

**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) 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**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned cases debtors and debtors in possession (collectively, the “Debtors”), for the entry of an Order, pursuant to section 501 the Bankruptcy Code and Bankruptcy Rules 2002, 3003(c) and 9007, (i) establishing the general bar date by which all creditors and equity holders must file proofs of claim or proofs of equity interests in these chapter 11 cases, including without limitation claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the twenty (20) days prior to the Petition Date (the “General Bar Date”);<sup>3</sup> (ii) establishing the date by which Governmental Units must file

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<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 set forth in the Motion.

<sup>3</sup> For purposes of this Motion, the Bar Dates (as defined herein) requested herein shall not extend to requests

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proofs of claim in these chapter 11 cases (the “Governmental Unit Bar Date”); (iii) establishing the date by which proofs of claim relating to the Debtors’ rejection of executory contracts or unexpired leases must be filed in these chapter 11 cases (the “Rejection Bar Date”); (iv) establishing a bar date by which creditors holding claims that have been amended by the Debtors in their Schedules (as defined below) must be filed in these chapter 11 cases (the “Amended Schedule Bar Date”); together with the General Bar Date, the Governmental Unit Bar Date and the Rejection Bar Date, the “Bar Dates”); (v) approving a tailored proof of claim form to be distributed to potential creditors; (vi) approving a tailored proof of interest form to be distributed to potential equity holders; (vii) approving the manner of notice of the Bar Dates; and (viii) providing certain supplemental relief; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and that the establishment of the Bar Dates and the procedures set forth in the Motion are fair and reasonable and will provide good, sufficient and proper notice to all creditors and equity holders of their rights and obligations in connection with claims or interests they may have against the Debtors or their property in these chapter 11 cases; and the Court finding that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the circumstances; and upon the record therein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. Bar Dates. The Bar Dates set forth in the Motion hereby are **APPROVED**.

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for payment of fees and expenses of professionals retained or sought to be retained by order of the Court in these cases.

3. Notices and Forms. The forms of the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form, substantially in the form attached to the Motion, and the manner of providing notice of the Bar Dates proposed in the Motion and set forth herein, are **APPROVED**. The form and manner of notice of the Bar Dates approved hereby are deemed to fulfill the notice requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

4. The General Bar Date. The General Bar Date by which proofs of claim against the Debtors and proofs of interest in Xinergy Ltd. must be filed is **July 31, 2015, at 4:00 p.m. (prevailing Eastern Time)**.

5. Any Entity that asserts a claim against one or more of Debtors, including without limitation any claim under Bankruptcy Code section 503(b)(9) for goods delivered to a Debtor within twenty (20) days before the Petition Date, or holds an equity interest in Xinergy Ltd. that arose prior to the Petition Date (any such claim, a "Prepetition Claim"; and any such interest, "Prepetition Interest") is required to file an original, written proof of such Prepetition Claim or Prepetition Interest, substantially in the form of the Proof of Claim Form or the Proof of Interest Form, as applicable, so as to be received on or before the General Bar Date by either mail or delivery by hand, courier, or overnight service to: (i) if via mail, c/o American Legal Claim Services, LLC, P.O. Box 23650, Jacksonville, FL 32241-3650 or (ii) if via delivery by hand, courier or overnight service, c/o American Legal Claim Services, LLC, 5985 Richard St., STE 3, Jacksonville, FL 32216 (either, the "Claims Docketing Center").

6. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form

is *actually received* by the Claims Docketing Center on or before the General Bar Date.

