

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

---

**THIRD REPORT OF THE INFORMATION OFFICER  
DELOITTE RESTRUCTURING INC.  
OCTOBER 21, 2015**

---

## INTRODUCTION

1. On April 6, 2015 (the "**Petition Date**"), Xinerger Ltd., which is incorporated pursuant to the laws of the Province of Ontario ("**Xinerger**" or the "**Applicant**"), and 25 subsidiaries of Xinerger incorporated in the United States (the "**U.S. Subsidiaries**" and together with Xinerger, 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. Xinerger has no Canadian operations or Canadian employees. Xinerger's only nexus to Canada is that it was incorporated pursuant to the laws of the Province of Ontario, was listed on the Toronto Stock Exchange (the "**TSX**") until it was de-listed on May 12, 2015, and has one bank account and two creditors domiciled in Canada that have filed proofs of claim. A third Canadian creditor, Cassels Brock & Blackwell LLP, has filed a claim against Xinerger Corp. as discussed further below. Xinerger, as the ultimate parent of the U.S. Subsidiaries, determined that recognition of the Chapter 11 Proceedings in Canada was necessary so that, among other things, certain assets of Xinerger, including net operating loss carryforwards, 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 Xinerger 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.
5. On April 14, 2015, Xinerger, as the proposed Foreign Representative for itself only (and not the other Chapter 11 Debtors as discussed in the Preliminary Report of the Proposed Information Officer (the "**Preliminary Report**")), 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) Declaring that the Applicant is the "foreign representative" as such term is defined in section 45 of the CCAA;
- (ii) Declaring that the centre of main interests (the “**COMI**”) for Xinery is the United States, and declaring that the Chapter 11 Proceedings of Xinery Ltd. is recognized as a “foreign main proceeding” as such term is defined in section 45 of the CCAA;
- (iii) Staying, until further Court order, all actions and proceedings against Xinery in accordance with section 48 of the CCAA; and,
- (iv) Prohibiting Xinery 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 to certain orders of the U.S. Court made in the Chapter 11 Proceedings;
- (ii) Appointing Deloitte Restructuring Inc. (“**Deloitte**”) as the Information Officer in respect of this proceeding (the “**Information Officer**”);
- (iii) Granting the Information Officer and its counsel a super-priority first-ranking charge on the assets of Xinery 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**”); and,
- (iv) Granting a super-priority second-ranking charge (subordinate only to the Administration Charge) in favour of the post petition lender (the “**DIP Lender**”) under the post petition credit facility (the “**DIP Credit Facility**”) approved by the U.S. Court pursuant to the Interim DIP Facility Order (as defined in the Preliminary Report).

6. On April 23, 2015, the Court granted the relief requested and issued the Initial Recognition Order and the Supplemental Order.

7. On May 13, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable May 21, 2015 pursuant to the CCAA for:

(a) An order pursuant to section 49 of the CCAA, *inter alia*, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court made in the Chapter 11 Proceedings:

(i) Final 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 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 (the “**Final DIP Order**”);

(ii) Final 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 “**Final Cash Management Order**”); and,

(iii) Final Trading Order Establishing Notification Procedures and Approving Restrictions On Certain Transfers Of Equity Interests In the Debtors’ Estates (the “**Final NOL Order**”).

The First Report of the Information Officer dated May 19, 2015 (the “**First Report**”) reported on the Foreign Representative’s motion returnable May 21, 2015.

8. Beginning on May 14, 2015, Jon Nix (“**Mr. Nix**”), a shareholder of Xinery, filed materials seeking certain relief. Those materials and the related Order of the Court are described below.

9. On May 21, 2015, the Court granted an order: i) recognizing the Final DIP Order, the Final Cash Management Order, and the Final NOL Order in Canada; ii) approving the Preliminary Report and the First Report; and iii) approving the activities of the Information Officer as outlined in the Preliminary Report and the First Report.

10. On June 11, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable June 18, 2015 for:

(a) An order pursuant to section 49 of the CCAA, *inter alia*, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court made in respect of the Chapter 11 Proceedings:

- (i) Modified Final 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 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 262, 363, and 364 (the “**Modified Final DIP Order**”);
- (ii) Stipulated Order Staying Adversary Proceeding (the “**Nix Stipulated Order**”); and
- (iii) Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims, and Proofs of Interest (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief (the “**Bar Date Order**”).

The Second Report of the Information Officer dated June 15, 2015 (the “**Second Report**”) reported on the Foreign Representative’s motion returnable June 18, 2015.

- 11. On June 18, 2015, the Court granted an order (the “**June 18 Order**”): i) recognizing the Modified Final DIP Order, the Nix Stipulated Order, and the Bar Date Order; ii) adjourning a motion for certain other relief sought by Nix; and iii) approving the Second Report and the activities of the Information Officer as outlined in the Second Report.
- 12. On September 16, 2015, the Chapter 11 Debtors filed with the U.S. Court a Joint Chapter 11 Plan of Xinery Ltd. and its Subsidiary Debtors and Debtors in Possession (the “**Plan**”), a Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors in Possession (the “**Disclosure Statement**”) and a motion to approve the disclosure statement and related solicitation procedures (the “**Disclosure Statement Motion**”).
- 13. This report - the Third Report of the Information Officer (the “**Third Report**”, and collectively with the Preliminary Report, the First Report and the Second Report, the “**Reports of the Information Officer**”) - will report to the Court on the Foreign Representative’s motion to the Court returnable October 26, 2015.

14. Since the date of the Second Report, the U.S. Court entered further orders of which the Applicant seeks to have two recognized as part of the CCAA Recognition Proceeding. These two orders 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 October 19, 2015.
15. On October 20, 2015, the Foreign Representative, via a notice of motion, made a motion to the Court returnable October 26, 2015 for, among other things:
- (a) An order pursuant to section 49 of the CCAA, *inter alia*, recognizing in Canada and giving full force and effect to the following orders of the U.S. Court in respect of the Chapter 11 Proceedings;
    - (i) Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing under the DIP Credit Agreement and Granted Related Relief (the “**Supplemental DIP Order**”) granted on August 27, 2015 on an interim basis; and
    - (ii) Order (I) Approving The Disclosure Statement; (II) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, Including (A) Approving Form And Manner Of Solicitation Procedures, (B) Approving Form And Notice Of The Confirmation Hearing, (C) Establishing Record Date And Approving Procedures For Distribution Of Solicitation Packages, (D) Approving Forms Of Ballots, (E) Establishing Deadline For Receipt Of Ballots And (F) Approving Procedures For Vote Tabulations; (III) Establishing Deadline And Procedures For Filing Objections (A) To Confirmation Of The Plan, And (B) To Proposed Cure Amounts; And (IV) Granting Related Relief (the “**Disclosure Statement Order**”) granted on October 16, 2015.
16. Other than this proceeding (the “**CCAA Recognition Proceeding**”), there are no other foreign proceedings in respect of Xinergy or any of the other Chapter 11 Debtors.
17. Motion materials and other documentation filed in the CCAA Recognition Proceeding, including the Reports of the Information Officer, and a website link for the materials filed in the Chapter 11 Proceedings, are available on the Information Officer’s website at <http://www.insolvencies.deloitte.ca/xinergy>.

## TERMS OF REFERENCE

18. In preparing this Third Report of the Information Officer (the “**Third Report**”), the Information Officer has been provided with, and has relied upon, unaudited financial information, declarations and affidavits of an executive officer of Xinerger, and financial information prepared by Xinerger, and public information available filed as part of the Chapter 11 Proceedings (collectively, the “**Information**”). The Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided; however, the Information Officer 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, the Information Officer expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
19. Any future oriented financial information referred to in this Third 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.
20. The Information Officer 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 the Information Officer.
21. This Third Report should be read in conjunction with the Preliminary Report, the First Report and the Second Report, and the Affidavit of Michael R. Castle sworn October 20, 2015 (the “**Fourth Castle Affidavit**”), which was included as a part of Xinerger’s Motion Record for the motion returnable on October 26, 2015, and which can also be found (without appendices) attached as **Appendix C** for reference.
22. All references to currency in this report are in United States dollars unless otherwise noted.
23. Defined terms are as defined in the Reports of the Information Officer.

## **PURPOSE OF THIRD REPORT**

24. The purpose of this Third Report is to assist the Court in considering the Foreign Representative's request for recognition of certain orders of the U.S. Court made in the Chapter 11 Proceedings, and to provide the Court with certain pertinent background and other information in order to do so, including the following:

- (a) Update on certain matters, motions, and orders issued in relation to the Chapter 11 Proceedings including, but not limited to, the Supplemental DIP Order and the Disclosure Statement Order;
- (b) Update on the Nix Stipulated Order and other matters involving Mr. Nix;
- (c) Information related to Xinergy's activities in Canada, and in particular, the Canadian creditors;
- (d) Summary of activities of the Information Officer since the Second Report; and
- (e) Conclusion.

## **THE CHAPTER 11 PROCEEDINGS**

25. As set out in the Fourth Castle Affidavit, the U.S. Court heard certain additional motions that resulted in the issuance of the Supplemental DIP Order and the Disclosure Statement Order. As discussed further below, the Supplemental DIP Order was issued on an interim basis on August 27, 2015 and became a final order on September 21, 2015. The Disclosure Statement Order was issued on October 16, 2015. Xinergy is seeking recognition of these orders in Canada in the CCAA Recognition Proceeding.

### Supplemental DIP Order

26. As mentioned above and detailed in the Second Report, on June 18, 2015, as a result of negotiations between the official committee of unsecured creditors in the Chapter 11 Proceedings (the "**UCC**"), the Chapter 11 Debtors and the lenders under the post-filing credit agreement (the "**DIP Lenders**"), the Court granted the Modified DIP Order which altered the Final DIP Order by:

- (a) Adjusting the challenge period and related provisions to address the appointment of the UCC and to allow the UCC the opportunity to challenge the validity, enforceability, priority, extent or amount of the Prepetition Obligations (as defined in the Modified Final DIP Order), which amendments can be found in paragraph 25(b) of the Modified Final DIP Order;
  - (b) Adjusting the carve-out provisions for the investigation regarding liens granted pursuant to the Prepetition Documents (as defined in the Modified Final DIP Order) during the challenge period from \$25,000 to \$50,000, which amendments can be found in paragraph 26 of the Modified Final DIP Order;
  - (c) Requiring that the UCC be provided with copies of any supplemental budgets prepared by the Chapter 11 Debtors; and
  - (d) Adding certain clarifying language regarding the Chapter 11 Debtors adequate protection obligations in respect of the financial advisor to the prepetition lenders.
27. Pursuant to the DIP Credit Facility, Xinergy Corp. borrowed, and the other Chapter 11 Debtors guaranteed, US\$40,000,000. The DIP Credit Facility also contains an accordion feature that permits the Chapter 11 Debtors to draw up to an additional US\$10,000,000 (the “**Incremental Loans**”) upon the satisfaction or waiver of certain conditions and approval by the U.S. Court.
28. On August 25, 2015, after reviewing their cash requirements and determining an immediate need for an additional US\$9 million of funding (of which US\$5 million would be borrowed on an interim basis and US\$2 million would be earmarked for capital expenditures), the Chapter 11 Debtors filed a motion (the “**Amendment Motion**”) with the U.S. Court, *inter alia*, seeking to amend the DIP Credit Facility and to obtain access to the Incremental Loans.

29. The Amendment Motion also sought to revise the milestone dates as set out in the DIP Credit Facility. The following table sets out the original date as provided for in the DIP Credit Facility and the revised dates as provided for in the Amendment Motion:

Milestones	Original date	Revised date
The date by which the Chapter 11 Debtors must file a reorganization plan acceptable to the DIP Lenders, along with a disclosure statement and plan solicitation procedures	June 20, 2015	September 11, 2015
The date by which the U.S. Court must enter an order approving the disclosure statement and plan solicitation procedure	August 9, 2015	October 16, 2015
The date by which the U.S. Court must enter an order confirming the Chapter 11 reorganization plan	October 8, 2015	December 1, 2015
The date by which the reorganization plan must be implemented	November 7, 2015	December 7, 2015

30. In addition, the Amendment Motion sought to create a new event of default if the Chapter 11 Debtors terminate the agreement with Wilson Energy Advisors, LLC, an operational consultant to the Chapter 11 Debtors.

31. The Amendment Motion was brought on an expedited basis and was heard by the U.S. Court on August 27, 2015. Given that there was no opposition to the Amendment Motion, but due to the lack of sufficient notice to interested parties, the U.S. Court granted the Supplemental DIP Order on an interim basis which, subject to no objections being filed by September 19, 2015, would become a final order upon the filing of a certificate of no objection with the U.S. Court. As no objections were filed, on September 21, 2015 the Chapter 11 Debtors filed a certificate of no objection making the Supplemental DIP Order a final order. A copy of the Supplemental DIP Order is attached hereto at **Appendix D**.

32. The Foreign Representative is seeking recognition of the Supplemental DIP Order by the Court and has advised the Information Officer that it believes recognition is appropriate to further the coordination of the proceedings in the United States and Canada. The Foreign Representative further advises that the funds provided to the Chapter 11 Debtors thereunder are necessary for the protection of Xinergy's property and to effect a successful reorganization. Given that the Court has approved prior financing orders and agreements,

the Foreign Representative is of the view that it is appropriate for the Court to recognize and enforce the most current version of the documents in the form of the Supplemental DIP Order.

### The Disclosure Statement Order

33. On September 16, 2015, the Chapter 11 Debtors filed with the U.S. Court the Plan, the Disclosure Statement and the Disclosure Statement Motion. Capitalized terms in this section not herein defined are as defined in the Plan or the Disclosure Statement.
34. The Information Officer understands that two objections were filed with the U.S. Court concerning the Disclosure Statement. The first objection was filed by Lexon Insurance Co. and Bond Safeguard Insurance Company (“**Lexon**”) who had issued various bonds prior to the Petition Date to secure the Chapter 11 Debtors performance of certain obligations. Lexon alleged that the Plan did not adequately address the bonding requirements that would be associated with environmental responsibilities of the reorganized entity.
35. The second objection to the Disclosure Statement was filed by Mr. Nix who alleged that: i) the Chapter 11 Debtors did not provide sufficient detail in the Disclosure Statement about the third party release and exculpation provisions in the Plan, including a lack of explanation regarding the propriety of such provisions; ii) the Chapter 11 Debtors did not provide a plausible legal basis for the third party release and exculpation provisions; iii) the third party releases were inconsistent with case law; and iv) the exculpation provision was overbroad and exceeded the scope of section 1125(e) of the Bankruptcy Code. Further, Mr. Nix claimed that the Disclosure Statement failed to provide adequate information in that it failed to disclose the projected recovery to unsecured creditors under the Plan, which information, he alleged, is vital to evaluating how far out of the money an equity holder stands.
36. On October 14, 2015, the Chapter 11 Debtors filed an amended Plan and amended Disclosure Statement which included amendments that substantially dealt with exit financing, the recognition proceedings and the treatment of various classes of claims including the general unsecured claims.
37. On October 14, 2015, the UCC filed a response to the Disclosure Statement Motion with the U.S. Court indicating their support for the Disclosure Statement Motion.

38. On October 15, 2015, the Chapter 11 Debtors submitted an Omnibus Reply to objections filed against the Disclosure Statement, including Mr. Nix's objections. In its reply, the Chapter 11 Debtors argued that the Disclosure Statement provides adequate information and that the propriety of the Plan's Third Party Releases is an issue that should be addressed at the confirmation hearing.
39. On October 15, 2015, Lexon withdrew its objection to the Disclosure Statement Motion.
40. At the hearing on October 16, 2015, the U.S. Court issued the Disclosure Statement Order approving the Disclosure Statement as containing "adequate information" as that term is defined in the Bankruptcy Code, and granted the other relief requested in the Disclosure Statement Motion. The Foreign Representative advises that the notice to non-voting parties has been amended to include an additional disclosure regarding the release provisions of the Plan. A copy of the Disclosure Statement Order is attached hereto as **Appendix E**.
41. The Plan provides for a new capital structure of the Chapter 11 Debtors with the ultimate parent company of the reorganized Chapter 11 Debtors - Xinergy Corp., or such other entity as the Chapter 11 Debtors select with the consent of the Majority Consenting Noteholders - being reorganized as New Holdco. New Holdco's equity interests will consist of New Common Stock to be issued in accordance with the Plan to holders of Allowed Claims in Class 3, the Senior Secured Note Claims (as set out below).
42. The Plan provides for exit financing on terms to be determined but may involve the conversion of the DIP Credit Facility. The Chapter 11 Debtors anticipate that the exit financing may include up to an estimated maximum principal amount of \$10,000,000 in additional financing in the form of a term loan or revolving credit facility. Details of the exit financing are to be filed in the Plan Supplement, which will be available on the Information Officer's website.
43. The Plan provides for certain releases of the Chapter 11 Debtors, certain consensual third party releases, exculpation of the Released Parties, and certain injunctions.
44. The charts below provide a summary of the treatment of claims and interests under the Plan and the estimated recoveries as set out in the Disclosure Statement:

Nature of Claim	Treatment in the Plan	Projected Recovery in the Plan
Administrative Claims	Paid in full in Cash	100%
DIP Facility Claims	Conversion to Exit Facility Loans or paid in full in cash	100%
Professional Claims	Paid in Allowed amount in Cash	100%
Priority Tax Claims	Paid in full in Cash	100%

Class	Claim or Interest	Voting Rights	Treatment under the Plan	Estimated Allowed Claims	Projected Plan Recovery
1	Priority Non-Tax Claims	Deemed to Accept	Paid in full in Cash	\$0	100%
2	Other Secured Claims	Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124	\$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	\$202,114,791	27.5% - 32.44%
4	General Unsecured Claims	Entitled to Vote	Lesser of Pro Rata share of \$200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	\$141,600,000 (\$4,500,000 - \$5,500,000 excluding Senior Secured Note Deficiency Claims)	<0.2% (which may increase to 4% in certain circumstances)
5	Intercompany Claims and Interests	Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	\$280,394,441	0%/100%
6	Interests in Xinergy Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%

45. As reported in the Preliminary Report, as at the Petition Date, Xinergy had identified only four Canadian domiciled creditors as follows: Cassels Brock & Blackwell LLP - CAD\$291,159.77, TMX Equity Transfer Services - CAD\$4,000, TSX - CAD\$16,492.02 and a Canadian Director - CAD\$1,674.67. The Foreign Representative advises that three claims were filed by Canadian domiciled creditors pursuant to Xinergy's claims process. It further advises that to the extent a creditor has not yet filed a claim in accordance with the U.S. Court approved claims procedures, such creditor will not be entitled to participate in any distributions under the Plan.

46. A listing of the claims filed by Canadian domiciled creditors is included below. The Information Officer understands that these claims are still being evaluated in the claims process and could be subject to revision or disallowance.

