

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

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE ASSETS OF TRUE ENERGY, LLC, (II)
SCHEDULING BID DEADLINES AND THE AUCTION,
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, (i) approving procedures, substantially in the form attached as Exhibit 1 hereto (the “True Energy Bidding Procedures”),² to be employed with respect to the proposed sale (the “Sale”) of all or substantially all of the property (the “True Energy Assets”) of True Energy, LLC (“True Energy”); (ii) scheduling submission deadlines for any bids (each, a “Bid”) and an auction related thereto (the “Auction”) if necessary; (iii) approving the form and manner of notice thereof; and (iv) granting such other

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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the True Energy Bidding Procedures, as applicable.

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and further relief as is just and proper, as more fully described in the Motion; the Court finds that: (a) it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; (e) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (f) upon the record herein, and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

THE COURT HEREBY FINDS AS FOLLOWS:³

A. True Energy Bidding Procedures. The Debtors have established good and sufficient reasons for authorizing and approving the True Energy Bidding Procedures, attached hereto as Exhibit 1, which are fair, reasonable, appropriate under the circumstances and designed to maximize the value realized by the Debtors for the benefit of the Debtors' estates, their creditors and other parties in interest.

B. Notice of Auction. The Notice of Auction, attached hereto as Exhibit 2, is reasonably calculated to provide all interested parties with timely and proper notice of the True Energy Bidding Procedures and the Auction, including: (i) the True Energy Bidding Procedures and certain dates and deadlines related thereto; (ii) the procedure for obtaining access to the information concerning the True Energy Assets; and (iii) the date, time and place of the Auction.

C. True Energy Assumption Procedures. The True Energy Assumption Procedures and the True Energy Assumption and Assignment Notice, attached here to as Exhibit 3, are reasonably calculated to provide all Contract Counterparties with proper notice of (a) the

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

Successful Bidder(s); (b) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Successful Bidder(s); (c) the names and addresses of the Contract Counterparties thereto; (d) the proposed effective date of the assignment (subject to the right of the Debtors and the Successful Bidder(s) to withdraw such request for assumption or assignment prior to the consummation of the Sale); (e) a statement as to the Successful Bidder(s)' ability to perform the applicable Debtors' obligations under such contract(s) and/or lease(s); and (f) the deadline by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of such contract or lease, *provided however*, that the presence of any contract or lease on a True Energy Assumption and Assignment Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease.

AND IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.

A. Important Dates and Deadlines

2. **The Auction.** The following dates and deadlines are hereby established with respect to the Auction (subject to modification as provided in the True Energy Bidding Procedures):

- (a) **Preliminary Indications of Interest: January 8, 2016, at 5:00 p.m. (prevailing Eastern Time)**, as the deadline by which all Preliminary Indications of Interest must be **actually received** by the Debtors and counsel to the Debtors in the form and manner specified in the True Energy Bidding Procedures, in order for an interested party to become a Qualified Bidder;
- (b) **Bid Deadline: January 14, 2016, at 5:00 p.m. (prevailing Eastern Time)**, as the deadline by which all Bids must be **actually received** by the Debtors and counsel to the Debtors in the form and manner specified in the True Energy Bidding Procedures;
- (c) **Auction: January 19, 2016, at 10:00 a.m. (prevailing Eastern Time)**, as the date and time of the Auction, which will be held at the offices of Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond,

Virginia 23219 or such other location as the Debtors may designate after consultation with the Committee and the DIP Agent; and

- (d) **Sale Hearing: January 21, 2016, at 2:00 p.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard, which will be held before the Honorable Paul M. Black, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

B. True Energy Bidding Procedures

3. The True Energy Bidding Procedures are hereby approved in their entirety, and the Debtors are authorized to solicit Bids, conduct the Auction and otherwise take any and all actions necessary to implement the True Energy Bidding Procedures.

C. Notice of Auction

4. The Notice of Auction attached hereto as Exhibit 2 is approved in all respects.
5. Within three business days of entry of the Order, the Debtors propose that they will cause the Auction Notice to be (a) published in the Lexington Herald-Leader, the Bristol Herald Courier, and one or more industry trade publications (to be determined in the Debtors' discretion in consultation with the Committee and the DIP Agent), (b) made available on the Debtors' case information website (located at www.americanlegal.com/xinergy), and (c) served upon the following parties or, in lieu thereof, to their counsel, if known: (i) the U.S. Trustee; (ii) the attorneys for the Committee; (iii) the attorneys for the DIP Agent (iv) all parties who are known or reasonably believed to have asserted any lien, encumbrance, claim or other interest in the True Energy Assets, including all known creditors holding secured claims against the Debtors' estates; and (v) all potential bidders previously identified or otherwise known to the Debtors.

