CCAA Recognition Proceedings and the Chapter 11 Proceedings, which reports may include information relevant to the property and business of Xinergy or this proceeding.

DELOITTE'S QUALIFICATIONS TO ACT AS INFORMATION OFFICER

53. Deloitte has significant experience in connection with recognition proceedings under the CCAA, including but not limited to acting as information officer in the CCAA recognition proceedings of TerreStar Networks Inc., and Compania Mexicana De Aviacion.

54. Adam Bryk and Paul Casey, who are responsible for this matter, are trustees within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

DELOITTE'S CONSENT TO ACT

55. Deloitte consents to act as Information Officer should this Court grant the requested Supplemental Order.

CONCLUSION

56. Deloitte believes the terms of the Initial Recognition Order relating to its role as Information Officer appear to be reasonable, and consistent with the terms of appointments of information officers in other recognition proceedings under the CCAA.

57. Based on the information provided in this Preliminary Report, the proposed Information Officer believes the relief requested by Xinery in the Initial Recognition Order and Supplemental Order appears to be reasonable.

58. **ALL OF WHICH IS RESPECTFULLY SUBMITTED** at Toronto, Ontario this 21st day of April, 2015.

DELOITTE RESTRUCTURING INC., solely
in its capacity as the Proposed Information Officer of
Xinery Ltd. and not in its personal or corporate capacity

Per:

Adam Bryk

A handwritten signature in black ink, appearing to read 'Adam', is written over a horizontal line.

APPENDIX A

Listing of the Chapter 11 Debtors

Chapter 11 Debtors

1. Xinerger Ltd.
2. Xinerger Corp.
3. Xinerger Finance (US), Inc.
4. Pinnacle Insurance Group LLC
5. Xinerger of West Virginia, Inc.
6. Xinerger Straight Creek, Inc.
7. Xinerger Sales, Inc.
8. Xinerger Land, Inc.
9. Middle Fork Mining, Inc.
10. Big Run Mining, Inc.
11. Xinerger of Virginia, Inc.
12. South Fork Coal Company, LLC
13. Sewell Mountain Coal Co., LLC
14. Whitewater Contracting, LLC
15. Whitewater Resources, LLC
16. Shenandoah Energy, LLC
17. High MAF, LLC
18. Wise Loading Services, LLC
19. Strata Fuels, LLC
20. True Energy, LLC
21. Raven Crest Mining, LLC
22. Brier Creek Coal Company, LLC
23. Bull Creek Processing Company, LLC
24. Raven Crest Minerals, LLC
25. Raven Crest Leasing, LLC
26. Raven Crest Contracting, LLC

APPENDIX B

**Listing of all Orders issued in the Chapter 11 Proceedings
As at April 20, 2015**

Listing of all Orders issued in the Chapter 11 Proceedings as at April 20, 2015
(excluding Orders Granting Motion to Appear)

FILING DATE	DESCRIPTION
April 7, 2015	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)
April 7, 2015	ORDER AUTHORIZING XINERGY LTD. TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505
April 7, 2015	INTERIM TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
April 8, 2015	ORDER DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
April 8, 2015	ORDER SETTING AN EXPEDITED HEARING ON "FIRST DAY MOTIONS" AND RELATED RELIEF
April 8, 2015	ORDER APPROVING THE FORM AND MANNER OF NOTICE OF COMMENCEMENT OF THE CHAPTER 11 CASES
April 8, 2015	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
April 8, 2015	ORDER (I) EXTENDING THE TIME TO FILE SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS AND (II) EXTENDING THE TIME TO SCHEDULE THE MEETING OF CREDITORS
April 8, 2015	INTERIM ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
April 8, 2015	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 45(b) OF THE BANKRUPTCY CODE
April 8, 2015	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
April 8, 2015	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
April 8, 2015	INTERIM ORDER 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

(continued)

FILING DATE	DESCRIPTION
April 8, 2015	INTERIM 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
April 8, 2015	INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS
April 8, 2015	INTERIM 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
April 9, 2015	ORDER AUTHORIZING THE APPOINTMENT OF AMERICAN LEGAL CLAIMS SERVICES, LLC AS CLAIMS, NOTICING AND BALLOTING AGENT

APPENDIX C

Castle Affidavit

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. Xinerdy 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 Xinerdy 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 Xinerdy's Canadian solicitors, Cassels Brock & Blackwell LLP.