<b>Creditor</b>	<b>Amount of Claim Asserted in Proof of Claim (in US\$)</b>
Cassels Brock & Blackwell LLP	\$ 258,928.77
CNW Group Ltd.	24,987.62
DSA Corporate Services Inc.	7,504.37

47. The Claims Register indicates that Cassels Brock & Blackwell LLP filed its claim against Xinergy Corp. while the other two claims were filed against Xinergy Ltd.

48. The Foreign Representative advises that the confirmation hearing before the U.S. Court is scheduled for December 1, 2015 and that the motion to seek recognition by this Court of the confirmation order from the U.S. Court, if granted, is scheduled for December 2, 2015.

49. The Foreign Representative is seeking recognition of the Disclosure Statement Order to ensure that Canadian creditors and interest holders will be bound by the voting and notification procedures ensuring a consistent solicitation process in these cross-border proceedings.

View of the Information Officer

50. The Information Officer, having considered the circumstances of this case, believes that the recognition by the Court of the Supplemental DIP Order and the Disclosure Statement Order appears to be reasonable.

**UPDATE ON THE NIX STIPULATED ORDER**

51. As previously described in the Reports of the Information Officer, in a letter to Xinergy dated April 16, 2015, Wildeboer Dellelce LLP on behalf of Mr. Nix, requisitioned the directors of Xinergy (the “**Shareholder Requisition**”) to call a meeting of the shareholders to consider removing and appointing certain directors (the “**Shareholder Meeting**”).

52. The Board of Directors declined to call the Shareholder Meeting as it determined that scheduling the requested meeting would not be in the best interests of Xinergy and the other Chapter 11 Debtors.

53. On May 8, 2015, Xinergy and the other Chapter 11 Debtors filed a Complaint for Injunctive and Declaratory Relief in respect of the Shareholder Requisition (the “**Adversary Proceeding**”) in the U.S. Court seeking the following:

- (a) A declaration that the automatic stay in the Chapter 11 Proceedings prohibits Mr. Nix from calling or holding the Shareholder Meeting;
- (b) A declaration that Xinergy is not required to call the Shareholder Meeting, and if a meeting is held by Mr. Nix, it shall have no force and effect; and
- (c) An injunction enjoining Mr. Nix from taking any further action to call or hold any shareholder meeting.

54. On May 13, 2015, Mr. Nix provided notice of a special meeting of shareholders of Xinergy in the Globe and Mail.

55. On May 14, 2015, Mr. Nix served a motion as part of the CCAA Recognition Proceeding (the “**Nix Motion**”) for an order, *inter alia*:

- (a) Declaring that the stay of proceeding granted pursuant to the Initial Recognition Order does not apply to the Shareholder Meeting;
  - (b) In the alternative, declaring that the stay of proceedings in the Initial Recognition Order shall be lifted for the limited purpose of holding the Shareholder Meeting; and
  - (c) Granting certain administrative relief regarding the conduct of the Shareholder Meeting.
56. On May 19, 2015, Xinergy filed a motion with the U.S. Court seeking a preliminary injunction enjoining Mr. Nix from taking any further action to call or hold the Shareholder Meeting (the **“Preliminary Injunction Motion”**).
57. At a scheduling hearing with the Court, Justice Wilton-Siegel determined that certain issues (the **“Initial Questions”**) raised by the Nix Motion would be heard on May 28, 2015. On May 27, 2015, Mr. Nix served an amended notice of motion seeking additional relief (as amended, the **“Amended Nix Motion”**).
58. On May 29, 2015, the Court released a brief endorsement (the **“Nix Stay Order”**) finding that Mr. Nix’s actions to call the Shareholder Meeting and the related actions addressed in the Amended Nix Motion are prohibited by the stay of proceedings in the Supplemental Order.
59. The Court released the reasons for judgement pertaining to the Nix Stay Order on June 9, 2015. The Court found that the continuing actions of Nix in respect of the Shareholder Meeting and the related actions contained in the Nix Motion constituted the exercise of rights in respect of Xinergy by an individual – representing a contravention of the stay of proceedings in the Supplemental Order.
60. The Preliminary Injunction Motion was scheduled to be heard by the U.S. Court on June 9, 2015; however, after the Court issued the Nix Stay Order and following further discussion among the parties, it was determined that the best use of estate resources was to work constructively towards a plan of reorganization. As a result, the Chapter 11 Debtors and Mr. Nix agreed to a stipulated order staying the adversary proceeding in the U.S. Court and the Preliminary Injunction Motion (the **“Nix Stipulated Order”**).
61. Specifically, the Nix Stipulated Order provides for the following, *inter alia*:

- (a) The Preliminary Injunction Motion and the adversary proceeding are stayed;
  - (b) The Chapter 11 Debtors or Mr. Nix may file a statement (a “**Statement**”) with the U.S. Court advising that negotiations have reached an impasse and that the applicable party wishes the stay to be lifted;
  - (c) A timeline for the resumption of litigation upon the filing of a Statement by either the Chapter 11 Debtors or Mr. Nix;
  - (d) Mr. Nix agrees not to renew any steps to hold the Shareholder Meeting during the stay period imposed by the Nix Stipulated Order;
  - (e) The Chapter 11 Debtors may enforce the stay of proceedings granted in the CCAA Recognition Proceeding for any other shareholder that takes actions towards calling or holding a meeting of the shareholders; and
  - (f) The parties will seek an adjournment from the Court of the remaining relief set out in the Amended Nix Motion.
62. On June 18, 2015, the Court issued the June 18 Order recognizing the Nix Stipulated Order. The Court further ordered that the remaining relief unheard as set out in the Amended Nix Motion be adjourned until the earlier of:
- (a) A determination by the U.S. Court on the Preliminary Injunction Motion (as defined in the Nix Stipulated Order); and
  - (b) 21 days after the date the earliest Statement is filed.

Further, the June 18 Order provided that upon occurrence of the earlier of (a) and (b), either Xinergy or Mr. Nix may schedule a 9:30 appointment with the Court to establish a schedule for the issues to be heard as set out in the Amended Nix Motion.

63. On October 16, 2015, the U.S. Court held a status conference concerning the Adversary Proceeding. The Foreign Representative advises that at the hearing, the parties agreed to adjourn the Adversary Proceeding to December 1, 2015.

## **UPDATE ON XINERGY'S ACTIVITIES IN CANADA**

64. As noted previously in the Reports of the Information Officer, 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, was listed on the TSX until it was delisted on May 12, 2015, and has a bank account in Canada. As per the results of the claims process, three creditors domiciled in Canada have filed claims, two filed against Xinergy Ltd. and one filed against Xinergy Corp.
65. As of the date of this Third Report, neither Xinergy nor the Information Officer is aware of any additional Canadian creditors other than the creditors noted above.

## **ACTIVITIES OF THE INFORMATION OFFICER**

66. Since the date of the Second Report, the activities of the Information Officer have included the following:
- (a) Attending to various telephone discussions and corresponding with Xinergy's Canadian legal counsel and the Information Officer's legal counsel regarding the status of the matters related to the Chapter 11 Proceedings and the CCAA Recognition Proceedings;
  - (b) Reviewing materials filed to date by various parties in the Chapter 11 Proceedings and the CCAA Recognition Proceeding, including the Plan and Disclosure Statement;
  - (c) Updating and maintaining a website to make available copies of the orders granted in the CCAA Recognition Proceeding, as well as other relevant motion materials and reports;
  - (d) Responding to an enquiry from the legal counsel for Mr. Nix regarding the status of proceedings;
  - (e) Preparing for and attending at Court for the scheduled hearings pertaining to the CCAA Recognition Proceeding; and
  - (f) Preparing this Third Report and discussions with the Information Officer's legal counsel regarding same.

## CONCLUSION

Based on the information provided in this Third Report, the Information Officer believes the relief requested by Xinerger in its Notice of Motion returnable October 26, 2015 appears to be reasonable.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** at TORONTO, ONTARIO, CANADA this 21<sup>st</sup> day of October, 2015.

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

Per:

  
\_\_\_\_\_  
Adam Bryk

**APPENDIX A**  
**Listing of the Chapter 11 Debtors**

## **Chapter 11 Debtors**

1. Xinery Ltd.
2. Xinery Corp.
3. Xinery Finance (US), Inc.
4. Pinnacle Insurance Group LLC
5. Xinery of West Virginia, Inc.
6. Xinery Straight Creek, Inc.
7. Xinery Sales, Inc.
8. Xinery Land, Inc.
9. Middle Fork Mining, Inc.
10. Big Run Mining, Inc.
11. Xinery 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 October 19, 2015**

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

<b>FILING DATE</b>	<b>DESCRIPTION</b>
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

FILING DATE	DESCRIPTION
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 (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

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 8, 2015	INTERIM ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
April 9, 2015	ORDER AUTHORIZING THE APPOINTMENT OF AMERICAN LEGAL CLAIMS SERVICES, LLC AS CLAIMS, NOTICING AND BALLOTING AGENT
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE PAMELA MYLES
April 21, 2015	ORDER (PRE-HEARING) IN RELIEF FROM STAY MOTION WITH ATTACHMENTS SIGNED ON 4/21/2015 RE JANET K. WILLIAMS
April 23, 2015	ORDER GRANTING MOTION TO SHORTEN NOTICE REQUIREMENT
April 28, 2015	ORDER WITHDRAWING MOTION TO RECONSIDER

FILING DATE	DESCRIPTION
May 4, 2015	ORDER GRANTING MOTION BY SUZANNE JETT TORWBRIDGE, COUNSEL FOR WHAYNE-WALKER TO PARTICIPATE TELEPHONICALLY IN 05/05/2015 HEARING
May 5, 2015	STIPULATED PROTECTIVE ORDER
May 5, 2015	ORDER GRANTING MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST PETITION FINANCING PURSUANT TO 11 USC §§ 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 USC § 363 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 USC §§ 361, 362, 363, AND 364
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF 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. LIMITED OBJECTION WITHDRAWN
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING CERTAIN NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW SURETY BOND PROGRAM AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

FILING DATE	DESCRIPTION
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF 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
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF 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
May 8, 2015	FINAL ORDER GRANTING MOTION FOR ENTRY OF 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
May 8, 2015	FINAL ORDER APPROVING/DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER APPROVING PROCEDURES FOR THE RETENTION AND COMPENSATION OF CERTAIN ORDINARY COURSE PROFESSIONALS OF THE DEBTORS, RETROACTIVE TO THE PETITION DATE

FILING DATE	DESCRIPTION
May 8, 2015	ORDER GRANTING MOTION FOR ENTRY OF ORDER ESTABLISHING PROCEDURES FOR INTERIM MONTHLY COMPENSATION AND REIMBURSEMENT
May 8, 2015	ORDER GRANTING APPLICATION TO EMPLOY HUNTON & WILLIAMS LLP AS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE
May 8, 2015	ORDER GRANTING/AUTHORIZING THE EMPLOYMENT AND RETENTION OF CASSELS BROCK & BLACKWELL LLP AS SPECIAL COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8,2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF MICHAEL WILSON PLC AS SPECIAL CONFLICTS COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	ORDER GRANTING/AUTHORIZING EMPLOYMENT AND RETENTION OF STUBBS ALDERTON & MARKILES, LLP AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE. LIMITED OBJECTION WITHDRAWN.
May 8, 2015	FINAL TRADING ORDER ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF EQUITY INTERESTS IN THE DEBTORS' ESTATES
May 11, 2015	APPOINTMENT OF UNSECURED CREDITORS COMMITTEE

FILING DATE	DESCRIPTION
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING
May 12, 2015	ORDER APPROVING MOTION TO SHORTEN NOTICE AND ORDER CONTINUING MOTION FOR RELIEF FROM STAY FOR FINAL HEARING SIGNED ON 5/12/2015
May 12, 2015	ORDER GRANTING APPLICATION TO EMPLOY AND RETAIN SEAPORT GLOBAL SECURITIES AS FINANCIAL ADVISORS AND INVESTMENT BANKERS TO DEBTORS AND DEBTORS IN POSSESSION AS OF THE PETITION DATE
June 2, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, THE DEBTORS' MOTION FOR AN ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST, (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF; AND (B) GRANTING RELATED RELIEF
June 3, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, THE DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO IMPLEMENT NON-INSIDER KEY EMPLOYEE RETENTION PLAN; AND (B) GRANTING RELATED RELIEF
June 4, 2015	ORDER DENYING MOTION TO APPOINT AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
June 4, 2015	ORDER (A) EXPEDITING CONSIDERATION OF, AND SHORTENING THE NOTICE PERIOD APPLICABLE TO, THE MOTION TO MODIFY THE FINAL DIP ORDER; AND (B) GRANTING RELATED RELIEF

FILING DATE	DESCRIPTION
June 5, 2015	MODIFIED FINAL 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 AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364
June 8, 2015	ORDER AUTHORIZING THE EMPLOYMENT OF MCGUIREWOODS AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
June 8, 2015	ORDER PURSUANT TO SECTION 1103(a) OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF WHITEFORD, TAYLOR & PRESTON LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
June 8, 2015	ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM, INCLUDING SECTION 503(b)(9) CLAIMS, AND PROOFS OF INTEREST, (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (III) PROVIDING CERTAIN SUPPLEMENTAL RELIEF
June 8, 2015	ORDER AUTHORIZING DEBTORS TO IMPLEMENT NON-INSIDER KEY EMPLOYEE RETENTION PLAN
June 11, 2015	ORDER GRANTING IN PART MOTIONS FOR RELIEF FROM STAY WITH CONDITIONS AND GRANTING MOTION FOR RELIEF FROM STAY
July 6, 2015	ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF XINERGY, LTD, ET AL., TO RETAIN AND EMPLOY GADDY ENGINEERING COMPANY AS MINING CONSULTANTS
July 13, 2015	ORDER GRANTING/AUTHORIZING DEBTORS TO (A) EMPLOY AND RETAIN ZOLFO COOPER MANAGEMENT, LLC TO PROVIDE INTERIM MANAGEMENT SERVICES AND (B) DESIGNATE SHERMAN EDMISTON

	AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS NUNC PRO TUNC TO JUNE 15, 2015
July 31, 2015	AGREED ORDER ADJOURNING 9019 MOTION TO OMNIBUS HEARING SET FOR SEPTEMBER 1, 2015, AT 10:00 AM (PREVAILING EASTERN TIME)
August 27, 2015	SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING UNDER TH DIP CREDIT AGREEMENT AND GRANTED RELATED RELIEF
August 27, 2015	ORDER AUTHORIZING THE DEBTORS TO (A) EMPLOY AND RETAIN WILSON ENERGY ADVISORS, LLC TO PROVIDE INTERIM MANAGEMENT SERVICES AND (B) DESIGNATE JEFFERY A. WILSON AS SENIOR VICE PRESIDENT-OPERATIONS FOR THE DEBTORS EFFECTIVE AS OF AUGUST 13, 2015
August 28, 2015	ORDER EXPEDITING CONSIDERATION AND SHORTENING THE APPLICABLE NOTICE PERIOD
September 1, 2015	ORDER AUTHORIZING THE DEBTORS AND DEBTORS-IN POSSESSION TO ENTER INTO PREMIUM FINANCE AGREEMENT
September 2, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF HUNTON & WILLIAMS LLP AS COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015
September 10, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF CASSELS BROCK & BLACKWELL LLP AS CANADIAN COUNSEL FOR THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015
September	ORDER GRANTING FIRST INTERIM APPLICATION OF SEAPORT

10, 2015	GLOBAL SECURITIES LLC AS FINANCIAL ADVISORS AND INVESTMENT BANKERS FOR DEBTORS AND DEBTORS-IN-POSSESSION FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 6, 2015 THROUGH JUNE 30, 2015
September 10, 2015	ORDER APPROVING THE MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER EXTENDING DEBTORS' EXCLUSIVE PERIODS WITHIN WHICH TO FILE A PLAN AND SOLICIT VOTES THEREON
September 10, 2015	ORDER APPROVING THE MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
September 10, 2015	ORDER PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY CODE AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING REJECTION OF AN EMPLOYMENT AGREEMENT
September 14, 2015	AGREED ORDER ADJOURNING 9019 MOTION TO OMNIBUS HEARING SET FOR OCTOBER 6, 2015, AT 11:00 A.M. (PREVAILING EASTERN TIME)
September 17, 2015	ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT
September 17, 2015	AMENDED ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT
October 5, 2015	ORDER PURSUANT TO SECTIONS 105(a) AND 365(a) OF THE BANKRUPTCY CODE AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING REJECTION OF EXCLUSIVE COAL SALES SERVICES AGREEMENT

October 5, 2015	ORDER APPROVING SETTLEMENT OF RIGHTS TO ESCROWED FUNDS
October 5, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF WHITEFORD TAYLOR & PRESTON LLP AS COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD MAY 14, 2015 THROUGH JUNE 30, 2015
October 5, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF GADDY ENGINEERING AS MINING CONSULTANT FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE QUARTERLY PERIOD ENDING JUNE 30, 2015
October 6, 2015	ORDER GRANTING FIRST INTERIM APPLICATION OF MCGUIREWOODS LLP AS CO-COUNSEL FOR OFFICAL COMMITTEE OF UNSECURED CREDITORS FOR ALLOWANCE OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD MAY 11, 2015 THROUGH JUNE 30, 2015
October 16, 2015	ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM AND MANNER OF SOLICITATION PROCEDURES, (B) APPROVING FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOTS, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (III) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS (A) TO CONFIRMATION OF THE PLAN, AND (B) TO PROPOSED CURE AMOUNTS; AND (IV) GRANTING RELATED RELIEF

**APPENDIX C**  
**Fourth 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 OCTOBER 20, 2015)**

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

1. I am the Chief Financial Officer of Xinergy Ltd. (the "**Applicant**" or "**XInergy**"). 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. This Affidavit is filed in support of the Applicant's motion for an order, *inter alia*, recognizing in Canada and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "**CCAA**") to certain orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the Western District of Virginia (the "**US Bankruptcy Court**") made in respect of the case (the "**Chapter 11 Case**") commenced by Xinergy in the US Bankruptcy Court

under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

### Corporate Overview

3. Xinerger, a public Ontario corporation, is the ultimate parent of 26 subsidiaries, 25 of which are incorporated in the United States.

4. Xinerger and the 25 US subsidiaries (collectively, the "**Chapter 11 Debtors**") are a US 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.

### Background on Proceedings

5. On April 6, 2015, the Chapter 11 Debtors filed voluntary petitions for relief under the Bankruptcy Code to commence proceedings in the United States (the "**Chapter 11 Cases**").

6. On April 7, 2015, Xinerger obtained an order from the US Bankruptcy Court authorizing it to act as the foreign representative of the Chapter 11 Debtors, pursuant to section 1505 of the Bankruptcy Code, in any judicial or other proceeding, including these proceedings.