D. True Energy Assumption Procedures

6. The True Energy Assumption Procedures and the True Energy Assumption and Assignment Notice attached hereto as Exhibit 3, are approved in all respects.

7. Through service of the Cure Notice on each Contract Counterparty under each Assumed and Assigned Contract, the Debtors have adequately and properly set forth the True Energy Cure Amounts. Any Contract Counterparty that did not file an objection by the Cure Objection Deadline is deemed to have consented to the True Energy Cure Amount set forth in the Cure Notice and has waived any objection thereto.

8. As soon as reasonably practicable after the selection of a Successful Bid, the Debtors propose to file with the Court a schedule setting forth the contracts and/or leases proposed to be assumed and assigned and serve the True Energy Assumption and Assignment Notice on each Contract Counterparty under each proposed Assumed and Assigned Contract by first class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail.

9. Objections to the assumption and assignment of any executory contract or unexpired lease **must**: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Bankruptcy Rules and any case management order entered in these cases; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served, so as to be actually received no later than ten days after the True Energy Assumption and Assignment Notice is served, on: (i) the Debtors, Xinergy Ltd., 8351 East Walker Springs Lane, Suite 400, Knoxville, Tennessee, Attn: Gregory L. "Bernie" Mason, email: bmason@xinergycorp.com; (ii) counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iii) counsel to the

Committee, (a) McGuireWoods LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, email mroeschenthaler@mcguirewoods.com, and (b) Whiteford Taylor & Preston, LLP, 114 Market Street, Ste 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings and Brandy M. Rapp, email: mhastings@wtplaw.com and brapp@wtplaw.com; and (iv) the attorneys for the DIP Agent and an informal group of holders of the Debtors' pre-petition secured notes and lenders under the Debtors' post-petition financing, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York 10019-6064, Attn: Brian S. Hermann and Lauren Shumejda, email: bhermann@paulweiss.com and lshumejda@paulweiss.com, and (b) Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Peter J. Barrett, email: peter.barrett@kutakrock.com.

10. Except as otherwise set forth herein or in the True Energy Bidding Procedures, any party that fails to file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract shall be forever barred from filing any objection thereto, including (i) asserting that the assignee of such contract or lease has not provided adequate assurances of future performance and (ii) asserting that the assignment is subject to any anti-alienation provision or other restriction on assignment.

E. Other Provisions

11. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits.

12. In the event of any inconsistencies between this Order, the Motion and the True Energy Bidding Procedures, this Order shall govern in all respects.

13. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to

determine the effective date of rejection for any Lease or Contract that the Debtors may seek to reject.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice.

16. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Roanoke, Virginia

Dated: December 23, 2015


UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Justin F. Paget

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SEEN AND AGREED:

/s/ Kelly C. Griffith (with permission via email dated 12/23/2015)

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SEEN AND AGREED:

/s/ Margaret K. Garber (with permission via email dated 12/22/2015)

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EXHIBIT 1
True Energy Bidding Procedures

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

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

TRUE ENERGY BIDDING PROCEDURES

These bidding procedures (the “True Energy Bidding Procedures”) shall be employed with respect to the proposed sale (the “Sale”) under section 363 of the Bankruptcy Code (as defined below) of all or substantially all of the assets (the “True Energy Assets”) of Debtor True Energy, LLC (“True Energy”) subject to approval by the United States Bankruptcy Court for the Western District of Virginia (the “Bankruptcy Court”).

Background

On December 11, 2015, the Debtors filed with the Bankruptcy Court their motion (the “Motion”) for entry of orders pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); (i) approving bidding procedures to be employed with respect to the proposed sale of all or substantially all of the property of Debtor True Energy, LLC (ii) scheduling submission deadlines for any bids and an auction related thereto, if necessary; (iii) approving the form and manner of notice thereof; and (iv) granting such other and further relief as is just and proper.

On December [], 2015, the Bankruptcy Court entered an order (the “True Energy Bidding Procedures Order”), which, among other things, authorized the Debtors to solicit bids for the purchase of the True Energy Assets.