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

10. Xinerdy 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, Xinerdy 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. Xinerdy 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 Xinerger, 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 Xinerger's cash position. Prior to approval by the U.S. Court of the postpetition financing (the "**DIP Financing**"), Xinerger lacked the liquidity needed to maintain operations in the near term and to sustain its current capital structure. The confluence of these factors and Xinerger's substantial debt burden has taken Xinerger 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 Xinerger 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.

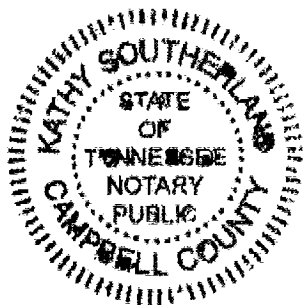
28. I make this affidavit in support of the within application and for no other or improper purpose.

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

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

Michael R. Castle

Michael R. Castle



APPENDIX D

Declaration of Michael R. Castle, CFO, Xinergy Ltd.

**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 1 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**"), Xinergy Ltd. and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**", "**Xinergy**" 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 Xinerger Ltd. will receive appropriate protection in Canada to the extent those assets may be subject to the Canadian courts' jurisdiction.

18. All of Xinerger Ltd.'s direct and indirect subsidiaries are Debtors and debtors-in-possession in these proceedings except for Xinerger 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. Xinerger's organization chart is attached to this Declaration as Exhibit A.

C. Capital Structure

19. In May 2011, Xinerger 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 Xinerger'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. Xinerger 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 Xinerger's cash position. Absent approval of additional borrowing capacity, Xinerger 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 Xinerger's substantial debt burden have taken Xinerger 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, Xinerger 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. Xinergy 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 Xinergy'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 Xinergy 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. Xinergy 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

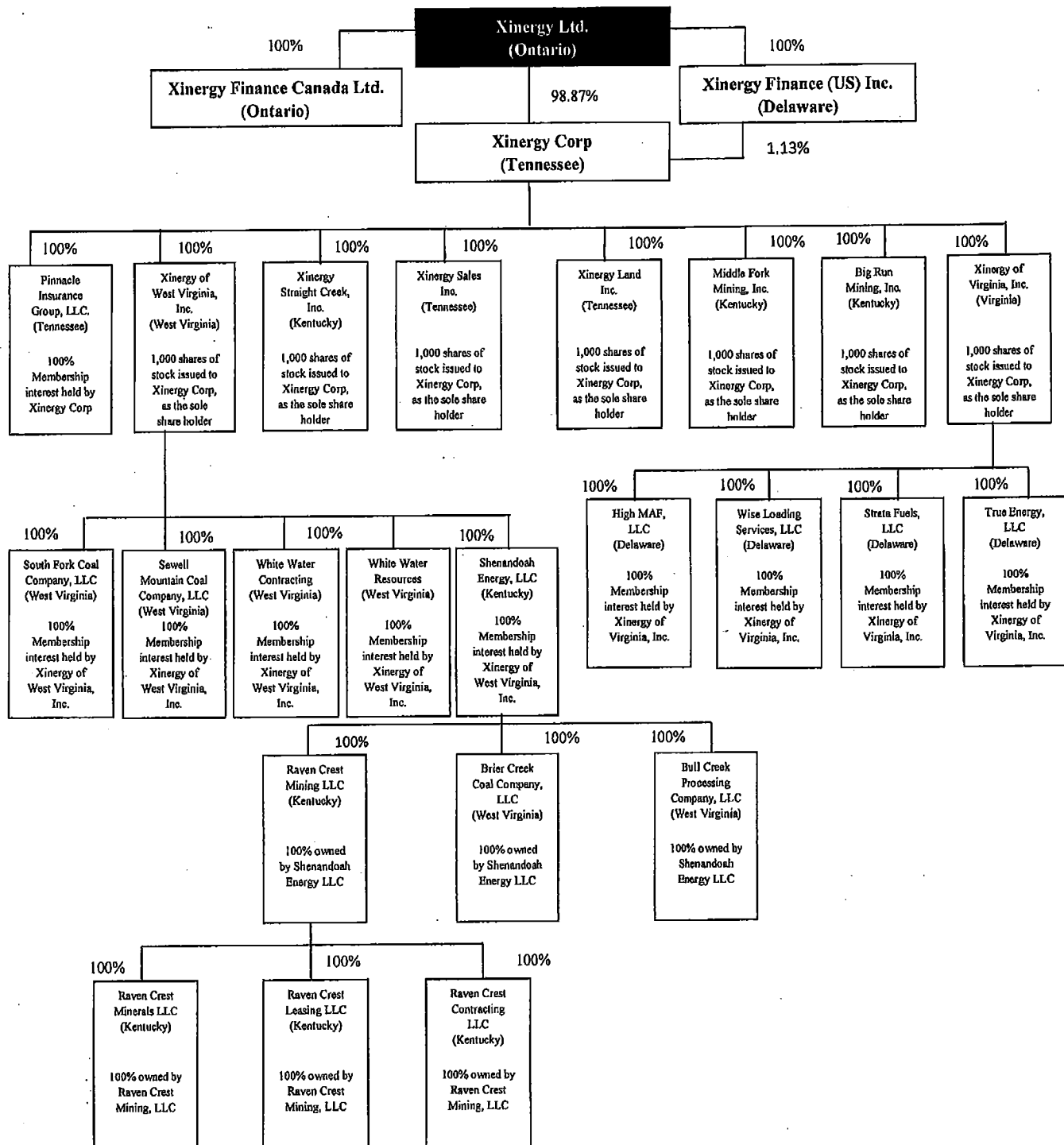
A handwritten signature in black ink, appearing to read "M R Castle", is written over a horizontal line.