7. In order to ensure the protection of Xinerger's Canadian assets and potential tax attributes related to the transfers of Xinerger's common shares, and to ensure that this Court and the Canadian stakeholders are kept properly informed of Xinerger's Chapter 11 Case, pursuant to its appointment as foreign representative, Xinerger sought and obtained from this Court on April 23, 2015, recognition of its Chapter 11 Case as a "foreign main proceeding" under the CCAA. A copy of the Initial Recognition Order of April 23, 2015 is attached hereto as **Exhibit "A"**. A copy of the reasons of Justice Newbould of April 24, 2015 is attached hereto as **Exhibit "B"**.

8. On April 23, 2015, this Court also granted a second order, which, among other things, (i) appointed Deloitte Restructuring Inc. as Information Officer, (ii) recognized the order of the US Bankruptcy Court appointing Xinergy as the foreign representative, and (iii) recognized certain interim orders of the US Bankruptcy Court (the "**Supplemental Order**"). A copy of the Supplemental Order (without schedules) of April 23, 2015 is attached hereto at **Exhibit "C"**.

9. On May 21, 2015, this Court granted an order (the "**May 21 Order**") recognizing the final forms of certain orders that had previously been recognized pursuant to the Supplemental Order. One of the orders recognized in the May 21 Order was the *Final 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 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Final DIP Order**"). A copy of the May 21 Order (without schedules) is attached hereto at **Exhibit "D"**.

10. On June 18, 2015, this Court granted an order (the "**June 18 Order**") recognizing certain additional orders granted by the US Bankruptcy Court. One of the orders recognized by the June 18 Order was the *Modified Final Order (I) Authorizing Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(9), 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 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* (the "**Modified DIP Order**"). The Modified DIP Order reflected certain consensual changes to the Order that provided additional protections to unsecured creditors and avoided the need for litigation over the post-filing financing. A copy of the June 18 Order (without schedules) is attached hereto at **Exhibit "E"**.

11. On August 25, 2015, the Chapter 11 Debtors filed a motion (the "**Amendment Motion**") seeking to amend the post-filing financing facility (the "**DIP Credit Agreement**") and obtain access to incremental financing under the amended DIP Credit Agreement. A copy of the Amendment Motion is attached hereto at **Exhibit "F"**. A copy of the DIP Credit Agreement as previously provided to the Court in the Application Record is attached hereto at **Exhibit "G"**.

12. Contemporaneously with the Amendment Motion, the Chapter 11 Debtors brought a motion to expedite the hearing on the Amendment Motion. On August 27, 2015, without opposition, the US Bankruptcy Court granted the order (the "**Supplemental DIP Order**") on an interim basis. A copy of the Supplemental DIP Order is attached hereto at **Exhibit "H"**.

#### The Supplemental DIP Order

##### *Incremental Financing under the DIP Credit Agreement*

13. Pursuant to the DIP Credit Agreement (as previously approved by the US Bankruptcy Court and recognized by this Court), Xinergy Corp. borrowed, and the other Chapter 11 Debtors guaranteed, US\$40,000,000 (the "**DIP Facility**"). The DIP Facility is secured by a first priority charge on all of the Chapter 11 Debtors' assets (including the assets of the Applicant).

14. The DIP Credit Agreement contains an "accordion" feature that permits the Chapter 11 Debtors to draw up to an additional US\$10,000,000 (the "**Incremental Loans**") under the DIP Facility upon the satisfaction or waiver of certain conditions. The DIP Credit Agreement also requires that the Incremental Loans be approved by the US Bankruptcy Court.

15. Upon review of their cash flows and expected capital expenses, the Chapter 11 Debtors determined that they required immediate access to additional funding. Specifically, the Chapter 11 Debtors determined that they required an additional US\$9 million, of which US\$5 million would

be borrowed on an interim basis. Of the Incremental Loans, US\$2 million would be earmarked for capital expenditures to support the Chapter 11 Debtors' businesses.

*Amendment to the DIP Credit Agreement*

16. The DIP Credit Agreement contains, among other protections for the lenders, certain plan milestones that are intended to provide the lenders with certainty regarding the direction and speed of the Chapter 11 Cases.

17. Although the Chapter 11 Debtors and the lenders under the DIP Credit Agreement (the "**DIP Lenders**") had previously agreed to informal extensions of the milestones and the amendments to the DIP Credit Agreement did not require US Bankruptcy Court approval under the Modified DIP Order, the lenders determined that it was prudent to document the extensions in an amendment approved by the US Bankruptcy Court (the "**DIP Amendment**") at the same time the Chapter 11 Debtors sought approval of the Incremental Loans.

18. The DIP Amendment modifies the milestones as follows:

- (a) By no later than September 11, 2015,<sup>1</sup> the Debtors shall file a proposed Acceptable Reorganization Plan<sup>2</sup> and a motion seeking approval of a disclosure statement for such Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders.

---

<sup>1</sup> As of September 11, 2015, the Chapter 11 Debtors and the lenders were still in discussions regarding the plan. In order to facilitate negotiations, the parties agreed to an informal extension of the September 11, 2015 milestone. A formal extension was not documented in order to allow the parties to focus on plan negotiations.

<sup>2</sup> Terms not defined herein have the meanings ascribed to such terms in the DIP Credit Agreement.

- (b) By no later than October 16, 2015, the US Bankruptcy Court shall have entered an order approving a disclosure statement for an Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing, which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders, and the Bankruptcy Court's approval of such disclosure statement and solicitation procedures shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by Majority Lenders.
  
- (c) By no later than December 1, 2015, the US Bankruptcy Court shall have entered an order confirming an Acceptable Reorganization Plan, which order shall be in form and substance acceptable to DIP Agent and Majority Lenders in their sole discretion and shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders.
  
- (d) By no later than December 7, 2015, the effective date of an Acceptable Reorganization Plan shall have occurred, and the order confirming the Acceptable Reorganization Plan shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders

19. In addition, the DIP Amendment creates a new event of default if the Chapter 11 Debtors terminate the agreement (the "**Wilson Services Agreement**") with Wilson Energy Advisors, LLC, an operational consultant to the Chapter 11 Debtors.

*Final Order*

20. The Supplemental DIP Order provided that if no objections to the Supplemental DIP Order were filed by September 18, 2015 at 4:00 p.m., the Supplemental DIP Order would become a final order, without a hearing or further action by the US Bankruptcy Court or the Chapter 11 Debtors.

21. No objections were filed and the Chapter 11 Debtors filed a certificate of no objection on September 21, 2015. A copy of the certificate of no objection is attached hereto as **Exhibit "I"**. As of October 14, 2015, approximately US\$45 million was drawn and outstanding under the DIP Facility.

22. Recognition of the Supplemental DIP Order is appropriate to further the coordination of the proceedings in the United States and Canada. The prior financing orders and agreements have been approved by this Court, and it is appropriate for the Court to recognize and enforce the most current version of the documents in the form of the Supplemental DIP Order. The Supplemental DIP Order and the funds provided to the Chapter 11 Debtors thereunder are necessary for the protection of Xinergy's property and to effect a successful reorganization.

The Disclosure Statement Order

23. Consistent with the milestones set out in the DIP Amendment, on September 16, 2015, the Chapter 11 Debtors filed a plan of reorganization, a disclosure statement and a motion to approve the disclosure statement.

24. Following discussions with their stakeholders, on October 14, 2015, the Chapter 11 Debtors filed amended versions of the plan, disclosure statement (the "**Disclosure Statement**") and proposed order approving the disclosure statement and the related solicitation procedures. Copies of the amended versions of the plan and disclosure statement are attached hereto as **Exhibits "J"** and **"K"** respectively.

25. The Disclosure Statement provides, among other things, a detailed description of the Chapter 11 Debtors, the events leading up to the filing of the Chapter 11 Cases, the conduct of the cases to date and a description of the plan.

26. Below is a brief description of the treatment of claims and interests under the plan. This information is included in the Disclosure Statement, but reproduced here for the convenience of the Court. Terms used in the chart below and not defined herein have the meanings set forth in the Disclosure Statement. The amounts set forth below are in US dollars.

<b>Claim</b>	<b>Plan Treatment</b>	<b>Projected Plan Recovery</b>
<b>Administrative Claims</b>	<b>Paid in full in Cash</b>	<b>100%</b>
<b>DIP Facility Claims</b>	<b>Conversion to Exit Facility Loans or paid in full in Cash</b>	<b>100%</b>
<b>Professional Claims</b>	<b>Paid in Allowed amount in Cash</b>	<b>100%</b>
<b>Priority Tax Claims</b>	<b>Paid in full in Cash</b>	<b>100%</b>

Class	Claim or Interest	Voting Rights	Treatment	Estimated Allowed Claims	Projected Plan Recovery
1	Priority Non-Tax Claims	Deemed to Accept	Paid in full in Cash	\$0	100%
2	Other Secured Claims	Deemed to Accept	Paid in full in Cash, surrender of the collateral securing the Other Secured Claim, or other treatment in accordance with section 1124.	\$38,952	100%
3	Senior Secured Note Claims	Entitled to Vote	Pro Rata share of 100% of the New Common Stock	\$202,114,791 (\$65,500,000 secured)	27.5%–32.4%
4	General Unsecured Claims	Entitled to Vote	Lesser of Pro Rata share of \$200,000 or 4% of Allowed Class 4 Claims (excluding Senior Secured Note Deficiency Claims) and release from any Avoidance Actions	\$141,600,000 (\$4,500,000 – \$5,500,000 excluding the Senior Secured Note Deficiency Claims)	<0.2% (which may increase to 4% in certain circumstances) <sup>4</sup>
5	Intercompany Claims and Interests	Deemed to Reject/Accept	Canceled/Unaltered, reinstated or other treatment rendering Unimpaired	\$280,394,441	0%/100% <sup>5</sup>
6	Interests in Xinery Ltd. Common Stock	Deemed to Reject	Canceled	n/a	0%

<sup>4</sup> The holders of Senior Secured Note Deficiency Claims that are Consenting Noteholders have agreed to vote to accept the Plan and to waive any recovery on account of such Class 4 Claim if Class 4 votes in sufficient number and amount to accept the Plan. In that circumstance, the projected recovery to holders of Class 4 Claims (other than the Senior Secured Note Deficiency Claims) is approximately 4%.

<sup>5</sup> Intercompany Claims and Interests shall be, at the option of the Debtors (with the consent of the Majority Consenting Noteholders) (a) canceled or (b) unaltered, reinstated or otherwise treated as unimpaired. No Distribution will be made on account of Intercompany Claims and Interests under the Plan.

27. The Official Committee of Unsecured Creditors filed a response in support of approval of the Disclosure Statement. Lexon Insurance Company and Bond Safeguard Insurance Company (collectively, "**Lexon**") and one of the largest shareholders ("**Mr. Nix**"), filed objections to the disclosure statement. Lexon withdrew its objection prior to the hearing. After argument, the Court overruled the objection of Mr. Nix to approval of the Disclosure Statement, but requested, and the Chapter 11 Debtors agreed, that the notice to non-voting parties be amended to include an additional disclosure that the third-party release provision in the plan did not apply to shareholders.

28. On October 16, 2015, the US Bankruptcy Court granted an order approving the Disclosure Statement and the related solicitation procedures (the "**Disclosure Statement Order**"). A copy of the Disclosure Statement Order is attached hereto as **Exhibit "L"**.

29. A hearing to determine whether the plan should be confirmed by the US Bankruptcy Court has been scheduled for December 1, 2015. If the order confirming the plan is granted, Xinergy intends to seek recognition of such order from this Court on December 2, 2015.

30. Recognition of the Disclosure Statement Order will ensure that Canadian creditors and interest holders will be bound by the voting and notification procedures set forth in the Disclosure Statement Order, which will ensure a consistent solicitation process in these cross-border proceedings.

31. Pursuant to the Disclosure Statement Order, parties in interest will be advised of the upcoming hearing in the United States to confirm the plan and will be advised of applicable deadlines with respect to any objections or statements of position.

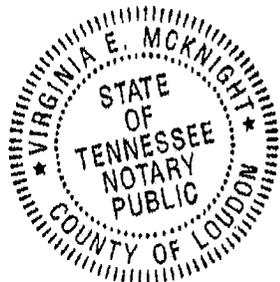
Update on Adversary Proceeding

32. At the October 16, 2015 hearing, the US Bankruptcy Court further adjourned the status conference on the adversary proceeding between the Chapter 11 Debtors and Mr. Nix to December 1, 2015.

SWORN/AFFIRMED BEFORE  
me at the City of Knoxville  
in the State of Tennessee  
this 20th day of October, 2015.

*Virginia E. McKnight*  
\_\_\_\_\_  
Notary Public

} *Michael R. Castle*  
\_\_\_\_\_  
Name: Michael R. Castle



**APPENDIX D**  
**Supplemental DIP Order**

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

In re:

XINERGY LTD., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-70444 (PMB)

Jointly Administered

Related Docket No. 263

**SUPPLEMENTAL ORDER AUTHORIZING THE DEBTORS TO AMEND  
THE DIP CREDIT AGREEMENT AND OBTAIN INCREMENTAL FINANCING  
UNDER THE DIP CREDIT AGREEMENT AND GRANTED RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking, among other things, a supplemental order (this "Supplemental Order") authorizing the Debtors to (i) obtain up to an aggregate principal amount of \$9,000,000 in incremental post-petition financing under the DIP Credit Agreement (the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Court's *Modified Final 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 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Dkt. No. 263], entered by the Court on June 5, 2015 (the "DIP Order").

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)

*Counsel to the Debtors  
and Debtors in Possession*

“Incremental DIP Financing”) on the same terms as, and ranking *pari passu* in right of payment and of security with, the Initial Term Loans made on the Closing Date and the Delayed Draw Term Loan made on the Final Term Funding Date (as such terms are defined in the DIP Credit Agreement) which were approved under the DIP Order, from those DIP Lenders who have executed the Incremental Amendment (as defined below), (ii) amend the DIP Credit Agreement to, among other things, permit the incurrence of the Incremental DIP Financing, and (iii) pay certain fees and expenses to the DIP Lenders who have executed the Incremental Amendment in connection with the Incremental DIP Financing; and the Court having considered the Motion, and the record in these cases; and it appearing that notice of the Motion, the relief requested therein and the hearing on the Motion (the “Hearing”) are adequate and appropriate under the particular circumstances; and the Court having considered all objections, if any, to the Motion; and upon the record made by the Debtors in the Motion, the Declaration of Michael R. Castle in support of the Chapter 11 Petitions and Related Motions (the “Castle Declaration”) [Doc. No. 18] and at the Hearing, and at the hearing on the DIP Order, and after due deliberation and consideration and it appearing that sufficient cause exists for granting the requested relief and that the relief requested is in the best interest of the Debtors, their estates, and their creditors;

**IT IS HEREBY FOUND, DETERMINED, ORDERED AND ADJUDGED THAT:**

1. The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled without prejudice to the rights of parties in interest to object to the granting of the Motion on a final basis in accordance with paragraph 17 hereof.

2. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and properties affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Under the circumstances, the notice given by the Debtors of the Motion and the Hearing constitutes due and sufficient notice of the Motion and the Hearing, and is adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no further notice related to this proceeding is necessary or required.

4. The terms of that certain Incremental Assumption Agreement, Amendment No. 1, and Waiver, dated as of August \_\_, 2015 (the "Incremental Amendment"), a copy of which was attached to the Motion in substantially final form, and the transactions related thereto are hereby authorized and approved on an INTERIM BASIS; provided that this Supplemental Order shall become a final order to the extent provided in paragraph 17 below. Promptly upon entry of this Supplemental Order, the Borrower is authorized to borrow up to an aggregate principal amount of \$5,000,000 pursuant to the Incremental DIP Financing (and, upon this Supplemental Order becoming a final order as provided in paragraph 17 below, the entire Incremental DIP Financing shall be available to the Borrower), and the guarantors under the Incremental DIP Financing are hereby authorized to guarantee such borrowings, plus interest, fees, amounts paid-in-kind, prepayment premiums, original issue discount, expenses (including professional fees and expenses whether incurred pre- or post-petition) and other amounts, in each case, as provided for in the DIP Documents and the Incremental Amendment, under the Incremental DIP Financing and in accordance with the terms and conditions of the DIP Credit Agreement, the DIP Order, this Supplemental Order, and the Incremental Amendment.

5. The Debtors are hereby authorized to perform and do all acts, including to make, execute and deliver the Incremental Amendment and all instruments and documents as may be required to effect the Incremental DIP Financing and the transactions contemplated thereby. The Debtors are authorized to perform each of their obligations in respect of the Incremental DIP Financing and to pay fees and other amounts that may be reasonably required or necessary for the Debtors' performance under the DIP Documents (including the Incremental Amendment) or in connection with the Incremental DIP Financing, including, without limitation, payment of fees referenced in the Fee Letter executed in connection with the Incremental Amendment and payment of the reasonable fees and out-of-expenses of the professionals of the DIP Agent and the DIP Lenders in accordance with the DIP Order.

6. The amendments and modifications to the DIP Credit Agreement and the DIP Order as set forth herein and in Section 2 of the Incremental Amendment are hereby approved on an interim basis in all respects, subject to this Supplemental Order becoming a final order as provided in paragraph 17 below.

7. Good cause has been shown for entry of this Order. The relief requested in the Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business, the management, and preservation of the Debtors' assets and personal property. It is in the best interest of the Debtors' estates that the Debtors be allowed to borrow the Incremental DIP Financing.

8. The Debtors are unable to obtain the required additional financing in the form of (i) unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (ii) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code, or (iii)

secured debt under section 364(c)(2) or (3) of the Bankruptcy Code. No other source of financing exists on terms more favorable than those offered in connection with the Incremental DIP Financing.

9. The Incremental DIP Financing and the amendments to the DIP Credit Agreement are vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if immediate access to the Incremental DIP Financing is not obtained.

10. The terms of the Incremental DIP Financing and the Incremental Amendment are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The Incremental DIP Financing, the amendments to the DIP Credit Agreement, the Incremental Amendment and this Supplemental Order have been negotiated in good faith and at arm's length between the Debtors and the DIP Lenders. Consequently, the Incremental DIP Financing shall be deemed to have been extended by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

11. The obligations under the Incremental DIP Financing and the Incremental Amendment shall constitute valid and binding obligations of the Debtors, and such obligations shall constitute Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes. The Incremental DIP Financing and all other obligations under the Incremental Amendment shall be treated as Superpriority Claims, Obligations (as defined in the DIP Credit Agreement) and DIP Obligations for all purposes hereunder, under the DIP Order and the DIP Documents (which, for the avoidance of doubt, shall include the Incremental Amendment), and, except for the Carve Out, no claims having an administrative priority superior to or *pari passu* with such DIP Obligations shall be granted while any portion thereof remains outstanding,

without the consent of the DIP Lenders in accordance with the DIP Documents. All references in the DIP Credit Agreement, the DIP Documents and the DIP Order to the DIP Facility shall be read to include the Incremental DIP Financing, and references to the DIP Credit Agreement shall be read to include the Incremental Amendment. The Incremental Amendment and all definitive documents relating to the Incremental DIP Financing shall be considered DIP Documents.