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

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*Counsel to the Debtors
and Debtors in Possession*

The True Energy Bidding Procedures Order set **January 21, 2016 at 2:00 pm (prevailing Eastern Time)** as the date the Bankruptcy Court will conduct a hearing (the “Sale Hearing”), subject to adjournment as set forth below and in the True Energy Bidding Procedures Order, to authorize the Debtors to sell the True Energy Assets to the Successful Bidder(s) (as defined herein).

These True Energy Bidding Procedures describe, among other things, (a) the True Energy Assets available for sale, (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively (each, as defined herein), (c) the coordination of diligence efforts among bidders, (d) the receipt and negotiation of bids received, (e) the conduct of any subsequent auction (the “Auction”), (f) the ultimate selection of the Successful Bidder(s), and (g) the Bankruptcy Court’s approval thereof.

These True Energy Bidding Procedures provide for the solicitation by the Debtors of proposals or offers (each, a “Bid”) by any potential bidder (each, a “Bidder”), pursuant to the following terms and conditions:

Nature of Any Sale

Assets To Be Sold

The True Energy Assets proposed to be sold are all or substantially all of the assets of True Energy.

As Is, Where Is

Sale of True Energy Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by any of the Debtors, their agents, or their estates.

Free of Any and All Claims and Interests

The True Energy Assets shall be sold free and clear of all Encumbrances and any Encumbrances shall attach to the net proceeds of the Sale of the True Energy Assets.

Participation Requirements

Interested Parties

To ensure that only Bidders with a serious interest in consummating a Sale participate, in order to become a “Qualified Bidder” each Bidder must meet certain minimal requirements, which include that the Bidder must provide, in form and substance satisfactory to the Debtors by January 8, 2016, the following:

- (a) an executed confidentiality agreement in form and substance acceptable to the Debtors;

(b) current audited financial statements for the Bidder, or, if the Bidder is an entity formed for the purpose of consummating the Sale, current audited financial statements for the equity holders of the Bidder who shall guarantee the obligations of the Bidder, or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtors; and

(c) a (nonbinding) written proposal (a "Preliminary Indication of Interest") that includes

(i) a preliminary indication of the True Energy Assets on which the Bidder intends to bid;

(ii) the proposed purchase price or price range for such True Energy Assets;

(iii) the structure and financing of the Sale, including, but not limited to, the sources of financing of the purchase price or the investment, as applicable, and the requisite deposit;

(iv) the nature and extent of additional due diligence the Bidder wishes to conduct and the date by which such due diligence will be completed;

(v) any anticipated regulatory approvals required to close the transaction, including whether the Bidder intends to apply for the transfer of the mining permits, surface disturbance permits and other environmental permits associated with the True Energy Assets, and the anticipate time frame and any anticipated impediments for obtaining such approvals; and

(vi) any additional information reasonably requested by the Debtors regarding such Bidder, its proposal and its operational and financial ability to consummate such proposal.

Each Preliminary Indication of Interest shall be submitted via email and actually received by (i) the Debtors, Xinery Ltd., 8351 East Walker Springs Lane, Suite 400, Knoxville, Tennessee, Attn: Gregory L. "Bernie" Mason, email: bmason@xinerycorp.com; and (ii) counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com. The Debtors shall promptly provide copies of transmitted Preliminary Indications of Interests received to counsel to the official committee of unsecured creditors then appointed in these cases (the "Committee") and counsel for the administrative agent (the "DIP Agent") under the Debtors' approved postpetition debtor in possession financing facility.

Due Diligence

Each Bidder (before or after submitting a Preliminary Indication of Interest) shall have an opportunity to participate in the diligence process after executing and delivering a confidentiality agreement; provided, however, that the Debtors, in consultation with the Committee and the DIP Agent, may refuse to provide any potential Bidder access to information if the Debtors believe

that doing so would be contrary to the best interests of the Debtors' estates and creditors. The Debtors, with the assistance of their professional advisors, will coordinate the diligence process and provide due diligence access and information as reasonably requested by any Bidder executing a confidentiality agreement, provided, however, that the Debtors, in consultation with the Committee and the DIP Agent, may refuse to provide any potential Bidder access to information if the Debtors believe that doing so would be contrary to the best interests of the Debtors' estates and creditors. It is expected that Bidders will complete all due diligence in connection with the True Energy Assets prior to the Bid Deadline and, in any event, without the written consent of the Debtors, **no Bid may be subject to any closing condition relating to completion or review of additional due diligence.**