7. The following Entities do not need to file proofs of claim or proofs of interest:

- (a) any Entity that has already properly filed with the Claims Docketing Center a proof of claim against one or more of the Debtors or proof of interest in Xinergy Ltd. for which no other or additional amounts or claims are sought;
- (b) any Entity (i) whose Prepetition Claim is not listed as “disputed,” “contingent,” or “unliquidated” in the Schedules, (ii) that agrees with the nature, classification, and amount of such Prepetition Claim set forth in the Schedules, and (iii) such entity does not dispute that its Prepetition Claim is an obligation only of the specific Debtor against which the Prepetition Claim is listed in the Schedules;
- (c) any Entity (i) whose Prepetition Interest is listed in the Schedules and (ii) that agrees with the nature, classification, and amount of such Prepetition Interest set forth in the Schedules;
- (d) any Entity whose Prepetition Claim (including any Prepetition Claim listed in the Debtors’ Schedules) previously has been allowed by, or paid pursuant to, an order of this Court;
- (e) any Entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code, unless such claim is pursuant to Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date;
- (f) any of the Debtors that hold Prepetition Claims against one or more of the other Debtors; and
- (g) any person or entity that holds a claim under that certain Credit Agreement dated as of December 21, 2012 (as amended, supplemented or otherwise modified from time to time) among Xinergy Corp., as borrower, Xinergy Ltd., as parent, other guarantors party thereto and the lenders party thereto; and
- (h) any person or entity whose claim is limited exclusively to the repayment of principal, interest and other fees and expenses under or in connection with that certain Indenture, dated as of May 6, 2011, by and among Xinergy Corp., as issuer, the guarantors listed therein and Wells Fargo Bank, National Association, as trustee and collateral trustee, for the 9.25% senior secured notes due 2019, as

thereafter amended, supplemented or modified from time to time.

8. Except as provided below, the following Entities must file a proof of claim on or before the General Bar Date:

- (a) Entities whose Prepetition Claims arise out of the rejection of executory contracts or unexpired leases by the Debtors prior to the entry of the Bar Date Order;
- (b) Entities whose Prepetition Claims arise out of the obligations of such Entities under a contract for the provision of liability insurance to a Debtor;
- (c) any Entity whose Prepetition Claim against the Debtors is not listed in the Schedules or whose Prepetition Claim is listed as disputed, contingent or unliquidated and that desires to participate in these chapter 11 cases or share in any distribution in these chapter 11 cases;
- (d) any Entity whose Prepetition Interest is not listed in the Schedules;
- (e) any Entity that believes that its Prepetition Claim or Prepetition Interest is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount other than that identified in the Schedules; and
- (f) any Entity that asserts a claim against the Debtors under Bankruptcy Code section 503(b)(9) on account of goods delivered to the Debtors during the twenty (20) days prior to the Petition Date.

9. Notwithstanding anything herein to the contrary, in accordance with the Court's order approving the Debtors' debtor-in-possession financing (Doc. No. 156) (the "DIP Financing Order"), none of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties (each as defined in the DIP Financing Order) shall be required to file proofs of claim in any of the Debtors' chapter 11 cases or any successor case, and the Debtors' stipulations in the DIP Financing Order shall be deemed to constitute a timely filed proof of claim."

10. The Governmental Unit Bar Date. The Governmental Unit Bar Date by which Governmental Units must file proofs of claim against the Debtors is **September 23, 2015, at 4:00 p.m. (prevailing Eastern Time).**

11. Governmental Units wishing to assert claims against the Debtors must file an original, written proof of such claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Governmental Unit Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

12. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim filed by a Governmental Unit shall be deemed timely filed only if the original Proof of Claim Form actually is received by the Claims Docketing Center on or before the Governmental Unit Bar Date.

13. The Rejection Bar Date. The Rejection Bar Date by which a proof of claim relating to the Debtors' rejection of any executory contract or unexpired lease must be filed is the later of (a) the General Bar Date or (b) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court.

14. Entities wishing to assert a Rejection Damages Claim are required to file an original, written proof of such Rejection Damages Claim, substantially in the form of the Proof of Claim Form, so as to be received on or before the Rejection Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

15. The Claims Docketing Center will not accept Proof of Claim Forms sent by facsimile, telecopy, or other electronic means. A proof of claim with respect to a Rejection Damages Claim shall be timely filed only if the original Proof of Claim Form is *actually received* by the Claims Docketing Center on or before the Rejection Bar Date.

16. The Amended Schedule Bar Date. The Amended Schedule Bar Date for creditors holding claims or interest holders holding an equity interest in Xinergy Ltd. which have been amended by the Debtors in their Schedules or added by the Debtors to the Schedules is the later of (a) the General Bar Date or (b) thirty (30) days after the date that notice of the amendment or addition is served on the affected claimant.

17. Entities wishing to file proofs of claim or proofs of interest with respect to claims or equity interests which have been amended by the Debtors in their Schedules or added thereto are required to file an original, written proof of such claim or proof of such equity interest, substantially in the form of the Proof of Claim Form or Proof of Interest Form, as applicable, so as to be received on or before the Amended Schedule Bar Date by either mail or delivery by hand, courier, or overnight service at the appropriate address identified above for the Claims Docketing Center.