12. All DIP Liens, security interests, priorities and other rights, remedies, benefits, privileges and protections provided to the DIP Lenders in the DIP Order and the DIP Documents with respect to or relating to the DIP Financing or the DIP Collateral shall apply with equal force and effect to the Incremental DIP Financing, the Incremental Amendment and all obligations incurred under or in connection therewith or related thereto, and the various claims, liens, super-priority claims and other protections granted pursuant to this Supplemental Order will not be affected by any subsequent reversal or modification of this Supplemental Order, the DIP Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the post-petition financing arrangements contemplated by this Supplemental Order.

13. The terms of the DIP Order are incorporated herein and made a part of this Supplemental Order. Except to the extent modified by this Supplemental Order, the terms, provisions and conditions of, and relief granted by, the DIP Order remain in full force and effect, and shall apply with equal weight to the Incremental DIP Financing as if the Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing. All factual and other findings and conclusions of law contained in the DIP Order shall remain fully applicable to the DIP Financing, and shall apply with equal weight to the Incremental DIP Financing as if the Incremental DIP Financing was entered into and authorized contemporaneously with the DIP Financing, except to the extent specifically modified herein. In

the event of any inconsistency among the provisions of this Supplemental Order, the DIP Order and the definitive documents related to the Incremental DIP Financing, the provisions of the DIP Order shall govern, except as expressly modified by this Supplemental Order.

14. The provisions of this Supplemental Order shall be binding upon and inure to the benefit of the DIP Lenders, the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), and the Debtors' estates.

15. All liens and priority granted to the DIP Lenders pursuant to this Supplemental Order shall be deemed perfected by operation of law as of the date hereof.

16. This Supplemental Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Supplemental Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Supplemental Order.

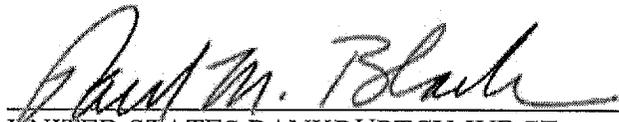
17. The Final Hearing to consider entry of this Supplemental Order on a final basis is scheduled for September 24, 2015 at 2:00 p.m. (EST) before this Court. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Objections, if any, to entry of this Supplemental Order on a final basis are due September 18, 2015 at 4:00 p.m (EST), provided, however, if no such objections are received by such date, this Supplemental Order shall automatically become final

without further order or action by the Court or the Debtors and the Final Hearing shall be cancelled.

18. On or before September 8, 2015, the Debtors shall serve a copy of the updated Budget (as defined in the DIP Order) on the United States Trustee, counsel to the Official Committee of Unsecured Creditors, and counsel to Jon Nix, which in the case of Mr. Nix shall be subject to the Stipulated Protective Order entered by this Court on May 5, 2015 [Doc. No. 155].

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

Dated: August 27, 2015  
Roanoke, Virginia

  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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

Counsel to the Debtors and Debtors in Possession

SEEN AND NO OBJECTION:

/s/ Brandy M. Rapp (with permission via email dated 8/27/2015)

Michael E. Hastings, Esq., Va. Bar No. 36090  
Brandy M. Rapp, Esq., Va. Bar No. 71385  
WHITEFORD TAYLOR & PRESTON LLP  
114 Market Street, Suite 210  
Roanoke, VA 24011  
Phone: (540) 759-3579  
Fax: (540) 343-3569  
[mhastings@wtplaw.com](mailto:mhastings@wtplaw.com)  
[brapp@wtplaw.com](mailto:brapp@wtplaw.com)

-and-

Michael J. Roesenthaler (PA 87647)  
McGUIREWOODS LLP  
EQT Plaza  
625 Liberty Avenue, 23rd Floor  
Pittsburgh, PA 15222  
Telephone: (412) 667-6000  
Facsimile: (412) 667-6050  
[mroeschenthaler@mcguirewoods.com](mailto:mroeschenthaler@mcguirewoods.com)  
*Counsel for Official Committee of Unsecured  
Creditors of Xinergy Ltd., et al.*

SEEN AND NO OBJECTION:

*/s/ Margaret K. Garber (with permission via email dated 8/27/2015)*

Margaret K. Garber  
Assistant U.S. Trustee  
Office of the United States Trustee  
210 First Street, SW, Suite 505  
Roanoke, VA 24011  
Tel: (540) 857-2806  
Fax: (540) 857-2844  
[margaret.k.garber@usdoj.gov](mailto:margaret.k.garber@usdoj.gov)  
United States Trustee

SEEN AND NO OBJECTION:

*/s/ Robert S. Westermann (with permission via email dated 8/27/2015)*

Robert S. Westermann (VSB No. 43294)  
Rachel A. Greenleaf (VSB No. 83938)  
HIRSCHLER FLEISCHER, P.C.  
The Edgeworth Building

2100 East Cary Street  
Post Office Box 500  
Richmond, Virginia 23218-0500  
Telephone: (804) 771-9500  
Facsimile: (804) 644-0957  
E-mail: rwestermann@hf-law.com  
rgreenleaf@hf-law.com

-and-

Thomas R. Califano (NY Bar No. 2286144)  
Daniel G. Egan (NY Bar No. 4644191)  
DLA PIPER LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
E-mail: Thomas.Califano@dlapiper.com  
Daniel.Egan@dlapiper.com  
*Counsel for Mr. Jon Nix*

**BLANK**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**CERTIFICATE OF NO OBJECTION**

The undersigned hereby certifies that, as of the date hereof, he is not aware of any answer, objection or other responsive pleading to the following:

- (i) *Supplemental Order Authorizing the Debtors to Amend the DIP Credit Agreement and Obtain Incremental Financing Under the DIP Credit Agreement and Granted Related Relief* (the "Supplemental DIP Order") [ECF No. 363];

The undersigned further certifies that he has caused a review of the Court's docket in these cases and no answer, objection or other responsive pleading to the Supplemental DIP Order appears thereon. According to the notice provided with the Supplemental DIP Order, objections to the relief requested in the Supplemental DIP Order were to be filed and served no later than

---

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Case Management Order (defined below).

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)

*Counsel to the Debtors  
and Debtors in Possession*

4:00 p.m. (prevailing Eastern Time) on September 18, 2015.

In accordance with the Final Order Establishing Certain Notice, Case Management and Administrative Procedures entered by the Court on May 8, 2015 [ECF. No. 179], the undersigned declares under penalty of perjury that the foregoing is true and correct.

DATED: September 21, 2015

Respectfully submitted,

/s/ Justin F. Paget

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

*Counsel to the Debtors  
and Debtors in Possession*

**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)       |

**APPENDIX E**  
**Disclosure Statement Order**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM AND MANNER OF SOLICITATION PROCEDURES, (B) APPROVING FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOTS, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (III) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS (A) TO CONFIRMATION OF THE PLAN, AND (B) TO PROPOSED CURE AMOUNTS; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order pursuant to sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017 and 3020 and Local Rule 3016-1, (i) approving the Disclosure Statement as containing "adequate information" as that term is defined in section 1125(a)(1) of the Bankruptcy Code; (ii) establishing procedures

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

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

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

*Counsel to the Debtors  
and Debtors in Possession*

for solicitation and tabulation of votes to accept or reject the Plan including (a) approving the form and manner of the solicitation packages, (b) approving the form and manner of notice of the confirmation hearing, (c) establishing a record date and approving procedures for distributing solicitation packages, (d) approving the forms of ballots, (e) establishing the deadline for the receipt of ballots and (f) approving procedures for tabulating acceptances and rejections of the Plan; (iii) establishing the deadline and procedures for filing objections (a) to confirmation of the Plan and (b) to proposed Cure Amounts; and (iv) granting related relief, the Court finds that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interests of the Debtors' estates and creditors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. All objections, including all reservations of rights, pertaining to the Motion that have not been withdrawn, waived, or resolved by agreement are overruled on their merits.
3. The Disclosure Statement is approved as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
4. The Debtors shall mail or caused to be mailed to the Voting Parties no later than the Solicitation Date, a solicitation package containing: (i) written notice (the "Confirmation Hearing Notice"), substantially in the form annexed hereto as Exhibit 1, of (a) the Court's approval of the Disclosure Statement, (b) the deadline for voting on the Plan, (c) the date of the Confirmation Hearing, and (d) the deadline and procedures for filing objections to confirmation

of the Plan, which Confirmation Hearing Notice is approved; (ii) the Plan (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion); (iii) the Disclosure Statement, substantially in the form approved by the Court (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion); (iv) the appropriate Ballot (substantially in the form annexed hereto as Exhibits 3-a through 3-e) and ballot return envelope; (v) a letter from the Committee urging unsecured creditors to vote in favor of the Plan; and (vi) such other information as the Court may direct or approve (collectively, the “Solicitation Package”). The Solicitation Package and the manner of service of the Solicitation Package satisfies the requirements of Bankruptcy Rule 3017(d).

5. The Debtors shall mail or cause to be mailed to each of the known counterparties to the Assumed Executory Contracts and Unexpired Leases and the Rejected Executory Contracts and Unexpired Leases a Confirmation Hearing Notice as well as copies of the Disclosure Statement and the Plan (either by paper copy or in “pdf” format on a CD-Rom, at the Debtors’ discretion).

6. The Debtors are not required to transmit a Solicitation Package to the Non-Voting Parties. By October 27, 2015, the Debtors shall mail or cause to be mailed to each Non-Voting Party the Non-Voting Creditor Notice substantially in the form attached hereto as Exhibit 2.

7. **October 5, 2015**, is established as the record date (the “Record Date”) for the purposes of determining the Holders of Claims and Interests entitled to receive the Solicitation Package and to vote on the Plan, and for the purpose of determining the Holders of Claims and Interests entitled to receive the Non-Voting Creditor Notice.

8. American Legal Claims Services, LLC (“ALCS”) shall tabulate the Ballots and certify to the Court the results of the balloting (in such capacity ALCS shall be referred to as the “Solicitation Agent,” the “Tabulation Agent” or the “Balloting Agent”).

9. The Debtors are required to continue good faith efforts to mail or otherwise distribute Solicitation Packages or Non-Voting Creditor Notices to addresses and entities to which the notice of the Disclosure Statement Hearing was returned by the United States Postal Service as undeliverable.

10. The Ballots, substantially in the form annexed hereto as Exhibits 3-a through 3-e, are hereby approved.

11. All Ballots must be properly executed, completed and delivered to the Balloting Agent at Xinery Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650, so that the Ballots are actually received on or before **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time)** (the “Voting Deadline”), unless extended by the Debtors. Ballots cast by facsimile, email or other electronic transmission will not be counted unless approved in advance by the Debtors in writing.

12. For purposes of voting on the Plan, the amount of a Claim held by a creditor shall be determined pursuant to the following guidelines:

- (a) The amount of the Claim listed in a Debtor’s schedule of liabilities, provided that (i) such Claim is not scheduled as contingent, unliquidated, undetermined or disputed, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Court under applicable law).
- (b) The noncontingent and liquidated amount specified in a proof of claim timely filed with the Court or ALCS (or otherwise deemed timely filed by the Court under applicable law) to the extent the proof of claim is not the subject of an objection, or an objection by the Debtors to a Claim amount solely for voting purposes, filed no later than November 24, 2015 (the “Vote Objection Deadline”) (or, if such Claim has been resolved pursuant to a stipulation or order entered by the Court, or otherwise resolved by the Court, the amount set forth in such stipulation or order).

- (c) The amount temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), provided that a motion is brought, notice is provided and a hearing is held at or prior to the Confirmation Hearing, in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.
- (d) Except as otherwise provided in subsection (c) hereof, with respect to Ballots cast by alleged creditors whose Claims (i) are not listed on a Debtor's schedule of liabilities, or (ii) are listed as disputed, contingent and/or unliquidated on a Debtor's schedule of liabilities, but who have timely filed proofs of claim in wholly unliquidated or unknown amounts that are not the subject of an objection filed before the Vote Objection Deadline, such Ballots shall be counted as votes in determining whether the numerosity requirement of section 1126(c) of the Bankruptcy Code has been met, and shall be counted as having a value of \$1.00 for determining whether the aggregate Claim amount requirement has been met.

13. If a creditor casts a Ballot and has timely filed a proof of claim (or has otherwise had a proof of claim deemed timely filed by the Court under applicable law), but the creditor's Claim is the subject of an objection (either generally to the applicable Claim, or solely for purposes of determining the amount of the applicable Claim for voting purposes) filed no later than the Vote Objection Deadline, then the creditor's Ballot shall not be counted, unless such Claim is temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), after a Claims Estimation Motion is brought by such creditor, notice is provided and a hearing is held at or prior to the Confirmation Hearing. Notwithstanding the foregoing, if an objection to a Claim requests that such Claim be reclassified and/or allowed in a fixed, reduced amount, such claimant's Ballot shall be counted in such reduced amount and/or as the reclassified category.

14. Creditors seeking to have a Claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a) must file and serve notice of a hearing on, and a Claims Estimation Motion, no later than **November 4, 2015**. The Court will schedule a hearing on such Claims Estimation Motion to be heard at or prior to the Confirmation

Hearing. If a Claims Estimation Motion is timely filed, the Debtors shall be required to send a provisional Ballot to such claimant (unless such claimant has already been provided with a ballot).

15. The following voting procedures and standard assumptions shall be used in tabulating the Ballots:

- (a) Creditors must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple Claims within a single Class) that partially rejects and partially accepts the Plan will not be counted.
- (b) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- (c) A creditor that declined to vote, voted to accept the Plan, or voted to reject the Plan may opt to reject the Consensual Third Party Release provisions in Section 8.4 of the Plan by so indicating on the Ballot.
- (d) Only Ballots that are timely received with original signatures will be counted. Unsigned Ballots will not be counted.
- (e) Ballots postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- (f) Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- (g) Whenever a creditor casts more than one Ballot voting the same Claim prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior Ballots.
- (h) If a creditor simultaneously casts inconsistent duplicate Ballots, with respect to the same Claim, such Ballots shall not be counted.
- (i) Each creditor shall be deemed to have voted the full amount of its Claim. Unless otherwise ordered by the Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Balloting Agent and the Debtors, which determination shall be final and binding and disclosed by

the Debtors and/or the Balloting Agent in any report disclosing the results of voting.

16. The following additional procedures shall be followed with respect to the holders of Claims in Class 3 (Senior Secured Note Claims) and holders of Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims), the Master Ballots submitted by the Nominees, and the tabulation of votes cast:

- (a) Only holders of Claims in Class 3 (Senior Secured Note Claims) and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) as reflected in the records (the "Record Amount") maintained by DTC as of the close of business on the Record Date shall be entitled to vote.
- (b) Votes submitted by the Nominees, pursuant to Master Ballots, shall not be counted in excess of the Record Amount held by the Nominees.
- (c) The Nominees shall summarize on the Master Ballots all Ballots cast by the holders of claims in Class 3 (Senior Secured Note Claims) and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) and return the Master Ballots to the Solicitation Agent on or before the Voting Deadline; provided, however, that the Nominees shall be required to retain the original Ballots cast by the holders of claims in Class 3 and Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims) for inspection for one year following the submission of the Master Ballots.
- (d) To the extent that conflicting votes or "overvotes" are submitted by the Nominees on Master Ballots, the Solicitation Agent, in good faith, shall attempt to reconcile discrepancies with the Nominees.
- (e) To the extent that overvotes submitted by the Nominees on the Master Ballots are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot that contains the overvote, but only to the extent of the position maintained by such Nominees as of the Record Date.
- (f) Each holder of an Allowed Senior Secured Note Claim in Class 3 and a Senior Secured Note Deficiency Claim in Class 4 shall be deemed to have voted the full amount of such holder's Allowed Senior Secured Note Claim in Class 3 notwithstanding any purported allocation of such Claim on the respective ballots. The Solicitation Agent shall have responsibility

for allocating the amount of Allowed Senior Secured Note Claims and Senior Secured Note Deficiency Claims between Class 3 and Class 4 in accordance with the Plan for the purpose of determining satisfaction of section 1126(c) of the Bankruptcy Code.

- (g) Holders of Allowed Senior Secured Note Claims shall not be entitled to split their votes between Class 3 and Class 4. In the event such holder returns Class 3 and Class 4 ballots that disagree, the vote and Consensual Third Party Release opt-out selection indicated on the Class 3 ballot shall control such holder's Class 4 vote and opt-out election.

17. Any objection, comment or response to confirmation of the Plan (including any supporting memoranda) must be in writing, served on the parties identified below, and filed with the Court, together with proof of service, such that the foregoing are received by such parties and the Court on or before **November 24, 2015, at 5:00 p.m. (prevailing Eastern Time)**. The Court shall consider only timely filed written objections. All objections not timely filed and served in accordance with the provisions of this Motion are hereby deemed waived. Objections to confirmation of the Plan should provide proposed language to remedy such objections and shall be served on the following parties (collectively, the "Notice Parties"):

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23<sup>rd</sup> Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roesenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

18. Any party supporting the Plan shall be afforded an opportunity to file a response to any objection to confirmation of the Plan, prior to the Confirmation Hearing.

19. A hearing shall be held before this Court on **December 1, 2015, at 11:00 a.m. (prevailing Eastern Time)**, at the United States Bankruptcy Court for the Western District of

Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011, or as soon thereafter as counsel may be heard, to consider confirmation of the Plan (the “Confirmation Hearing”).

20. The Confirmation Hearing may be adjourned from time to time without further notice to creditors and other parties-in-interest other than an announcement of the adjourned date at the Confirmation Hearing.