Qualified Bids

Bid Deadline

Only Qualified Bidders may submit Bids. Initial Bids shall be due no later than **January 14, 2016, at 5:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**"). All Bids must be submitted via email and actually received, on or before the Bid Deadline, by: (i) the Debtors, Xinergy Ltd., 8351 East Walker Springs Lane, Suite 400, Knoxville, Tennessee, Attn: Gregory L. "Bernie" Mason, email: bmason@xinergycorp.com; (ii) counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iii) counsel to the Committee, (a) McGuireWoods LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, email mroeschenthaler@mcguirewoods.com, and (b) Whiteford Taylor & Preston, LLP, 114 Market Street, Ste 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings and Brandy M. Rapp, email: mhastings@wtplaw.com and brapp@wtplaw.com; and (iv) the attorneys for the DIP Agent and an informal group of holders of the Debtors' pre-petition secured notes and lenders under the Debtors' post-petition financing, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York 10019-6064, Attn: Brian S. Hermann and Lauren Shumejda, email: bhermann@paulweiss.com and lshumejda@paulweiss.com, and (b) Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Peter J. Barrett, email: peter.barrett@kutakrock.com.

Qualified Bid Requirements

All Bids must be in writing acceptable to the Debtors and include the following (such a Bid, a "**Qualified Bid**"):

- a) a binding, executed, definitive agreement (on a form to be provided by the Debtors to each Qualified Bidder after receipt of a Preliminary Indication of Interest) that provides for payment by the Bidder in cash, or other consideration acceptable to the Debtors in their sole discretion, structured as a purchase of the True Energy Assets (or any portion thereof) under section 363 of the Bankruptcy Code.

- b) confirmation that the Bidder's offer is irrevocable until the Debtors, in consultation with the Committee and the DIP Agent, have selected the Successful Bid(s) (as defined below) or, in the case such Qualified Bid is selected as an Alternate Bid (as defined below), until the consummation of the transactions contemplated by the Successful Bid(s);
- c) a good faith cash deposit (the "Good Faith Deposit") equal to ten percent (10%) of the Bid amount;
- d) evidence of a binding commitment for financing, available cash, undrawn lines of credit, or other ability to obtain the funds necessary to consummate the transaction proposed by the Bid, to the satisfaction of the Debtors, and such funding commitments or other financing shall not be subject to any internal approvals, syndication requirements, diligence or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors;
- e) evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by True Energy and assigned to the Qualified Bidder; and
- f) evidence of authority, including, but not limited to, internal authorization or approval from its board of directors (or comparable governing body), with respect to the submission, execution, delivery, and closing of its Bid and the transactions contemplated thereby; and
- g) evidence reasonably acceptable to the Debtors, in consultation with any sureties providing bonding for any permits proposed to be transferred (the "Sureties"), of the Qualified Bidder's ability to obtain reclamation bonding commitments from qualified sureties sufficient to replace all reclamation bonds associated with the True Energy Assets, if applicable.

A Qualified Bid must not contain any conditions to closing other than Bankruptcy Court approval and any required regulatory approval. The Debtors shall have the right, in consultation with the Committee and the DIP Agent, to deem a Bid a Qualified Bid even if such Bid does not conform to one or more of the aforementioned requirements.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it (i) is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Debtors and their agents and representatives, regarding the Debtors, the True Energy Assets, these True Energy Bidding Procedures or any information provided in connection therewith and (ii) consents to the jurisdiction of the Bankruptcy Court and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these True Energy Bidding Procedures or the Auction Procedures, and/or the definitive documents for the Sale.

The Auction

If no Qualified Bids are submitted by the Bid Deadline, the Debtors may elect, in their reasonable discretion and in consultation with the Committee and the DIP Agent, to conduct or not conduct an Auction. If only one Qualified Bid is submitted by the Bid Deadline, then the Debtors may elect, in their reasonable discretion and in consultation with the Committee and DIP Agent, to conduct or not conduct an Auction and shall promptly seek Bankruptcy Court approval to enter into and consummate such transaction.

If two or more Qualified Bids are submitted by the Bid Deadline, the Debtors shall conduct the Auction at **10:00 a.m. (prevailing Eastern time) on January 19, 2016**, at the offices of Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 or such other location as the Debtors may designate after consultation with the Committee and the DIP Agent. The Debtors, in the exercise of their discretion and in consultation with the Committee and the DIP Agent, may at any time cancel the Auction for any reason.