Michael R. Castle
Chief Financial Officer
Xinergy Ltd.

SCHEDULE 1
(Debtor Entities)

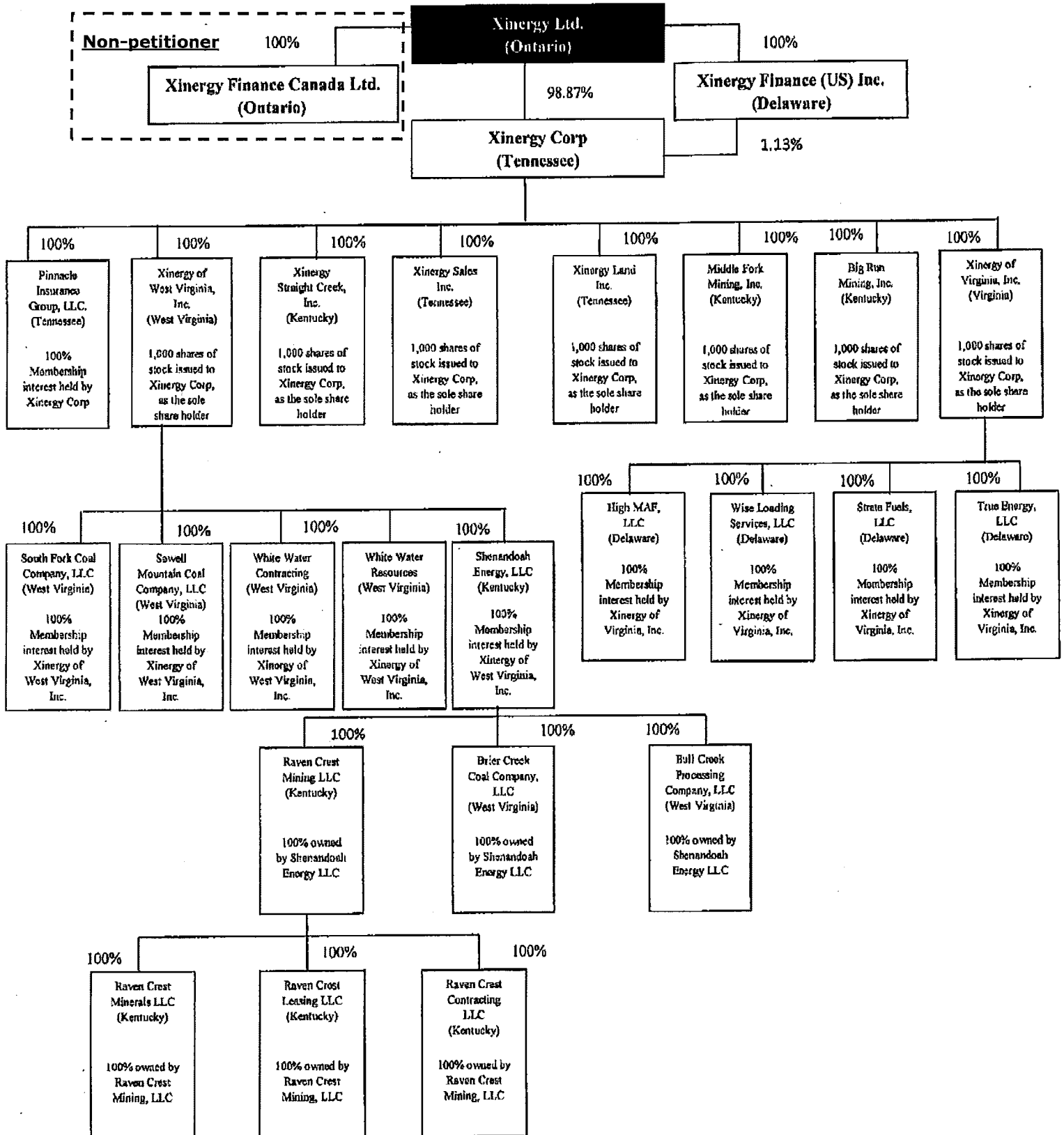
- | | |
|--|---|
| 1. Xinergy Ltd. (3697) | 14. Whitewater Contracting, LLC (7740) |
| 2. Xinergy Corp. (3865) | 15. Whitewater Resources, LLC (9929) |
| 3. Xinergy Finance (US), Inc. (5692) | 16. Shenandoah Energy, LLC (6770) |
| 4. Pinnacle Insurance Group LLC (6851) | 17. High MAF, LLC (5418) |
| 5. Xinergy of West Virginia, Inc. (2401) | 18. Wise Loading Services, LLC (7154) |
| 6. Xinergy Straight Creek, Inc. (0071) | 19. Strata Fuels, LLC (1559) |
| 7. Xinergy Sales, Inc. (8180) | 20. True Energy, LLC (2894) |
| 8. Xinergy 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. Xinergy 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



APPENDIX E

Organizational Chart



APPENDIX F

The Wildeboer Letter

WILDEBOER
— wildlaw.ca
DELLELCE LLP

DIRECT LINE: 416 361-4779

e-mail: spatel@wildlaw.ca

April 16, 2015

VIA COURIER

Xinergy Ltd.
c/o Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Each of the Directors of Xinergy Ltd. (the "Corporation")

Dear Sirs/Mesdames:

Re: Requisition of Meeting of Shareholders of the Corporation

We are counsel to Jon Nix (the "**Requisitioner**") in connection with the above noted matter. Further to recent discussions and correspondence among the Requisitioner and Wildeboer Dellelce LLP on the one hand, and the Corporation and its legal counsel on the other hand, please find enclosed a requisition (the "**Requisition**") pursuant to Section 105 of the *Business Corporations Act*, R.S.O. 1999, c. B.16 (the "**OBCA**") requisitioning the directors of the Corporation to call a meeting of the shareholders of the Corporation for the purposes set out in the Requisition (the "**Special Meeting**"). The Requisition is hereby delivered to the Corporation pursuant to Subsection 105(2) of the OBCA.

As you know, the Requisitioner holds not less than 5% of the issued shares of the Corporation that carry the right to vote at the Special Meeting. We confirm on behalf of the Requisitioner that if the Board of Directors of the Corporation determines that it is in the best interests of the Corporation to combine the business set out in the Requisition with the Corporation's annual general meeting to be held no later than June 30, 2015 (the "**Meeting Deadline**") as required by the OBCA, the Requisitioner does not intend to oppose such combination so long as such combined meeting is held prior to the Meeting Deadline.