21. The following procedures are approved for establishing the Cure Amounts for the Assumed Executory Contracts:

- (a) the Debtors will cause the *Notice of (I) Possible Assumption of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto* (the “Cure Notice”), in a form substantially similar to the form attached to this Order as Exhibit 4, to be served on the non-debtor parties to the Assumed Executory Contracts by October 27, 2015. Among other things, the Cure Notice shall set forth the amount that the Debtors believe must be paid in order to cure all monetary defaults under each of the Assumed Executory Contracts;
- (b) the non-debtor parties to the Assumed Executory Contracts shall have until **November 10, 2015, at 5:00 p.m. (prevailing Eastern Time)** (the “Cure Objection Deadline”), which deadline may be extended in the sole discretion of the Debtors, to object (a “Cure Objection”) to the (a) Cure Amounts listed by the Debtors and to propose alternative cure amounts, and/or (b) proposed assumption or assumption and assignment of the Assumed Executory Contracts under the Plan; provided, however, that if the Debtors amend the Cure Notice or any related pleading that lists the Assumed Executory Contracts to add a contract or lease or to reduce the Cure Amount thereof, except where such reduction was based upon the mutual agreement of the parties, the non-debtor party thereto shall have at least ten (10) calendar days after service of such amendment to object thereto or to propose alternative Cure Amounts;
- (c) any party objecting to the Cure Amounts, whether or not such party previously filed a proof of claim with respect to amounts due under the applicable Assumed Executory Contract, or objecting to the potential assumption or assumption and assignment of such Assumed Executory Contract, shall be required to file and serve a Cure Objection, in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Assumed Executory Contract and/or any and all objections to the potential

assumption or assumption and assignment of such Assumed Executory Contract, together with all documentation supporting such cure claim or objection, upon each of the Notice Parties so that the Cure Objection is actually received by them no later than the Cure Objection Deadline. If a Cure Objection is timely filed and the parties are unable to settle such Cure Objection, the Court shall determine the amount of any disputed Cure Amounts or objection to assumption or assumption and assignment at a hearing to be held at the time of the Confirmation Hearing or such other hearing date to which the parties may mutually agree. The Debtors may, in their sole discretion, extend the Cure Objection Deadline without further notice, but are not obligated to do so; and

- (d) in the event that no Cure Objection is timely filed with respect to an Assumed Executory Contract, the counterparty to such Assumed Executory Contract shall be deemed to have consented to the assumption or assumption and assignment of the Assumed Executory Contract and the Cure Amount proposed by the Debtors and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their Estates. In addition, if no timely Cure Objection is filed with respect to an Assumed Executory Contract, upon the Effective Date of the Plan, the Debtors or the assignee of such Assumed Executory Contract, and the counterparty to such Assumed Executory Contract shall enjoy all of the rights and benefits under the Assumed Executory Contract without the necessity of obtaining any party's written consent to the Debtors' assumption or assumption and assignment of the Assumed Executory Contract, and such counterparty shall be deemed to have waived any right to object, consent, condition or otherwise restrict the Debtors' assumption or assumption and assignment of the Assumed Executory Contract.

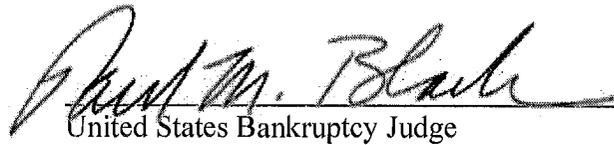
The inclusion of an Assumed Executory Contract in the Cure Notice is without prejudice to the Debtors' right to modify their election to assume, assume and assign or reject such Assumed Executory Contract prior to the entry of a final, non-appealable order (which order may be the order confirming the Plan) deeming any such Assumed Executory Contract assumed, assumed and assigned or rejected, and inclusion in the Cure Notice is not a final determination that any Assumed Executory Contract will, in fact, be assumed. In addition, the inclusion of an Assumed Executory Contract in the Cure Notice does not constitute an admission by the Debtors that the contract or lease is an executory contract or that the Debtors have any liability thereunder.

22. Prior to mailing the Disclosure Statement, Solicitation Packages, Non-Voting Creditor Notices, or the Cure Notice, the Debtors may fill in any missing dates and other information, correct any typographical errors and make such other non-material, non-substantive changes as they deem appropriate.

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

24. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Roanoke, Virginia  
October 16, 2015

  
United States Bankruptcy Judge

WE ASK FOR THIS:

HUNTON & WILLIAMS LLP

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

*Counsel to the Debtors  
and Debtors in Possession*

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD

/s/ Robert S. Westermann (with permission via email dated 10/16/2015)  
Robert S. Westermann (VSB No. 43294)

Rachel A. Greenleaf (VSB No. 83938)  
HIRSHLER FLEISCHER, P.C.  
The Edgeworth Building  
2100 East Cary Street  
Richmond, Virginia 23218-0500  
Telephone: (804) 771-9500  
Facsimile: (804) 644-0957  
Email: rwestermann@hf-law.com  
rgreenleaf@hf-law.com

-and-

Thomas R. Califano (NY Bar No. 2286144) (admitted pro hac vice)  
Daniel G. Egan (NY Bar No. 4644191) (admitted pro hac vice)  
DLA PIPER LLP (US)  
1251 Avenue of Americas  
New York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: Thomas.Califano@dlapiper.com  
Daniel.Egan@dlapiper.com

*Counsel for Mr. Jon Nix*

SEEN AND NO OBJECTION

/s/ Margaret K. Garber (with permission via email dated 10/16/15)

Margaret K. Garber  
Assistant U.S. Trustee  
Office of the United States Trustee  
210 First Street, SW, Suite 505  
Roanoke, VA 24011  
Tel: (540) 857-2806  
Fax: (540) 857-2844  
margaret.k.garber@usdoj.gov

*United States Trustee*

SEEN AND NO OBJECTION

/s/ Brandy M. Rapp (with permission via email dated 10/16/2015)

Michael E. Hastings, Esq., Va. Bar No. 36090  
Brandy M. Rapp, Esq., Va. Bar No. 71385  
WHITEFORD TAYLOR & PRESTON LLP  
114 Market Street, Suite 210  
Roanoke, VA 24011  
Phone: (540) 759-3579

Fax: (540) 343-3569  
[mhastings@wtplaw.com](mailto:mhastings@wtplaw.com)  
[brapp@wtplaw.com](mailto:brapp@wtplaw.com)

-and-

Michael J. Roesenthaler (PA 87647)  
McGUIREWOODS LLP  
EQT Plaza  
625 Liberty Avenue, 23rd Floor  
Pittsburgh, PA 15222  
Telephone: (412) 667-6000  
Facsimile: (412) 667-6050  
[mroeschenthaler@mcguirewoods.com](mailto:mroeschenthaler@mcguirewoods.com)  
*Counsel for Official Committee of Unsecured  
Creditors of Xinerger Ltd., et al.*

**Exhibit 1**

**Confirmation Hearing Notice**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT,  
(II) DEADLINE FOR VOTING ON THE JOINT PLAN OF REORGANIZATION  
OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN  
POSSESSION, (III) HEARING TO CONSIDER CONFIRMATION OF THE PLAN,  
AND (IV) LAST DATE AND PROCEDURES FOR FILING OBJECTIONS  
TO CONFIRMATION OF THE PLAN

TO: ALL HOLDERS OF CLAIMS IN CLASSES 3 AND 4  
AND CERTAIN OTHER PARTIES

PLEASE TAKE NOTICE THAT IF THIS NOTICE IS ACCOMPANIED BY A BALLOT, YOUR VOTE IS BEING SOLICITED IN CONNECTION WITH THE JOINT PLAN OF REORGANIZATION OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION (THE "PLAN") FILED BY THE ABOVE-CAPTIONED DEBTORS AND DEBTORS-IN-POSSESSION (COLLECTIVELY, THE "DEBTORS"). YOU SHOULD CAREFULLY REVIEW THE MATERIAL SET FORTH IN THE DISCLOSURE STATEMENT (AND IN THE EXHIBIT ATTACHED THERETO) IN ORDER TO MAKE AN INDEPENDENT DETERMINATION AS TO WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

---

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

**APPROVAL OF DISCLOSURE STATEMENT**

PLEASE TAKE FURTHER NOTICE that, by Order dated October [ ], 2015 (the "Disclosure Statement Order"), the United States Bankruptcy Court for the Western District of Virginia (the "Court") approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (the "Disclosure Statement"), as containing adequate information within the meaning of section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").

**DEADLINE FOR VOTING ON THE PLAN**

PLEASE TAKE FURTHER NOTICE that, pursuant to the Disclosure Statement Order, the Court established **November 24, 2015, at 5:00 p.m. prevailing Eastern Time** (the "Voting Deadline") as the deadline by which Ballots<sup>2</sup> accepting or rejecting the Plan must be actually received. To be counted, your original signed Ballot (a Ballot to be completed by you may be enclosed herewith) must actually be received on or before the Voting Deadline by American Legal Claim Services LLC (the "Balloting Agent") at Xinergy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650. Ballots received by facsimile, e-mail or other means of electronic transmission will not be counted.

**CONFIRMATION HEARING**

PLEASE TAKE FURTHER NOTICE that on **December 1, 2015, at 11:00 a.m. prevailing Eastern Time** or as soon thereafter as counsel may be heard, a hearing will be held before Judge Paul M. Black, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011 to consider confirmation of the Plan, as the same may be further amended or modified, and for such other and further relief as may be just and proper (the "Confirmation Hearing").

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Additionally, the Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

**RELEASE, INJUNCTION AND EXCULPATION PROVISIONS CONTAINED IN PLAN**

**PLEASE TAKE FURTHER NOTICE THAT THE PLAN CONTAINS CERTAIN RELEASE, INJUNCTION AND EXCULPATION PROVISIONS. YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASE, INJUNCTION AND EXCULPATION PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED.**

**DEADLINE AND PROCEDURES FOR OBJECTIONS TO CONFIRMATION OF THE PLAN**

PLEASE TAKE FURTHER NOTICE that objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011 together with proof of service, and shall state the name and address of the objector, all

---

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **November 24, 2015, at 5:00 p.m. prevailing Eastern Time**:

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23<sup>rd</sup> Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roesenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

**COPIES OF THE PLAN AND THE DISCLOSURE STATEMENT**

PLEASE TAKE FURTHER NOTICE that to the extent not enclosed herewith, copies of the Plan and the Disclosure Statement have been filed with the Bankruptcy Court and may be viewed at no charge at <https://www.americanlegal.com/xinergy> or for a fee via PACER at <http://www.vawb.uscourts.gov/>, or may be obtained at no charge by writing to Xinergy Ltd. c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.

HUNTON & WILLIAMS LLP

Dated: October [ ], 2015

/s/ Tyler P. Brown

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

*Counsel to the Debtors  
and Debtors in Possession*

**Exhibit 2**

**Non-Voting Notice**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF (I) APPROVAL OF DISCLOSURE STATEMENT, (II) HEARING TO  
CONSIDER CONFIRMATION OF THE PLAN, AND (III) LAST DATE AND  
PROCEDURES FOR FILING OBJECTIONS TO CONFIRMATION OF THE PLAN**

TO: ALL HOLDERS OF ADMINISTRATIVE CLAIMS, DIP FACILITY CLAIMS,  
PROFESSIONAL CLAIMS, PRIORITY TAX CLAIMS, AND CLAIMS AND  
INTERESTS IN CLASSES 1, 2, 5, 6, AND 7.

**APPROVAL OF DISCLOSURE STATEMENT**

PLEASE TAKE NOTICE that, by Order dated October [ ], 2015 (the "Disclosure Statement Order"), the United States Bankruptcy Court for the Western District of Virginia (the "Court") approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (the "Disclosure Statement"), as containing adequate information within the meaning of section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").

**CONFIRMATION HEARING**

PLEASE TAKE FURTHER NOTICE that on **December 1, 2015, at 11:00 a.m. prevailing Eastern Time** or as soon thereafter as counsel may be heard, a hearing will be held before Judge Paul M. Black, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011 to consider confirmation of the Plan, as the same

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

may be further amended or modified, and for such other and further relief as may be just and proper (the "Confirmation Hearing").

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Additionally, the Plan may be modified in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and other applicable law, without further notice, prior to or as a result of the Confirmation Hearing.

#### **CLASSES OF CLAIMS AND INTERESTS NOT ENTITLED TO VOTE**

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Plan and the Bankruptcy Code, (i) Holders of Administrative Claims, DIP Facility Claims, Professional Claims, Priority Tax Claims, and Claims in Classes 1 and 2 are unimpaired, are conclusively deemed to have accepted the Plan and, thus, are not entitled to vote on the Plan; (ii) Holders of Intercompany Claims and Interests in Class 5 are deemed to either accept or reject the Plan depending on the treatment elected by the Debtors with the consent of the Majority Consenting Noteholders, and are not entitled to vote on the Plan; and (iii) Holders of Interests in Class 6 and Claims in Class 7 will not receive any Distributions under the Plan and are deemed to have rejected the Plan. Only the Holders of impaired Claims in Classes 3 and 4 are entitled to vote to accept or to reject the Plan. You have been sent this notice because you may be a Holder of an Administrative Claim, a DIP Facility Claim, a Professional Claim, a Priority Tax Claim, or a Claim or Interest in Classes 1, 2, 5, 6, or 7.

#### **SUMMARY OF PLAN TREATMENT OF CLAIMS AND INTERESTS**

PLEASE TAKE FURTHER NOTICE that the Plan proposes to modify the rights of certain creditors and equity securities holders of all of the Debtors (collectively, the "Debtors"). The Plan establishes the following classes of Claims and Interests with the following treatment:<sup>2</sup>

##### **Unclassified - Administrative Claims**

Administrative Claims include those Claims against one or more of the Debtors constituting a cost or expense of administration of the Cases of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 363, 364(c)(1), 365, 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code (other than a Professional Claim) for the period from the Petition Date to the Effective Date. A Holder of an Allowed Administrative Claim will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such

---

<sup>2</sup> For a complete description of the Plan provisions, reference should be made to the Plan and Disclosure Statement, copies of which can be obtained by the methods described at the end of this Notice. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan.

Holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

#### **Unclassified - DIP Facility Claims**

DIP Facility Claims include those Claims against one or more of the Debtors pursuant to that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of April 8, 2015, by and among Xinergy Corp., as borrower, certain guarantors thereto, those certain lenders party to the DIP Facility Loan Agreement, and that certain administrative agent under the DIP Facility Loan Agreement, as amended and supplemented. Except to the extent that a holder of a DIP Facility Claim agrees to less favorable treatment, to the extent the Debtors exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive Exit Facility Loans in a face amount up to the amount of such DIP Facility Claim on the Effective Date, or such other treatment in full satisfaction of the DIP Facility Claims as the Debtors and Majority Consenting Noteholders may agree, to be specified in the Exit Facility Term Sheet, and to be otherwise governed by the Exit Facility Documents. If the Debtors do not exercise the Exit Conversion, each holder of a DIP Facility Claim shall receive payment in full in Cash. There are ongoing discussions between the Debtors and the DIP Facility Consenting Lenders concerning the terms and sizing of the Exit Facility, which will impact the treatment of the DIP Facility Claims. The material terms of the Exit Facility will be contained in an Exit Facility Term Sheet, which will be included in the Plan Supplement to be filed no later than five (5) days before the Voting Deadline.

#### **Unclassified - Professional Claims**

Professional Claims include all fees and expenses claimed by Professionals retained by the Debtors or the Committee that have been approved on a final basis by a Final Order. Professional Claims do not include professional fees and expenses incurred by any professionals in connection with their retention and employment by the Debtors on or after the Effective Date. The Debtors shall pay Professionals who are entitled to reimbursement or allowance of fees and expenses from the Estates, in Cash, in the amount awarded to such Professionals by Final Order of the Bankruptcy Court, as soon as practicable after the later of the Effective Date and the date upon which any order awarding fees and expenses becomes a Final Order, in accordance with the terms of any order entered by the Bankruptcy Court governing the payment of such fees and expenses. Any final application for allowance of a Professional Claim must be filed with the Bankruptcy Court and served on counsel for the Debtors and the Committee and the U.S. Trustee so that it is received no later than forty-five (45) days after the Effective Date or such Professional Claim shall be forever barred.

#### **Unclassified - Priority Tax Claims**

Priority Tax Claims are Claims asserted against one or more of the Debtors for an amount entitled to priority under section 507(a)(8) of the Bankruptcy Code. Unless a Final Order provides otherwise, each Holder of a Priority Tax Claim that is an Allowed Claim shall receive, at the discretion of the Debtors with the consent of the Majority Consenting Noteholders and in full and final satisfaction of such Holder's Allowed Claim, (a) Cash in an amount equal to the unpaid portion of such Allowed Claim, (b) payment of such Allowed Claim over a period not to exceed five (5) years with interest, or (c) some other, less favorable treatment as is agreed upon by the Debtors and the Holder of such Allowed Priority Tax Claim. Notwithstanding the foregoing, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any Claim or demand for any such penalty (a) will be subject to treatment as a General Unsecured Claim, if and to the extent an Allowed Claim, and (b) the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such

amounts from the Debtors or the Assets except as a General Unsecured Claim, if and to the extent an Allowed Claim.

### **Class 1 - Priority Non-Tax Claims**

Priority Non-Tax Claims include Claims against one or more of the Debtors that are entitled to priority pursuant to section 507(a) of the Bankruptcy Code and that are not Administrative Claims, Professional Claims or Priority Tax Claims. Each Holder of an Allowed Class 1 Claims shall receive, as applicable: (i) if the Allowed Class 1 Claim is due and payable on or before the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim; or (ii) if the Allowed Class 1 Claim is not due and payable on or before the Effective Date, Cash in an amount as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. Class 1 Claims are unimpaired and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 2 - Other Secured Claims**

Secured Claims include any Claim against one or more of the Debtors that is secured by a valid and unavoidable lien on property in which the Estates have an interest, or that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code to the extent of the value of the Holder's interest in the Estates' interest in such property, or to the extent of the amount subject to setoff, as applicable, as determined by the Bankruptcy Court pursuant to sections 506(a), 553, and/or 1129 (b)(2)(A)(i)(II), as applicable. At the sole option of the Debtors with the consent of the Majority Consenting Noteholders, each holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, and release of, and in exchange for, the holder's Allowed Secured Claim, (i) payment in full in Cash of its Allowed Class 2 Claim, including any accrued and unpaid interest, fees, and expenses as may be required to be paid, (ii) the collateral securing its Allowed Class 2 Claim, or (iii) such other treatment rendering its Allowed Class 2 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code. Class 2 Claims are unimpaired and conclusively deemed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **Class 3 - Senior Secured Note Claims**

Senior Secured Note Claims include any Claim arising under those certain 9.25% Senior Secured Notes Due 2019 issued by Xinery Corp. pursuant to the Indenture, dated as of May 6, 2011, by and among Xinery Corp., certain parties thereto as guarantors, and Wells Fargo Bank, National Association as trustee and collateral trustee. Each Holder of an Allowed Claim in Class 3 shall receive its Pro Rata share of 100% of the New Common Stock to the extent such claim is secured as determined pursuant to section 506(a) of the Bankruptcy Code. The remaining unsecured claim is a Senior Secured Note Deficiency Claims treated as a Class 4 Claim. Class 3 is an impaired Class and is entitled to vote on the Plan.