Partial Bids and Designation of Auction Lots

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the True Energy Assets (each such bid, a "Partial Bid"), the Debtors may conduct separate auctions at the Auction for each "lot" of assets (each, an "Auction Lot") subject to a Partial Bid (each such separate auction, an "Auction"). The Debtors may designate each Auction Lot at any time prior to the Auction.

Auction Procedures

The Auction shall be held in accordance with the following procedures:

- a) attendance at the Auction will be limited to the Debtors, each Qualified Bidder that has timely submitted a Qualified Bid, the Committee, the DIP Agent, and any other party with a security interest in property owned or leased by the Debtors, and the advisors to each of the foregoing, and only Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction;
- b) by 12:00 noon (prevailing Eastern time) on the day before the Auction, the Debtors will:
 - i. notify each Qualified Bidder that has timely submitted a Qualified Bid whether its Bid is a Qualified Bid;
 - ii. notify each Qualified Bidder that has timely submitted a Qualified Bid of any Auction Lot the Debtors have designated to be offered in a separate Auction; and
 - iii. provide such Qualified Bidders with copies of the Qualified Bid that the Debtors, in consultation with the Committee and the DIP Agent, believe is

the highest or otherwise best offer for the True Energy Assets in each designated Auction Lot (if applicable) (each such bid, a “Baseline Bid”);

- c) all Qualified Bidders that have timely submitted a Qualified Bid will be entitled to be present for all bidding at the Auction,
- d) bidding at each Auction will begin with the applicable Baseline Bid and each subsequent Bid (an “Overbid”) must exceed the Baseline Bid, in the first round of bidding, and the Leading Bid (as defined below), in each subsequent round, by a minimum increment (the “Minimum Overbid Increment”) to be determined by the Debtors prior to the commencement of such Auction,
- e) with each and every Overbid submitted at the Auction, the party submitting the Bid shall be required to delineate on the record at the Auction, to the satisfaction of the Debtors, the additional consideration being offered, the terms of such Overbid, any changes to such party’s initial Qualified Bid and such party’s basis for calculating the total consideration offered in such Overbid;
- f) except with respect to the Bid Deadline, an Overbid must comply with the conditions for a Qualified Bid set forth herein, and any Overbid shall remain open and binding on the applicable Bidder until and unless (a) the Debtors accept a higher Qualified Bid as an Overbid and (b) such Overbid is not selected as the Alternate Bid;
- g) after each round of bidding, the Debtors shall announce the Bid or Bids that they believe to be the highest or otherwise best offer or combination of offers (the “Leading Bid”);
- h) bidding shall continue in an additional round of bidding until no further Bids are received, or until the Debtors determine that the Leading Bid submitted in the prior round is superior to all subsequent Bids received; and
- i) the Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, the Leading Bid(s), the Alternative Bid(s) (as defined below) and the Successful Bid(s) (defined below).

The Debtors shall consult in good faith with the Committee and the DIP Agent throughout the Auction process to the extent reasonably practicable. The Debtors may conduct the Auction, and adopt additional rules with respect thereto, in the manner the Debtors determine in their reasonable discretion, and in consultation with the Committee and the DIP Agent, will result in the highest and best Bids.

Selection of Successful Bid(s) and Alternate Bid(s)

After the conclusion of the Auction, the Debtors, in consultation with the Committee and the DIP Agent, shall select the highest or otherwise best Qualified Bid (or combination of Qualified Bids) (each, a “Successful Bid” and each such bidder, a “Successful Bidder”), and may also select, in consultation with the Committee and the DIP Agent, the second-highest or

otherwise best Qualified Bid (or combination of Qualified Bids) (each, an “Alternate Bid” and each such Bidder, an “Alternate Bidder”), after taking into account such factors as the price of such bids, the form and structure of the bids, associated risks (including closing risks) and any tax considerations.

The Debtors shall promptly seek Bankruptcy Court approval to enter into and consummate the transaction(s) contemplated by the Successful Bid(s). The acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Court of the Successful Bid and the entry of an unstayed order approving such Successful Bid and the closing of the Sale reflected in the Successful Bid. The Alternate Bidder(s) shall be required to keep the Alternate Bid(s) open and irrevocable until the closing of the relevant Successful Bid with the relevant Successful Bidder, and the Good Faith Deposit of an Alternate Bidder shall be held by the Debtors until 24 hours after the closing of the transactions contemplated by the relevant Successful Bid.