18. The Claims Docketing Center will not accept Proof of Claim Forms or Proof of Interest Forms sent by facsimile, telecopy, or other electronic means. A proof of claim or proof of interest with respect to a claim or equity interest which has been amended by the Debtors in their Schedules or added thereto shall be timely filed only if the original Proof of Claim Form or Proof of Interest Form is *actually received* by the Claims Docketing Center on or before the Amended Schedule Bar Date.

19. Proof of Claim Form and Proof of Interest Form. Each proof of claim and proof of interest filed must: (a) be written in the English language, (b) be denominated in lawful currency of the United States, (c) conform substantially with the Proof of Claim Form or the Proof of Interest Form provided, as applicable, and (d) attach copies of any writings upon which the claim or interest is based.

20. Writings. Upon the advance express written consent of the Debtors, a proof of claim or proof of interest may be filed without the writings upon which the Prepetition Claim or Prepetition Interest, as applicable, is based, as required by Bankruptcy Rules 3001(c) and (d) and this Order; *provided, however*, that, upon request of the Debtors or any other party in interest in these cases, any creditor or equity holder that receives such written consent shall be required to transmit promptly such writings to the Debtors and the party in interest making such request as soon as reasonably practicable, but in no event later than ten (10) business days from the date of such request.

21. Filing Proofs of Claim Against Multiple Debtors. All Entities asserting claims against more than one Debtor are required to: (a) file a separate proof of claim with respect to each such Debtor, and (b) identify on each proof of claim the particular Debtor against which such Entity's claim is asserted.

22. Effect of Failure to File by Applicable Bar Date. Any Entity that is required to file a proof of claim or proof of interest in these chapter 11 cases pursuant to the Bankruptcy Code, the Bankruptcy Rules or the Bar Date Order, but that fails to do so in a timely manner, shall be forever barred, estopped, and enjoined from asserting any Prepetition Claim or Prepetition Interest against any of the Debtors (or filing a proof of claim or proof of interest with respect thereto), and the Debtors and their property shall be forever discharged from any and all



indebtedness or liability with respect to such Prepetition Claim or Prepetition Interest. Additionally, any holder of any Prepetition Claim or Prepetition Interest who is required, but fails, to file a proof of such claim or interest in accordance with the Bar Date Order on or before the applicable Bar Date shall not be permitted to vote to accept or reject any plan or plans or participate in any distribution in the Debtors' chapter 11 cases on account of such Prepetition Claim or Prepetition Interest or to receive further notices regarding such Prepetition Claim.

23. Mailing of Bar Date Notice Packages. The Debtors shall provide actual notice of the Bar Dates by mailing the Bar Date Notice, the Proof of Claim Form, and the Proof of Interest Form (together, the "Bar Date Notice Package") within five (5) business days of entry of this Order, but in no event later than June 15, 2015, to: (a) the U.S. Trustee; (b) each member of the Committee and counsel for the Committee; (c) all holders of Prepetition Claims or Prepetition Interests, including all such persons or entities listed on the Schedules; (d) all counterparties to executory contracts and unexpired leases; (e) all current and former employees of the Debtors to the extent that contact information for former employees is available in the Debtors' records; (f) all taxing authorities for locations in which the Debtors do business, including Canada Revenue Agency; (g) all parties to litigation in which the Debtors are involved; (h) all providers of utility services to the Debtors; (i) all insurance providers; (j) all of the Debtors' ordinary course professionals; (k) the Debtors' banks; (l) the Debtors' prepetition note holders; (m) all Entities requesting notice pursuant to Bankruptcy Rule 2002 as of the entry of this Order; and (n) all parties that have filed proofs of claim or proofs of interest in these cases as of the date of entry of this Order (collectively, the "Bar Date Notice Parties").

24. The Debtors may, in their discretion, but shall not be required to, serve the Bar Date Notice to certain Entities that are not Bar Date Notice Parties with which, prior to the

Petition Date, the Debtors had done business or that may have asserted a claim or an interest against the Debtors in the recent past.