### **Class 4 - General Unsecured Claims**

General Unsecured Claims include any Claim against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a Senior Secured Note Claim, (8) an Intercompany Claim or Interest, (9) an Interest in Xinery Ltd., or (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code. Class 4 includes General Unsecured Claims and Senior Secured Note Deficiency Claims. Each holder of an Allowed Class 4 Claim shall receive a Cash distribution equal to the lesser of its Pro Rata share of \$200,000, or four percent (4%) of the Allowed Amount of Class 4 Claims on the later of (A) the Effective Date or (B) the date such claim becomes an

Allowed Class 4 Claim; provided, however, that if holders of Allowed Class 4 Claims representing at least two-thirds in amount and more than one-half in number of Claims in Class 4 that vote accept the Plan, then holders of Senior Secured Note Deficiency Claims shall agree to waive their right to distributions on account of such Class 4 Claims. Class 4 is an impaired Class and is entitled to vote on the Plan.

#### **Class 5 - Intercompany Claims**

Intercompany Claims and Interests include Claims and Interests held by a Debtor against any other Debtor or any Interest of a Debtor in any other Debtor, respectively. All Intercompany Claims and Interests, at the option of the Debtors with the consent of the Majority Consenting Noteholders, or the Reorganized Debtors shall be (i) canceled or (ii) left unaltered, reinstated or otherwise rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code. Class 5 Claims are not entitled to vote on the Plan, and are conclusively deemed to accept or reject to the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code, as applicable.

#### **Class 6 - Interests in Xinergy Ltd.**

Interests in Xinergy Ltd. include any stock or other equity ownership interest in Xinergy Ltd. and all dividends and distributions with respect to such stock or interest and all rights, options, warrants, or other rights to acquire any stock or other equity ownership interest in Xinergy Ltd. as of the Petition Date. On the Effective Date, the Interests in Xinergy Ltd. shall be canceled and no Distribution shall be made on account of Allowed Class 6 Interests. Class 6 Interests are impaired and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

#### **Class 7 - Section 510(b) Claims**

Section 510(b) Claims, if any, include any Claim against one or more of the Debtors arising under 11 U.S.C. § 510(b). The Debtors are not aware of any Class 7 Claims and do not believe any exist. Upon Confirmation, all Class 7 Claims, if any exist, will be discharged, canceled, released and extinguished, and Holders of Class 7 Claims will not receive any Distribution on account of such Allowed Section 510(b) Claims. Class 7 Claims are impaired and conclusively deemed to have voted to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that the Plan contains the injunction, release and exculpation provisions set forth below:

#### **Discharge of Claims and Termination of Interests**

**The Reorganized Debtors shall receive the benefit of any and all discharges under the Plan. On and after the Effective Date, except as otherwise provided in the Plan or in the Confirmation Order or for some other specified reason, the Reorganized Debtors may operate the Debtors' business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.**

**As discussed in detail in the Disclosure Statement and otherwise provided herein, pursuant to Section 1123 of the Bankruptcy Code, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies related to the contractual, legal and equitable rights that a holder of a Claim or**

Interest may have in respect of such Claim or Interest. All Distributions made to holders of Allowed Claims in any Class are intended to, and shall be, final.

Except as otherwise provided for herein and effective as of the Effective Date pursuant to section 1141(d) of the Bankruptcy Code: (a) the rights afforded in the Plan and the treatment of all Claims, Interests, and Causes of Action that arose before the Effective Date shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, whether known or unknown, notwithstanding whether any such holders has filed a Proof of Claim or has failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code, regardless of whether a Proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a Distribution hereunder; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

#### Releases by the Debtors.

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, and Claims, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, the Debtors, on behalf of themselves and their Estates, and the Reorganized Debtors shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (and covenant with such Released Party not to sue or otherwise seek recovery from such Released Party on account of) any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Estates, the Reorganized Debtors, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any act or omission, transaction, agreement or occurrence taking place on or before the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes

with respect to the Plan; provided, however, that the foregoing provisions of Section 8.3 of the Plan shall not waive, release, or otherwise affect (i) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order, (ii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan, including the Exit Facility, (iii) except as otherwise expressly set forth in the Plan, any objections by the Debtors or the Reorganized Debtors to Claims filed by any Person against any Debtor and/or the Estates, including rights of setoff, refund, recoupment or other adjustments, and (iv) the rights of the Debtors or the Reorganized Debtors to assert any applicable defenses in litigation or other proceedings, including with their employees, or any claim of the Debtors or the Reorganized Debtors, including (but not limited to) cross-claims or counterclaims or other Causes of Action against employees or other parties, arising out of or relating to actions for personal injury, wrongful death, property damage, products liability or similar legal theories of recovery to which the Debtors or Reorganized Debtors are a party. The releases in Section 8.3 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that Section 8.3 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any claim or Cause of Action released pursuant to Section 8.3 of the Plan.

#### Consensual Third Party Releases.

The following Consensual Third Party Releases provision does not apply to the holders of Claims or Interests in Classes 1, 2, 5, 6 and 7 with respect to their Claims or Interests therein.

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, (a) each holder of an Impaired Claim, except those holders that elect to opt-out of the Releases set forth in Section 8.4 of the Plan, and (b) each Released Party shall be deemed to conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party from (regardless of whether a Released Party is also giving a release under Section 8.4 of the Plan), and covenant with each Released Party not to sue or otherwise seek recovery from such Released Party on account of, any and all claims, obligations, debts, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever, including any derivative claims asserted or which could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such party would have been legally entitled to assert (whether individually or collectively), based on or relating

to, or in any manner arising from, in whole or in part, any action, omission, transaction, agreement or event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors or their business and affairs, the Reorganized Debtors, the Restructuring, the Chapter 11 Cases, the Recognition Proceeding, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, Distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or the solicitation of votes with respect to the Plan; *provided, however*, that the foregoing provisions of Section 8.4 of the Plan shall not waive, release, or otherwise affect (i) any claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities of such Persons solely to the extent of their right to receive Distributions or other treatment under the Plan; (ii) the liability of any Person for any act or omission that constitutes gross negligence, willful misconduct, fraud or criminal acts as determined by a Final Order and (iii) any rights to enforce the Plan or the other contracts, instruments, releases, agreements or documents to be, or that were previously, entered into in connection with the Plan. The releases in Section 8.4 of the Plan apply only to the Released Parties solely in their respective capacities as such.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of Section 8.4 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that Section 8.4 of the Plan is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released in Section 8.4 of the Plan; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Persons from asserting any Claim or Cause of Action released pursuant to Section 8.4 of the Plan.

#### **Exculpation.**

Notwithstanding anything contained herein to the contrary, the Released Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering or implementing the Plan, or consummating the Plan, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the Exit Facility Documents, the Restructuring, the Chapter 11 Cases, the issuance, distribution, and/or sale of any shares of New Common Stock or any other security offered, issued, or distributed in connection with the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the Chapter 11 Cases, the Recognition Proceeding or the Restructuring; *provided, however*, that each Released Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person solely to the extent resulting from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Person for acts or omissions occurring

after the Confirmation Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Released Parties from liability. Without limiting the generality of the foregoing, the Released Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of an Administrative Claim, Claim, or Interest shall be permitted to commence or continue any Cause of Action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or before the Effective Date and that has been released or waived pursuant to this Plan.

### **Injunction**

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.3 or Section 8.4 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.5 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

Nothing in the Plan or the Confirmation Order releases, discharges, precludes, exculpates, or enjoins the enforcement of: (i) any liability or obligation to, or any Claim or cause of action by, a Governmental Unit under any applicable Environmental Law to which any Debtor is subject as and to the extent that it is the owner, lessee, controller, or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, Claim or cause of action is based in whole or part on acts or omission prior to the Confirmation Date); (ii) any liability to a Governmental Unit under any applicable Police or Regulatory Law that is not a Claim; (iii) any Claim of a Governmental Unit under any applicable Police or Regulatory Law arising on or after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors; (v) any liability to a Governmental Unit under the Federal Mine Safety & Health Act, any state mine safety law or the BLBA; or (vi) any valid right of setoff or recoupment by any Governmental Unit. Nothing in this Plan or any Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence.

### **DEADLINE AND PROCEDURES FOR OBJECTIONS TO CONFIRMATION OF THE PLAN**

PLEASE TAKE FURTHER NOTICE that objections, if any, to confirmation of the Plan, including any supporting memoranda, must be in writing, must be filed with the Clerk of the United States Bankruptcy Court of the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke,

Virginia 24011 together with proof of service, and shall state the name and address of the objector, all grounds for the objection and the amount of the Claim(s) or other Interest(s) held by the objector, and shall provide proposed language to remedy such objections. Any such objection must be filed with the Court and served so that it is actually received by the Court, the following parties, and all other parties requesting or entitled to receive notice in these cases, on or before **November 24, 2015, at 5:00 p.m. prevailing Eastern Time:**

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23<sup>rd</sup> Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq.

Any objection not filed and served as set forth above will be deemed waived and will not be considered by the Court.

**COPIES OF THE PLAN AND THE DISCLOSURE STATEMENT**

PLEASE TAKE FURTHER NOTICE that copies of the Plan and the Disclosure Statement have been filed with the Bankruptcy Court and may be viewed at no charge at <https://www.americanlegal.com/xinergy> or for a fee via PACER at <http://www.vawb.uscourts.gov/>, or may be obtained at no charge by writing to Xinergy Ltd. c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.

HUNTON & WILLIAMS LLP

Dated: October [ ], 2015

/s/ Tyler P. Brown

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

*Counsel to the Debtors  
and Debtors in Possession*

**Exhibit 3-a**

**Master Ballot for Class 3 (Senior Secured Notes Claims)**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

MASTER BALLOT FOR CLASS 3 (SENIOR SECURED NOTES CLAIMS) FOR  
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION  
OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS  
AND DEBTORS IN POSSESSION

PLEASE READ AND FOLLOW THE INSTRUCTIONS CAREFULLY. PLEASE COMPLETE, SIGN, AND DATE THIS CLASS 3 MASTER BALLOT AND RETURN IT TO THE SOLICITATION AGENT BY FIRST CLASS MAIL, OR DURING REGULAR BUSINESS HOURS BY OVERNIGHT COURIER OR HAND DELIVERY, TO: BALLOTING AGENT AT XINERGY LTD. BALLOT TABULATION CENTER C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650. IF THIS CLASS 3 MASTER BALLOT HAS NOT BEEN RECEIVED BY THE SOLICITATION AGENT BY NOVEMBER 24 AT 5:00 P.M. (PREVAILING EASTERN TIME) (THE "VOTING DEADLINE"), THE VOTES OF THE INDIVIDUAL HOLDERS OF CLAIMS IN CLASS 3 (EACH AN "INDIVIDUAL CLAIMANT" AND COLLECTIVELY, THE "INDIVIDUAL CLAIMANTS") WILL NOT BE COUNTED. THEREFORE, YOU MUST ALLOW SUFFICIENT TIME TO BE SURE THAT THE CLASS 3 MASTER BALLOT IS RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE.

You, as the Nominee<sup>2</sup> for the Individual Claimants ("You," "YOU," or "you"), must deliver the completed, executed Class 3 master ballot (the "Master Ballot") so that it is actually *received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Ballot returned to you

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

<sup>2</sup> Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

by an Individual Claimant (each an “Individual Ballot”), you must retain such Individual Ballot in your files for one year from the Voting Deadline.

This Master Ballot is to be used by you, as the representative of holders of Claims in Class 3 (Senior Secured Notes Claims), to transmit the votes of such Individual Claimants in respect of their decision to accept or reject the *First Amended Joint Plan of Reorganization of Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be amended, modified, and/or supplemented, the “Plan”).

By Order dated October [ ], 2015, the “Disclosure Statement Order”, the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (including all exhibits thereto, and as the same may be amended, modified, and/or supplemented from time to time, the “Disclosure Statement”) as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). These documents are contained on the CDs sent to you with this Master Ballot. The Disclosure Statement Order also contains important information regarding the balloting process. Please also read the Disclosure Statement Order and the instructions sent with this Master Ballot prior to submitting a Master Ballot.

### **VOTING INSTRUCTIONS**

#### **VOTING DEADLINE:**

The Voting Deadline is **November 24 at 5:00 p.m. (prevailing Eastern Time)**, unless such time is extended. To have the votes of the Individual Claimants in Class 3 counted, you must complete, sign, and return this Master Ballot so that it is received by the Solicitation Agent at the address set forth in the Master Ballot on or before the Voting Deadline. Accordingly, you should immediately transmit the enclosed Solicitation Packages, including Ballots, to the Individual Claimants, with a return envelope addressed to you with instructions that the Individual Claimants return their Individual Ballots to you so as to be received on or before the Voting Deadline.

#### **HOW TO VOTE:**

If you are transmitting the votes of any Individual Claimants, other than yourself, you must deliver the Class 3 Ballot to the Individual Claimants, along with the Plan, Disclosure Statement, Disclosure Statement Order, Confirmation Hearing Notice, and other materials requested to be forwarded, and take the necessary actions to enable such Individual Claimants to complete and execute such Individual Ballot voting to accept or reject the Plan, and to return the completed, executed Individual Ballot to you so as to be received on or before the Voting Deadline.

With respect to all of the Individual Ballots returned to you, you must properly complete the Master Ballot, as follows:

- i. Complete the certification of authority to vote in Item 1;
- ii. Indicate in Item 2 the total votes to accept or reject the Plan;

**IMPORTANT: INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS IN CLASS 3 TO ACCEPT OR REJECT THE PLAN. IF ANY SUCH BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH**

VOTE BY SUBMITTING A BALLOT THAT PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN, PLEASE CONTACT THE SOLICITATION AGENT IMMEDIATELY. Any Individual Claimant that does not indicate either acceptance or rejection of the Plan, or indicates both acceptance and rejection of the Plan, will not be counted, and the votes in such ballots should not be included in your tabulation;

- iii. Transcribe the votes from the Individual Ballots in the addendum to the Master Ballot referenced in Item 3 thereof;
- iv. Review the certification in Item 4 of the Master Ballot;
- v. Ensure that each Individual Ballot is signed and the certification is complete;
- vi. Sign and date the Master Ballot;
- vii. Independently verify and confirm the accuracy of the information provided with respect to each individual holder of Class 3 Claims;
- viii. If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable item of the Master Ballot to which you are responding;
- ix. You must deliver the completed, executed Master Ballot so that it is *actually received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Individual Ballot returned to you by an individual holder, you must retain such Individual Ballot in your files for one year from the Voting Deadline;
- x. Votes cast by Individual Claimants through You will be applied against the positions held by such entities as of the Record Date. Votes submitted by You, pursuant to the Master Ballot, will not be counted in excess of the Record Amount;
- xi. To the extent that conflicting votes or “overvotes” are submitted by You, the Solicitation Agent, in good faith, will attempt to reconcile discrepancies with You; and
- xii. To the extent that “overvotes” on the Master Ballot are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent will apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot that contained the “overvote,” but only to the extent of your position in the applicable security.

**PLEASE NOTE**

This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan. Holders should not surrender, at this time, certificates representing their securities. The Solicitation Agent will not accept delivery of any such certificates surrendered together with a Master Ballot or Individual Ballot.

No Master Ballot or Individual Ballot shall constitute or be deemed to be a proof of claim or Equity Interest, or an assertion of a Claim, an allowance of a Claim, or an admission by the Debtors of the validity of a Claim.

No fees or commissions or other remuneration will be payable to You in connection with the distribution of Solicitation Packages or the preparation of the Master Ballot.

**PLEASE MAIL THIS MASTER BALLOT PROMPTLY. IF YOU BELIEVE THAT YOU ARE MISSING ANY MATERIALS FROM THE SOLICITATION PACKAGE, HAVE RECEIVED THE WRONG BALLOTS OR MASTER BALLOT, HAVE QUESTIONS REGARDING THE BALLOTS OR MASTER BALLOT, OR THE VOTING PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF OTHER ENCLOSED MATERIALS, PLEASE CALL THE SOLICITATION AGENT AT (904) 517-1442. DO NOT CONTACT THE SOLICITATION AGENT FOR LEGAL ADVICE. THE SOLICITATION AGENT CANNOT AND WILL NOT PROVIDE PARTIES WITH LEGAL ADVICE.**

**Item 1 - CERTIFICATION OF AUTHORITY TO VOTE.** The undersigned certifies that as of October 5, 2015 (the "Record Date"), the undersigned (please check applicable box):

Is a nominee and/or an Intermediary for the Individual Claimants of the aggregate principal amount listed in Item 2 below; or

Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below; or

Has been granted a proxy (an original of which is attached hereto) from a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the Individual Claimants of the Class 3 (Senior Secured Notes Claims) described below.

**Item 2 - TABULATION OF BENEFICIAL OWNER VOTING.** The undersigned certifies that:

**A. Class 3 Claims – Senior Secured Notes Claims**

**Acceptances.** \_\_\_\_\_ Individual Claimants holding Class 3 Senior Secured Notes Claims in the aggregate unpaid principal amount of \$ \_\_\_\_\_ have delivered duly completed Individual Ballots to the undersigned voting to **ACCEPT** the Plan; and

**Rejections.** \_\_\_\_\_ Individual Claimants holding Class 3 Senior Secured Notes Claims in the aggregate unpaid principal amount of \$ \_\_\_\_\_ have delivered duly completed Individual Ballots to the undersigned voting to **REJECT** the Plan.

**Item 3 – TRANSMITTAL OF VOTES FROM INDIVIDUAL BALLOTS.** The undersigned transmits the votes of Individual Claimants holding Claims in Class 3 as fully set forth below and certifies that the parties listed are the Individual Claimants, as of the Record Date, and have delivered to the undersigned, as the Nominee, Individual Ballots casting such votes, which, as set forth in each column therein, indicate the aggregate principal amount voted for each claim, and whether such claim is voted to accept or reject the Plan, and whether the holder of such claim that voted to accept the Plan has elected not to grant the release provisions set forth in Article VIII of the Plan.

**ADDENDUM TO MASTER BALLOT**

**1. Summary of Class 3 Senior Secured Notes Claims Voted.**

Name or Account Number for Each Individual Claimant of a Class 3 Senior Secured Notes Claims Voting on the Plan	Principal Amount of Claim Voted	Principal Amount of Class 3 Senior Secured Notes Claims Voted to ACCEPT the Plan*	Principal Amount of Class 3 Senior Secured Notes Claims Voted to REJECT the Plan*	Individual Claimant has Elected Not to Grant the Release Provisions Set Forth in Article VIII of the Plan (Indicate Yes if Item 3 was checked, or No if it was not checked)
1.		\$	\$	
2.		\$	\$	
3.		\$	\$	
4.		\$	\$	
5.		\$	\$	
6.		\$	\$	
7.		\$	\$	
8.		\$	\$	
<b>TOTALS</b>		\$	\$	

[If space is insufficient, attach additional sheets in same format.]