A brief biography of each of the proposed nominees for election as a director of the Corporation as set in the Requisition (other than current directors of the Corporation) has previously been sent to John McIlvery, the Corporation's external legal counsel. The Requisitioner and the newly proposed nominees will work with the Corporation to ensure that the information in respect of the newly proposed nominees that is required to be included in the management information circular to be prepared and mailed in connection with the Special Meeting (or a combined meeting, if applicable) is provided to the Corporation in a timely manner.

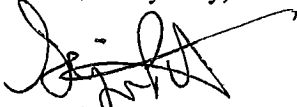
Please confirm to the undersigned by no later than **5:00 p.m. (ET) on Monday, April 20, 2015** (the "**Response Deadline**") whether the Corporation intends to combine the business set out in the Requisition with the Corporation's annual general meeting to be held on or before the Meeting Deadline or, if not, the date on which the Corporation intends to hold the Special Meeting. As you know, the Special Meeting must be called within 21 days following the Corporation's receipt of the Requisition. If the Corporation



determines not to combine the business set out in the Requisition with the Corporation's upcoming annual general meeting, or if the Corporation does not intend to hold the Special Meeting in a timeframe that is acceptable to the Requisitioner, or if the Corporation fails to respond to this letter by the Response Deadline, the Requisitioner intends to exercise all his rights under the OBCA to ensure that the Special Meeting is held in a timely manner including, without limitation, making application to the Superior Court of Justice for an order that the Special Meeting be held.

We look forward to the Corporation's timely response.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Sanjeev Patel', with a long horizontal flourish extending to the right.

Sanjeev Patel
Enclosure

cc: Jon Nix (via email only)
John McIlvery (via email only)
Rory Cattnach (via email only)
Bernie Mason (via email only)

APPENDIX G

The Requisition

**REQUISITION OF MEETING OF THE
SHAREHOLDERS OF XINERGY LTD.**

TO: XINERGY LTD. (the "Corporation")
AND TO: EACH OF THE DIRECTORS OF THE CORPORATION

The undersigned, being a holder of not less than 5% (five percent) of the issued shares of the Corporation that carry the right to vote at the meeting of shareholders sought to be held pursuant to this requisition, hereby requisitions the directors of the Corporation to call a meeting of shareholders of the Corporation (the "Special Meeting") for the following purposes:

- (a) to consider and, if deemed advisable, to fix the number of directors to be elected at the Special Meeting at four (4);
- (b) to consider and, if deemed advisable, pass an ordinary resolution to remove Todd Q. Swanson as a director of the Corporation;
- (c) to consider and, if deemed advisable, pass an ordinary resolution to remove Joseph Groia as a director of the Corporation;
- (d) to consider and, if deemed advisable, pass an ordinary resolution to remove Mark Holliday as a director of the Corporation;
- (e) to elect Jeffrey A. Wilson as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;
- (f) to elect Debra Powers as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until her successor is duly elected or appointed;
- (g) to elect Robert James Metcalfe as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed;
- (h) to elect Gregory L. "Bernie" Mason as a director of the Corporation to hold office until the close of the next annual meeting of shareholders or until his successor is duly elected or appointed; and
- (i) to consider and, if deemed advisable, pass a special resolution empowering the board of directors of the Corporation to determine from time to time the number of directors within the minimum and maximum numbers provided in the articles of the Corporation.

This requisition is made pursuant to Section 103 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

Dated this 16th day of April, 2015.


Witness Charles W. Kite, J.E. Jim Nix

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)

PRELIMINARY REPORT OF THE PROPOSED
INFORMATION OFFICER
April 21, 2015

BENNETT JONES LLP
3400 One First Canadian Place
Toronto, ON M5X 1A4
Fax: (416) 863-1716

S. Richard Orzy (LSUC#23181I)
Tel: (416) 777-5737

Sean H. Zweig (LSUC#57307I)
Tel: (416) 777-6254

Counsel to Deloitte Restructuring Inc., the Proposed Information
Officer