25. Publication Notice. The Debtors shall publish notice of the Bar Dates in substantially the form of the Bar Date Notice once in the *Globe and Mail, National Edition, Charleston Daily Mail*, and *The Charleston Gazette* as soon as practicable after entry of this Order, but in no event later than forty (40) days before the General Bar Date. Additionally, the Debtors shall post a copy of the Bar Date Notice and the Proof of Claim Form on the Debtors' case information website (located at <https://www.americanlegal.com/xinergy>).

26. Supplemental Mailings of Bar Date Notice Packages. In the event that: (a) Bar Date Notice Packages are returned by the post office with forwarding addresses, necessitating a remailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along Bar Date Notice Packages to such parties and instead return their names and addresses to the Debtors for direct mailing, or (c) additional potential claimants or equity security holders become known to the Debtors (collectively, the "Special Bar Date Parties"), the Debtors may, in their discretion, but shall not be required to make supplemental mailings of the Bar Date Notice Package up to twenty-three (23) days in advance of the applicable Bar Dates, with any such supplemental mailings being deemed timely.

27. Establishment of Special Bar Dates. The Debtors are authorized to establish special bar dates with respect to the Special Bar Date Parties as to which a mailing or remailing of the Bar Date Notice Package is necessary and cannot be accomplished prior to twenty-three (23) days in advance of an applicable Bar Date. With respect to the Special Bar Date Parties, the Debtors are authorized to establish special bar dates at least twenty-one (21) days after the date on which the Debtors mail the notice of each such special bar date. Such notice will

substantially take the form of the Bar Date Notice (with necessary modifications to reflect the special bar date provisions). The Debtors shall advise the Court of the establishment of each special bar date by filing a notice, together with a list that specifically identifies the Special Bar Date Parties that are subject thereto and a copy of the bar date notice applicable to the special bar date. In addition to being filed with the Court, the Debtors shall serve such notice upon the U.S. Trustee, the attorneys for the informal group of holders of the Debtors' prepetition secured notes and lenders under the Debtors' postpetition financing, and counsel for any statutory committees appointed in these cases. The Debtors shall file a certificate of service to evidence the mailing of each special bar date notice to the parties subject thereto.

28. Each of the special bar dates will apply only to the Special Bar Date Parties who are specifically identified as being subject thereto in the lists to be filed with the Court. As to any of such specifically identified parties, however, who may be found to have received effective notice of the Bar Dates, the Debtors do not waive the right to assert that the Bar Dates, rather than the special bar date, governs. The Bar Dates will remain effective and fully enforceable both with respect to known parties who have received actual notice thereof pursuant to the Bar Date Notice and with respect to unknown parties who are deemed to have received constructive notice thereof.

29. Actual Notice of Amended Schedule Bar Date. If and when the Debtors amend their Schedules to reduce the undisputed, noncontingent and liquidated amount, to change the nature or classification of a Prepetition Claim or Prepetition Interest or add a claim or equity interest in Xinergy Ltd. to the Schedules, the Debtors shall provide notice to the affected claimant of any such amended or added claim or equity interest, which shall include information

regarding the Amended Schedule Bar Date and how to file a proof of claim or proof of interest or amend an existing proof of claim or proof of interest.

30. Assistance of Claims Agent. American Legal Claim Services, LLC (“ALCS”), the claims agent appointed in these cases, is authorized to facilitate and coordinate the claims reconciliation and bar date notice functions, including the mailing of the Bar Date Notice Packages. To the extent that ALCS requires any assistance with the preparation and mailing of the Bar Date Notice Package, ALCS is authorized to employ and pay necessary service providers, subject to prior approval from the Debtors, and to obtain reimbursement from the Debtors for any such payments on the same terms applicable to its direct services. ALCS is further authorized to take such other actions as may be necessary to ensure timely preparation and mailing of the Bar Date Notice Package.

31. Reservation of Rights. The Debtors shall retain the right to: (a) dispute, or assert offsets or defenses, against any Prepetition Claim or Prepetition Interest; (b) subsequently designate any Prepetition Claim as disputed, contingent or unliquidated; and (c) object to any Prepetition Claim or Prepetition Interest, whether scheduled or filed, on any grounds.

32. The Debtors are authorized and empowered to take such steps and perform such actions as may be necessary to implement and effectuate the terms of this Order, including payment of costs incurred in connection with the process of noticing the Bar Dates.

33. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

Dated: June 8, 2015

  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III  
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SEEN AND NO OBJECTION:

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-and-

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