**Item 4. CERTIFICATION AS TO TRANSCRIPTION OF INFORMATION FROM ITEM 3 OF THE INDIVIDUAL BALLOT AS TO OTHER CLASS 3 SENIOR SECURED NOTES CLAIMS VOTED THROUGH OTHER INDIVIDUAL BALLOTS.**

The undersigned certifies that the undersigned has transcribed in the following table the information, if any, provided by Individual Claimants in Item 3 of the original Individual Ballots, identifying any Class 3 Senior Secured Notes Claims for which such holders have submitted other Individual Ballots other than to the undersigned:

Your Customer Account Number for Each Holder of Voting Class 3 Senior Secured Notes Claims	TRANSCRIBE FROM ITEM 3 OF THE INDIVIDUAL BALLOTS		
	Account Number	Name of Holder	Principal Amount of Other Class 3 Senior Secured Notes Claims Voted
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

**Item 5 - CERTIFICATION.** By signing this Master Ballot, the undersigned certifies that: (a) each Individual Claimant holding a Claim(s) in Class 3 whose vote is being transmitted by this Master Ballot has been provided with a copy of the Plan, Disclosure Statement, Disclosure Statement Order, and a Ballot for voting its Claim(s); and (b) each Individual Claimant has not cast more than one vote with respect to any given Claim for any purpose, including for determining both the number of votes and the amount of the Claim, even if such holder holds securities of the same type in more than one account. The undersigned also acknowledges that the solicitation of votes in Class 3 to accept or reject the Plan is subject to all the terms and conditions set forth in the Disclosure Statement Order, dated October [ ], 2015.

\_\_\_\_\_  
Name of Nominee

\_\_\_\_\_  
Participant Number

\_\_\_\_\_  
Signature of Nominee

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date Completed

**In order to vote Claims in Class 3 to accept or reject the Plan, please complete, sign, and date this Master Ballot and promptly return it to one of the following addresses, as appropriate, so as to be received on or prior to the Voting Deadline, by regular mail, or by hand delivery or overnight courier during normal business hours, to: Balloting Agent at Xinerdy Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.**

**MASTER BALLOTS RECEIVED BY FACSIMILE OR OTHER ELECTRONIC MEANS,  
OR RECEIVED AFTER THE VOTING DEADLINE, WILL NOT BE COUNTED**

**Exhibit 3-b**

**Ballot for Class 3 (Senior Secured Notes Claims)**

**NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>9</sup>

**Chapter 11**

**Case No. 15-70444 (PMB)**

**(Jointly Administered)**

Voting Deadline: November 24 at 5:00 p.m. (ET)  
Confirmation Obj. Deadline: November 24 at 5:00 p.m. (ET)  
Confirmation Hearing Date: December 1 at 11:00 a.m. (ET)

**INDIVIDUAL BALLOT FOR CLASS 3 SENIOR SECURED NOTES CLAIMS FOR ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE RETURNED TO YOUR NOMINEE SO THAT IT IS ACTUALLY RECEIVED BY THE NOMINEE ON OR BEFORE THE VOTING DEADLINE**

**THE VOTING DEADLINE FOR YOUR NOMINEE TO SUBMIT THE MASTER BALLOT TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 24, 2015 (THE "VOTING DEADLINE").**

This ballot (the "Ballot") is being sent to parties holding Claims<sup>10</sup> against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a General Unsecured Claims; (8) an Intercompany Claim or Interest, (9) an Interest in Xinery Ltd., or (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code (the "Senior Secured Note Claims"). If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [ ], 2015, the United States Bankruptcy Court for the Western District of Virginia (the "Court") signed an order (the "Solicitation Order") which approved the *Disclosure Statement Accompanying Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated September 16, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the "Disclosure Statement") regarding the *Joint Plan of*

<sup>9</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

<sup>10</sup> Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

*Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be further amended or modified, the “Plan”), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the “Debtors”). The Plan is Exhibit A to the Disclosure Statement that accompanies this Ballot. Any party may request, at the Debtors’ expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Senior Secured Notes Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

**THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 3 SENIOR SECURED NOTE CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE NOMINEE. THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.**

**ITEM 1. CLASS 3 CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the “Record Date”), it held a Senior Secured Note Claim in the below amount:**

\$ \_\_\_\_\_

**ITEM 2. CLASS 3 (SENIOR SECURED NOTE CLAIMS) VOTE. The Holder of the Senior Secured Note Claim that relates to this Ballot votes:**

to ACCEPT the Plan                       to REJECT the Plan

**ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**ITEM 3. OPTIONAL RELEASE ELECTION:**

The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

**ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the Senior Secured Note Claim certifies that it:**

- A. is the Holder of the Senior Secured Note Claim to which this Ballot pertains;**
- B. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;**

**C. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and**

**D. has not submitted any other Ballots relating to the Senior Secured Note Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.**

Name: \_\_\_\_\_  
(Print or Type)

Social Security Or Federal Tax I.D. No.: \_\_\_\_\_  
(Optional)

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
(If Appropriate)

Title: \_\_\_\_\_  
(If Appropriate)

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date Completed: \_\_\_\_\_

This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. This Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

**YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE NOMINEE, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.**

**IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.**

**Exhibit 3-c**

**Master Ballot for Holders of Senior Secured Note Deficiency Claims  
in Class 4 (General Unsecured Claims)**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

MASTER BALLOT FOR HOLDERS OF SENIOR SECURED NOTE  
DEFICIENCY CLAIMS IN CLASS 4 (GENERAL UNSECURED CLAIMS) FOR  
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF  
XINERGY LTD. AND ITS SUBSIDIARY DEBTORS  
AND DEBTORS IN POSSESSION

PLEASE READ AND FOLLOW THE INSTRUCTIONS CAREFULLY. PLEASE COMPLETE, SIGN, AND DATE THIS SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT AND RETURN IT TO THE SOLICITATION AGENT BY FIRST CLASS MAIL, OR DURING REGULAR BUSINESS HOURS BY OVERNIGHT COURIER OR HAND DELIVERY, TO: BALLOTING AGENT AT XINERGY LTD. BALLOT TABULATION CENTER C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650. IF THIS SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT HAS NOT BEEN RECEIVED BY THE SOLICITATION AGENT BY NOVEMBER 24 AT 5:00 P.M. (PREVAILING EASTERN TIME) (THE "VOTING DEADLINE"), THE VOTES OF THE INDIVIDUAL HOLDERS OF SENIOR SECURED NOTE DEFICIENCY CLAIMS IN CLASS 4 (EACH AN "INDIVIDUAL CLAIMANT" AND COLLECTIVELY, THE "INDIVIDUAL CLAIMANTS") WILL NOT BE COUNTED. THEREFORE, YOU MUST ALLOW SUFFICIENT TIME TO BE SURE THAT THE SENIOR SECURED NOTE DEFICIENCY CLAIMS CLASS 4 MASTER BALLOT IS RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE.

---

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

You, as the Nominee<sup>2</sup> for the Individual Claimants (“You,” “YOU,” or “you”), must deliver the completed, executed Senior Secured Note Deficiency Claims Class 4 master ballot (the “Master Ballot”) so that it is actually *received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Ballot returned to you by an Individual Claimant (each an “Individual Ballot”), you must retain such Individual Ballot in your files for one year from the Voting Deadline.

This Master Ballot is to be used by you, as the representative of holders of Senior Secured Note Deficiency Claims in Class 4 (General Unsecured Claims), to transmit the votes of such Individual Claimants in respect of their decision to accept or reject the *Joint Plan of Reorganization of Xinerger Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be amended, modified, and/or supplemented, the “Plan”).

By Order dated October [ ], 2015, the “Disclosure Statement Order”), the United States Bankruptcy Court for the Western District of Virginia (the “Court”) approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinerger Ltd. and its Subsidiary Debtors and Debtors In Possession* (including all exhibits thereto, and as the same may be amended, modified, and/or supplemented from time to time, the “Disclosure Statement”) as containing adequate information within the meaning of section 1125 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). These documents are contained on the CDs sent to you with this Master Ballot. The Disclosure Statement Order also contains important information regarding the balloting process. Please also read the Disclosure Statement Order and the instructions sent with this Master Ballot prior to submitting a Master Ballot.

### **VOTING INSTRUCTIONS**

#### **VOTING DEADLINE:**

The Voting Deadline is **November 24 at 5:00 p.m. (prevailing Eastern Time)**, unless such time is extended. To have the votes of the Individual Claimants that hold Senior Secured Note Deficiency Claims in Class 4 counted, you must complete, sign, and return this Master Ballot so that it is received by the Solicitation Agent at the address set forth in the Master Ballot on or before the Voting Deadline. Accordingly, you should immediately transmit the enclosed Solicitation Packages, including Ballots, to the Individual Claimants, with a return envelope addressed to you with instructions that the Individual Claimants return their Individual Ballots to you so as to be received on or before the Voting Deadline.

#### **HOW TO VOTE:**

If you are transmitting the votes of any Individual Claimants, other than yourself, you must deliver the Class 4 Ballot to the Individual Claimants, along with the Plan, Disclosure Statement, Disclosure Statement Order, Confirmation Hearing Notice, and other materials requested to be forwarded, and take the necessary actions to enable such Individual Claimants to complete and execute such Individual Ballot voting to accept or reject the Plan, and to return the completed, executed Individual Ballot to you so as to be received on or before the Voting Deadline.

With respect to all of the Individual Ballots returned to you, you must properly complete the Master Ballot, as follows:

- xiii. Complete the certification of authority to vote in Item 1;

---

<sup>2</sup> Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

- xiv. Indicate in Item 2 the total votes to accept or reject the Plan;

IMPORTANT: EACH HOLDER OF AN ALLOWED SENIOR SECURED NOTE CLAIM IN CLASS 3 AND A SENIOR SECURED NOTE DEFICIENCY CLAIM IN CLASS 4 SHALL BE DEEMED TO HAVE VOTED THE FULL AMOUNT OF SUCH HOLDER'S ALLOWED SENIOR SECURED NOTE CLAIM IN CLASS 3 NOTWITHSTANDING ANY PURPORTED ALLOCATION OF SUCH CLAIM ON THE RESPECTIVE BALLOTS. HOLDERS OF ALLOWED SENIOR SECURED NOTE CLAIMS SHALL NOT BE ENTITLED TO SPLIT THEIR VOTES BETWEEN CLASS 3 AND CLASS 4. IN THE EVENT SUCH HOLDER RETURNS CLASS 3 AND CLASS 4 BALLOTS THAT DISAGREE, THE VOTE AND THIRD-PARTY RELEASE OPT-OUT SELECTION INDICATED ON THE CLASS 3 BALLOT SHALL CONTROL SUCH HOLDER'S CLASS 4 VOTE AND OPT-OUT ELECTION. INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES WITHIN A CLASS. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS TO ACCEPT OR REJECT THE PLAN. IF ANY SUCH BENEFICIAL HOLDER HAS ATTEMPTED TO SPLIT SUCH VOTE WITHIN A CLASS BY SUBMITTING A BALLOT THAT PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN, PLEASE CONTACT THE SOLICITATION AGENT IMMEDIATELY. Any Individual Claimant that does not indicate either acceptance or rejection of the Plan, or indicates both acceptance and rejection of the Plan, will not be counted, and the votes in such ballots should not be included in your tabulation;

- xv. Transcribe the votes from the Individual Ballots in the addendum to the Master Ballot referenced in Item 3 thereof;
- xvi. Review the certification in Item 4 of the Master Ballot;
- xvii. Ensure that each Individual Ballot is signed and the certification is complete;
- xviii. Sign and date the Master Ballot;
- xix. Independently verify and confirm the accuracy of the information provided with respect to each individual holder of Class 4 Senior Secured Note Deficiency Claims;
- xx. If additional space is required to respond to any item on the Master Ballot, please use additional sheets of paper clearly marked to indicate the applicable item of the Master Ballot to which you are responding;
- xxi. You must deliver the completed, executed Master Ballot so that it is *actually received* by the Solicitation Agent on or before the Voting Deadline. For each completed, executed Individual Ballot returned to you by an individual holder, you must retain such Individual Ballot in your files for one year from the Voting Deadline;
- xxii. Votes cast by Individual Claimants through You will be applied against the positions held by such entities as of the Record Date. Votes submitted by You, pursuant to the Master Ballot, will not be counted in excess of the Record Amount;
- xxiii. To the extent that conflicting votes or "overvotes" are submitted by You, the Solicitation Agent, in good faith, will attempt to reconcile discrepancies with You; and
- xxiv. To the extent that "overvotes" on the Master Ballot are not reconcilable prior to the preparation of the vote certification, the Solicitation Agent will apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and reject the Plan

submitted on the Master Ballot that contained the "overvote," but only to the extent of your position in the applicable security.

**PLEASE NOTE**

This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan. Holders should not surrender, at this time, certificates representing their securities. The Solicitation Agent will not accept delivery of any such certificates surrendered together with a Master Ballot or Individual Ballot.

No Master Ballot or Individual Ballot shall constitute or be deemed to be a proof of claim or Equity Interest, or an assertion of a Claim, an allowance of a Claim, or an admission by the Debtors of the validity of a Claim.

No fees or commissions or other remuneration will be payable to You in connection with the distribution of Solicitation Packages or the preparation of the Master Ballot.

**PLEASE MAIL THIS MASTER BALLOT PROMPTLY. IF YOU BELIEVE THAT YOU ARE MISSING ANY MATERIALS FROM THE SOLICITATION PACKAGE, HAVE RECEIVED THE WRONG BALLOTS OR MASTER BALLOT, HAVE QUESTIONS REGARDING THE BALLOTS OR MASTER BALLOT, OR THE VOTING PROCEDURES, OR IF YOU NEED ADDITIONAL COPIES OF OTHER ENCLOSED MATERIALS, PLEASE CALL THE SOLICITATION AGENT AT (904) 517-1442. DO NOT CONTACT THE SOLICITATION AGENT FOR LEGAL ADVICE. THE SOLICITATION AGENT CANNOT AND WILL NOT PROVIDE PARTIES WITH LEGAL ADVICE.**

**Item 1 - CERTIFICATION OF AUTHORITY TO VOTE.** The undersigned certifies that as of October 5, 2015 (the "Record Date"), the undersigned (please check applicable box):

Is a nominee and/or an Intermediary for the Individual Claimants of the aggregate principal amount listed in Item 2 below; or

Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below; or

Has been granted a proxy (an original of which is attached hereto) from a nominee that is the registered holder of the aggregate principal amount listed in Item 2 below and accordingly, has full power and authority to vote to accept or reject the Plan on behalf of the Individual Claimants of the Class 4 (General Unsecured Claims) described below.

**Item 2 - TABULATION OF BENEFICIAL OWNER VOTING.** The undersigned certifies that:

**B. Class 4 General Unsecured Claims**

**Acceptances.** \_\_\_\_\_ Individual Claimants holding Senior Secured Notes in the aggregate unpaid principal amount of \$\_\_\_\_\_ have delivered duly completed Individual Ballots to the undersigned voting to **ACCEPT** the Plan; and

**Rejections.** \_\_\_\_\_ Individual Claimants holding Senior Secured Notes in the aggregate unpaid principal amount of \$ \_\_\_\_\_ have delivered duly completed Individual Ballots to the undersigned voting to **REJECT** the Plan.

**Item 3 – TRANSMITTAL OF VOTES FROM INDIVIDUAL BALLOTS.** The undersigned transmits the votes of Individual Claimants holding Senior Secured Note Deficiency Claims in Class 4 as fully set forth below and certifies that the parties listed are the Individual Claimants, as of the Record Date, and have delivered to the undersigned, as the Nominee, Individual Ballots casting such votes, which, as set forth in each column therein, indicate the aggregate principal amount voted for each claim, and whether such claim is voted to accept or reject the Plan, and whether the holder of such claim that voted to accept the Plan has elected not to grant the release provisions set forth in Article VIII of the Plan.

**ADDENDUM TO MASTER BALLOT**

**2. Summary of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted.**

Name or Account Number for Each Individual Claimant of a Class 4 Senior Secured Note Deficiency General Unsecured Claims Voting on the Plan	Principal Amount of Claim Voted	Principal Amount of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted to ACCEPT the Plan*	Principal Amount of Class 4 Senior Secured Note Deficiency General Unsecured Claims Voted to REJECT the Plan*	Individual Claimant has Elected Not to Grant the Release Provisions Set Forth in Article VIII of the Plan (Indicate Yes if Item 3 was checked, or No if it was not checked)
1.		\$	\$	
2.		\$	\$	
3.		\$	\$	
4.		\$	\$	
5.		\$	\$	
6.		\$	\$	
7.		\$	\$	
8.		\$	\$	
<b>TOTALS</b>		\$	\$	

[If space is insufficient, attach additional sheets in same format.]

**Item 4. CERTIFICATION AS TO TRANSCRIPTION OF INFORMATION FROM ITEM 3 OF THE INDIVIDUAL BALLOT AS TO OTHER CLASS 4 SENIOR SECURED NOTE DEFICIENCY GENERAL UNSECURED CLAIMS VOTED THROUGH OTHER INDIVIDUAL BALLOTS.**

The undersigned certifies that the undersigned has transcribed in the following table the information, if any, provided by Individual Claimants in Item 3 of the original Individual Ballots, identifying any Class 4 Senior Secured Note Deficiency General Unsecured Claims for which such holders have submitted other Individual Ballots other than to the undersigned:

Your Customer Account Number for Each Holder of Voting Class 4 Senior Secured Note Deficiency General Unsecured Claims	TRANSCRIBE FROM ITEM 3 OF THE INDIVIDUAL BALLOTS		
	Account Number	Name of Holder	Principal Amount of Other Class 4 Senior Secured Note Deficiency General Unsecured Claims
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

**Item 5 - CERTIFICATION.** By signing this Master Ballot, the undersigned certifies that: (a) each Individual Claimant holding a Senior Secured Note Deficiency General Unsecured Claim(s) in Class 4 whose vote is being transmitted by this Master Ballot has been provided with a copy of the Plan, Disclosure Statement, Disclosure Statement Order, and a Ballot for voting its Claim(s); and (b) each Individual Claimant has not cast more than one vote with respect to any given Claim for any purpose, including for determining both the number of votes and the amount of the Claim, even if such holder holds securities of the same type in more than one account. The undersigned also acknowledges that the solicitation of Senior Secured Note Deficiency Claim votes in Class 4 to accept or reject the Plan is subject to all the terms and conditions set forth in the Disclosure Statement Order, dated October [ ], 2015.

\_\_\_\_\_  
Name of Nominee

\_\_\_\_\_  
Participant Number

\_\_\_\_\_  
Signature of Nominee

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date Completed

**In order to vote Senior Secured Note Deficiency General Unsecured Claims in Class 4 to accept or reject the Plan, please complete, sign, and date this Master Ballot and promptly return it to one of the following addresses, as appropriate, so as to be received on or prior to the Voting Deadline, by regular mail, or by hand delivery or overnight courier during normal business hours, to: Balloting Agent at Xinery Ltd. Ballot Tabulation Center c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650.**

**MASTER BALLOTS RECEIVED BY FACSIMILE OR OTHER ELECTRONIC MEANS,  
OR RECEIVED AFTER THE VOTING DEADLINE, WILL NOT BE COUNTED**

**Exhibit 3-d**

**Ballot for Holders of Senior Secured Note Deficiency Claims  
in Class 4 (General Unsecured Claims)**

**NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.**

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

In re:

XINERGY LTD., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

Voting Deadline: November 24 at 5:00 p.m. (ET)  
Confirmation Obj. Deadline: November 24 at 5:00 p.m. (ET)  
Confirmation Hearing Date: December 1 at 11:00 a.m. (ET)

**INDIVIDUAL BALLOT FOR HOLDERS OF SENIOR SECURED NOTE DEFICIENCY CLAIMS IN CLASS 4 (GENERAL UNSECURED CLAIMS) FOR ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF XINERGY LTD. AND ITS SUBSIDIARY DEBTORS AND DEBTORS IN POSSESSION**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE RETURNED TO YOUR NOMINEE SO THAT IT IS ACTUALLY RECEIVED BY THE NOMINEE ON OR BEFORE THE VOTING DEADLINE**

**THE VOTING DEADLINE FOR YOUR NOMINEE TO SUBMIT THE MASTER BALLOT TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 24, 2015 (THE "VOTING DEADLINE").**

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached to the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

This ballot (the “Ballot”) is being sent to parties holding Class 4 Senior Secured Note Deficiency Claims<sup>2</sup> against one or more of the Debtors. If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [ ], 2015, the United States Bankruptcy Court for the Western District of Virginia (the “Court”) signed an order (the “Solicitation Order”) which approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Disclosure Statement”) regarding the *First Amended Joint Plan of Reorganization of Xinery Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be further amended or modified, the “Plan”), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the “Debtors”). The Plan is Exhibit A to the Disclosure Statement that accompanies this Ballot. Any party may request, at the Debtors’ expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of General Unsecured Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

**THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE NOMINEE. THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.**

**IMPORTANT: HOLDERS OF ALLOWED SENIOR SECURED NOTE CLAIMS SHALL NOT BE ENTITLED TO SPLIT THEIR VOTES BETWEEN CLASS 3 AND CLASS 4. IN THE EVENT SUCH HOLDER RETURNS CLASS 3 AND CLASS 4 BALLOTS THAT DISAGREE, THE VOTE AND THIRD-PARTY RELEASE OPT-OUT SELECTION INDICATED ON THE CLASS 3 BALLOT SHALL CONTROL SUCH HOLDER’S CLASS 4 VOTE AND OPT-OUT ELECTION. INDIVIDUAL CLAIMANTS MAY NOT SPLIT THEIR VOTES. EACH INDIVIDUAL CLAIMANT MUST VOTE ALL OF HIS, HER, OR ITS CLAIMS TO ACCEPT OR REJECT THE PLAN.**

**ITEM 1. CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the “Record Date”), it held a Senior Secured Note Claim in the below amount:**

\$ \_\_\_\_\_

---

<sup>2</sup> Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

**ITEM 2. CLASS 4 SENIOR SECURED NOTE DEFICIENCY CLAIM VOTE. The Holder of the Class 4 Senior Secured Note Deficiency Claim that relates to this Ballot votes:**

to ACCEPT the Plan  to REJECT the Plan

**ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**ITEM 3. OPTIONAL RELEASE ELECTION:**

The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

**ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the Class 4 Senior Secured Note Deficiency Claim certifies that it:**

**A. is the Holder of the Senior Secured Note Deficiency Claim to which this Ballot pertains;**

**E. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;**

**F. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and**

**G. has not submitted any other Ballots relating to its Class 4 Senior Secured Note Deficiency Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.**

Name: \_\_\_\_\_  
(Print or Type)

Social Security Or Federal Tax I.D. No.: \_\_\_\_\_  
(Optional)

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
(If Appropriate)

Title: \_\_\_\_\_  
(If Appropriate)

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date Completed: \_\_\_\_\_

This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. This Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

**YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE NOMINEE, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.**

**IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.**

**Exhibit 3-e**

**Ballot for Class 4 (General Unsecured Claims)**

**NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.**

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

**In re:**

**XINERGY LTD., et al.,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 15-70444 (PMB)**

**(Jointly Administered)**

**BALLOT FOR HOLDERS OF CLASS 4 GENERAL UNSECURED CLAIMS FOR  
ACCEPTING OR REJECTING THE JOINT PLAN OF REORGANIZATION OF  
XINERGY LTD. AND ITS SUBSIDIARY DEBTORS  
AND DEBTORS IN POSSESSION**

This ballot (the “Ballot”) is being sent to parties holding Claims<sup>2</sup> against one or more of the Debtors other than (1) an Administrative Claim, (2) a DIP Facility Claim, (3) a Professional Claim, (4) a Priority Tax Claim, (5) a Priority Non-Tax Claim, (6) an Other Secured Claim, (7) a Senior Secured Note Claims, (8) an Intercompany Claim or Interest, (9) an Interest in Xinergy Ltd., (10) a Claim subject to subordination pursuant to section 510(b) of the Bankruptcy Code and (11) Senior Secured Note Deficiency Claims (the “Class 4 General Unsecured Claims”). If you hold Claims in other Classes in which you are entitled to vote, you will receive a Ballot for each such other Class.

On October [ ], 2015, the United States Bankruptcy Court for the Western District of Virginia (the “Court”) signed an order (the “Solicitation Order”) which approved the *Disclosure Statement Accompanying First Amended Joint Plan of Reorganization Proposed by Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Disclosure Statement”) regarding the *First*

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

<sup>2</sup> Capitalized terms used, but not defined herein, shall have the meaning ascribed to them in the Plan.

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)

*Counsel to the Debtors  
and Debtors in Possession*

*Amended Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession* (as the same may be further amended or modified, the “Plan”), and which established certain procedures for the solicitation and tabulation of votes to accept or reject the Plan. Please use this Ballot to cast your vote to accept or reject the Plan, which is proposed by the above-captioned debtors and debtors-in-possession (collectively the “Debtors”). Any party may request, at the Debtors’ expense, hard copies of the Disclosure Statement, together with the Plan and other exhibits annexed thereto, from the Balloting Agent. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Class 4 Claims and if the Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (a) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Plan and (b) otherwise satisfies the requirements under section 1129(b) of the Bankruptcy Code.

**THIS BALLOT IS TO BE USED BY HOLDERS OF CLASS 4 GENERAL UNSECURED CLAIMS. PLEASE COMPLETE, SIGN AND DATE THIS BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO THE AGENT SUPERVISING THE SOLICITATION, TABULATION, AND BALLOTING PROCESS (THE “BALLOTING AGENT”). THE VOTING DEADLINE IS 5:00 P.M. PREVAILING EASTERN TIME ON NOVEMBER 24, 2015.**

**ITEM 1. CLASS 4 CLAIM AMOUNT. The undersigned certifies that as of October 5, 2015 (the “Record Date”), it held a Class 4 General Unsecured Claim in the below amount:**

\$ \_\_\_\_\_

**ITEM 2. CLASS 4 (GENERAL UNSECURED CLAIMS) VOTE. The holder of the Class 4 General Unsecured Claim that relates to this Ballot votes:**

to ACCEPT the Plan                       to REJECT the Plan

**ANY BALLOT WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**ITEM 3. OPTIONAL RELEASE ELECTION:**

The undersigned elects NOT to grant the releases contained in Section 8.4 of the Plan.

**ITEM 4. CERTIFICATION. By signing this Ballot, the Holder of the General Unsecured Claim certifies that it:**

**A. is the Holder of the General Unsecured Claim to which this Ballot pertains;**

**B. has been provided with a copy of the Plan and the Disclosure Statement and that it acknowledges that the vote, or the election concerning the Third Party**

Release in Section 8.4 of the Plan, set forth on this Ballot is subject to all the terms and conditions set forth in the Plan and the Disclosure Statement;

C. has full power and authority to vote to accept or reject the Plan and to elect to accept or reject the Third Party Release in Section 8.4 of the Plan; and

D. has not submitted any other Ballots relating to the Class 4 General Unsecured Claim that are inconsistent with the vote or election as set forth in this Ballot or that, as limited by the terms of the Solicitation Order and the instructions attached hereto, if such other Ballots were previously submitted, they either have been or are hereby revoked or changed to reflect the vote or election set forth herein.

Name: \_\_\_\_\_  
(Print or Type)

Social Security Or Federal Tax I.D. No.: \_\_\_\_\_  
(Optional)

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
(If Appropriate)

Title: \_\_\_\_\_  
(If Appropriate)

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date Completed: \_\_\_\_\_

No fees, commissions or other remuneration will be payable to any broker, dealer or other person for soliciting votes on the Plan. This Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan or to elect to accept or reject the Third Party Release in Section 8.4 of the Plan. Holders should not surrender, at this time, certificates representing their securities. The Balloting Agent will not accept delivery of any such certificates surrendered together with a Ballot. Moreover, this Ballot shall not constitute or be deemed to be a proof of claim or equity interest or an assertion of a claim or equity interest.

**YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE BALLOTING AGENT, BY 5:00 P.M. EASTERN TIME ON NOVEMBER 24, 2015, OR YOUR VOTE WILL NOT BE COUNTED. FACSIMILE OR OTHER MEANS OF ELECTRONIC TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.**

**IF YOU HAVE QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL BALLOT OR ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.**

### **VOTING INSTRUCTIONS**

All capitalized terms used in the ballot (the "Ballot") or these instructions but not otherwise defined therein shall have the meanings ascribed to them in the Plan.

Please read and follow these instructions carefully. You must transmit this Ballot to the Balloting Agent by no later than 5:00 p.m. prevailing Eastern Time on November 24, 2015, unless such time is extended (the "Voting Deadline"), or your Ballot will not be counted.

In order for your vote to count, you must:

- Complete Item 1;
- Cast ONE vote to accept or reject the Plan by checking the proper box in Item 2;
- Review the certifications in Item 4;
- Sign the Ballot – Your original signature is required on the Ballot in order for your vote to count;
- If you are completing the Ballot on behalf of an entity, indicate your relationship with such entity and the capacity in which you are signing, and provide proof of your authorization to so sign. In addition, please provide your name and mailing address if different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot; and
- Return the completed Ballot to the Balloting Agent in the pre-addressed stamped envelope enclosed with this Ballot.

**IF YOU DO NOT CAST A VOTE WITH RESPECT TO THE PLAN, YOU MAY COMPLETE ITEM 3 TO ELECT TO ACCEPT OR REJECT THE THIRD PARTY RELEASE.**

If you believe you received the wrong form of Ballot, or if you need additional Ballots, please immediately contact the Balloting Agent.

If you wish to have your Claim or Interest allowed for purposes of voting on the Plan in a manner that is inconsistent with the Ballot you received or if you did not receive a Ballot and wish to have your Claim or Interest temporarily allowed for voting purposes only, you must serve on the Debtors and file with the Bankruptcy Court, on or before November 4, 2015, a motion for an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing such Claim or Interest for purposes of voting (an "Estimation Motion"). An Estimation Motion must set forth with particularity the amount and classification of which you believe your Claim or Interest should be allowed for voting purposes, and the evidence in support of your belief. In respect of any timely filed Estimation Motion, the Ballot in question shall be counted (a) in the amount established by the Bankruptcy Court in an order entered on or before the Confirmation Hearing or (b) if such an order has not been entered by the Confirmation Hearing and unless the Debtors and you have come to an agreement as to the relief requested in the Estimation Motion, in an amount equal to the preprinted amount on the Ballot or in the event you did not receive a Ballot, you shall not

have a Ballot counted at all. The Court will schedule a hearing on such Estimation Motion to be heard at or prior to the Confirmation Hearing.

If multiple Ballots are received from the same person with respect to the same Claims or Interests prior to the Voting Deadline, the last Ballot timely received will supersede and revoke any earlier received Ballot. However, if a Holder of Claims or Interests casts Ballots received by the Balloting Agent on the same day, but which are voted inconsistently, such Ballots will not be counted.

Any Ballot that is illegible or that contains insufficient information to permit the identification of the claimant will not be counted.

Properly executed Ballots that attempt to partially accept and partially reject the Plan will not be counted.

After the Voting Deadline, no Ballot may be withdrawn or modified without the prior consent of the Debtors.

This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim or Interest.

If you hold Claims or Interests in more than one Class under the Plan, you may receive more than one Ballot for each different Class. Each Ballot votes only your Claims or Interests indicated on that Ballot. Please complete and return each Ballot you receive.

**PLEASE MAIL YOUR BALLOT PROMPTLY. FACSIMILE OR OTHER ELECTRONIC (INCLUDING E-MAIL) TRANSMISSION OF THIS BALLOT WILL NOT BE ACCEPTED.**

**IF YOU HAVE ANY QUESTIONS REGARDING THE BALLOT OR THE PROCEDURES GENERALLY, OR IF YOU NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CALL THE BALLOTING AGENT AT (904) 517-1442.**

**FOR MAILING PURPOSES, THE ADDRESS OF THE BALLOTING AGENT IS: XINERGY LTD. BALLOTS C/O AMERICAN LEGAL CLAIM SERVICES, LLC, P.O. BOX 23650, JACKSONVILLE, FL 32241-3650.**

**Exhibit 4**

**Cure Notice**

**EXHIBIT 4**

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

**In re:**

**XINERGY LTD., et al.,**

**Debtors.<sup>17</sup>**

**Chapter 11**

**Case No. 15-70444 (PMB)**

**(Jointly Administered)**

**NOTICE OF (I) POSSIBLE ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (II) FIXING OF CURE AMOUNTS; AND (III) DEADLINE TO OBJECT THERETO**

**PLEASE TAKE NOTICE** that on September 16, 2015, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed in the United States Bankruptcy Court for the Western District of Virginia (the “Bankruptcy Court”) the *Debtors’ Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections (A) to Confirmation of the Plan, and (B) to Proposed Cure Amounts; and (IV) Granting Related Relief* (the “Voting Procedures Motion”). The Voting Procedures Motion sought approval of, among other things, procedures for the fixing of Cure Amounts (as defined below) in connection with the potential assumption or assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Contracts”) pursuant to the *First Amended Joint Plan of Reorganization of Xinergy Ltd. and its Subsidiary Debtors and Debtors In Possession*, dated October 14, 2015 (as amended, the “Plan”),<sup>18</sup> and the deadline to object to such Cure Amounts, assumptions or assignments and assignments.

**PLEASE TAKE FURTHER NOTICE** that on the schedule annexed hereto as Exhibit A, the Debtors have indicated the cure amounts that the Debtors believe must be paid to compensate the non-Debtor parties for any actual pecuniary losses arising from any defaults under the Debtors’ Contracts that may be assumed, or assumed and assigned, under the Plan (in each instance, the “Cure Amount”).<sup>19</sup>

<sup>17</sup> The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Plan.

<sup>18</sup> Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Plan.

<sup>19</sup> To the extent that any Contract previously has been rejected in part, with respect to certain portions of a Contract, the inclusion of such Contract on Exhibit A refers solely to the proposed assumption of those portions of the Contract not previously rejected pursuant to Court Order.

**PLEASE TAKE FURTHER NOTICE** that any party objecting to the Cure Amounts, whether or not such party previously filed a proof of claim with respect to amounts due under the applicable agreement, or objecting to the potential assumption or assumption and assignment of such Contract(s), shall be required to file and serve an objection, in writing, setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Contracts and/or any and all objections to the potential assumption or assumption and assignment of such agreements, together with all documentation supporting such cure claim or objection. Any objections to the proposed assumption or assumption and assignment of the Contract(s) and/or the corresponding Cure Amount(s), must be filed with the Clerk of the Bankruptcy Court for the Western District of Virginia, 210 Church Avenue, Room 200, Roanoke, Virginia 24011, and served upon each of the following notice parties so that the objection is received no later than **November 10, 2015, at 5:00 p.m. prevailing Eastern Time** (the "Cure Objection Deadline"):

The Debtors: Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, Attn: Tyler P. Brown, Esq.

The Creditors Committee: (i) McGuireWoods LLP, EQT Plaza, 625 Liberty Avenue, 23<sup>rd</sup> Floor, Pittsburgh, Pennsylvania 15222-3142, Attn: Michael J. Roeschenthaler, Esq., and (ii) Whiteford Taylor & Preston, LLP, 114 Market Street, Suite 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings, Esq.

The Informal Prepetition Noteholder Committee and DIP Lenders: Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, 10019, Attn: Brian Hermann, Esq. & Lauren Shumejda, Esq.

The Office of the United States Trustee: 210 First Street, Suite 505, Roanoke, Virginia 24011, Attn: Margaret K. Garber, Esq

**PLEASE TAKE FURTHER NOTICE** that if an objection is timely filed and the parties are unable to settle such objection, a hearing with respect to the assumption or assumption and assignment of your Contract and/or your Cure Amount will be held at the time of the Confirmation Hearing, **December 1, 2015, at 11:00 a.m. prevailing Eastern Time**, or such other hearing date to which the parties may mutually agree, before Judge Paul M. Black, United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

**PLEASE TAKE FURTHER NOTICE** that in the event that no objection is timely filed with respect to a Contract, the counterparty to such Contract shall be deemed to have consented to the Cure Amount proposed by the Debtors and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their Estates. In addition, if no timely objection is filed with respect to a Contract, upon the Effective Date of the Plan, the Debtors or the assignee, and the counterparty to such Contract shall enjoy all of the rights and benefits under the Contract without the necessity of obtaining any party's written consent to the Debtors' assumption or assumption and assignment of the Contract, and such counterparty shall be deemed to have waived any right to object, consent, condition or otherwise restrict the Debtors' assumption or assumption and assignment of the Contract.

**PLEASE TAKE FURTHER NOTICE** that if you agree with assumption or assumption and assignment of your Contract and the Cure Amount indicated, you need not take any further action.

**PLEASE TAKE FURTHER NOTICE** that the inclusion of a Contract herein is without prejudice to the Debtors' right to modify their election to assume, assume and assign or to reject such Contract prior to the entry of a final, non-appealable order (which order may be the order confirming the

Plan) deeming such Contract assumed, assumed and assigned or rejected, and inclusion of a Contract herein is not a final determination that such Contract will, in fact, be assumed or assumed and assigned.

**PLEASE TAKE FURTHER NOTICE** that the inclusion of a Contract herein shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code or that the Debtors have any liability thereunder.

HUNTON & WILLIAMS LLP

Dated: October [ ], 2015

/s/ Tyler P. Brown

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

*Counsel to the Debtors  
and Debtors in Possession*

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)

---

THIRD REPORT OF THE  
INFORMATION OFFICER  
OCTOBER 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 Information Officer