Post-Auction Procedures

True Energy Assumption and Assignment Notice

As soon as practicable after the selection of a Successful Bid, the Debtors will file with the Court a schedule setting forth the contracts and/or leases proposed to be assumed and assigned and serve the True Energy Assumption and Assignment Notice, substantially in the form attached as Exhibit 3 to the True Energy Bidding Procedures Order (the “True Energy Assumption and Assignment Notice”) by first class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail on each counterparty (each, a “Contract Counterparty”) under each contract or lease proposed intended to be assumed by True Energy and assigned to the Successful Bidder(s) (each, an “Assumed and Assigned Contract”).

The True Energy Assumption and Assignment Notice shall set forth: (i) the Successful Bidder(s); (ii) the contract(s) and/or lease(s) that may be assumed by the Debtors and assigned to the Successful Bidder(s); (iii) the name and address of the Contract Counterparty thereto; (iv) the proposed effective date of the assignment (subject to the right of the Debtors and Successful Bidder(s) to withdraw such request for assumption and assignment prior to the consummation of the Sale); (v) a statement as to the Successful Bidder(s)’ ability to perform True Energy obligations under such contract(s) and/or lease(s); and (vi) the deadline by which any such Contract Counterparty must file an objection to the proposed assumption and assignment; *provided, however*, that the presence of any contract or lease on a True Energy Assumption and Assignment Notice does not constitute an admission that such contract or lease is an executory contract or unexpired lease.

If any objection to the proposed assumption and assignment of a contract or is timely filed, a hearing with respect to such objection will be held before the Honorable Paul M. Black, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

Implementation of the Sale

If the Successful Bid contemplates a Sale, the Debtors seek to have the Sale Hearing on **January [], 2016, at [] (prevailing Eastern time)**, or if the Auction has not been held by such date, on the second business day following the Auction or as soon thereafter as the Bankruptcy Court's calendar will permit, before the Honorable Paul M. Black, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011, at which time the Bankruptcy Court shall consider the Motion, the Successful Bid(s) and the Alternate Bid(s) (if any) and confirm the results of the Auction, if any. The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Sale Hearing.

If the Successful Bidder fails to consummate the Sale (following approval of such Sale by the Bankruptcy Court) for any reason, then the Alternate Bid(s) will be deemed to be a Successful Bid(s) and the Debtors shall be authorized, but not required, to effectuate the Sale based on the Alternate Bid(s) without further order of the Bankruptcy Court. The Debtors and any other person may pursue any and all remedies available under law against the Successful Bidder in connection with its failure to consummate any Sale.

Return of Good Faith Deposits

The Good Faith Deposit of each Qualified Bidder shall be held in escrow accounts by the Debtors and shall be returned (other than with respect to the Successful Bidder and the Alternate Bidder) upon or within two business days after the Auction. If the Successful Bidder (or the Alternate Bidder, if applicable) timely closes the transaction contemplated by its Bid, its Good Faith Deposit shall be credited towards the purchase price or investment, as applicable. If a Successful Bidder fails to consummate a proposed transaction because of a breach or failure to perform on the part of such Successful Bidder, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtors, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtors, and such Good Faith Deposit shall irrevocably become property of the Debtors. In addition, the Debtors reserve the right to seek all available damages from the defaulting Successful Bidder.

Reservation of Rights

Notwithstanding anything to the contrary herein, the Debtors reserve the right, in their reasonable judgment, in consultation with the Committee and the DIP Agent, except with respect to any immaterial modifications, to modify these True Energy Bidding Procedures at any time, with notice to Qualified Bidders and, to the extent any such modifications affect them, the Sureties, including, without limitation, to (i) to adjourn or make earlier the Auction, the Sale Hearing or any of the dates set forth herein one or more times for any reason, (ii) terminate these True Energy Bidding Procedures at any time to pursue an alternative restructuring strategy that maximizes value for the Debtors' estates, (iii) determine which Qualified Bid(s), if any, is the Successful Bid and the Alternate Bid, (iv) reject at any time, any bid that is: (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or these True Energy Bidding Procedures, or (c) contrary to the best interests of the Debtors and their estates

and creditors, or (v) accept as a Qualified Bidder or Qualified Bid a Bidder or Bid that does not otherwise meet the requirements set forth in these True Energy Bidding Procedures.

EXHIBIT 2
Auction Notice

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

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

NOTICE OF AUCTION

PLEASE TAKE NOTICE that:

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), are soliciting offers for the purchase of all or substantially all of the property of the Debtor True Energy, LLC (such property, the “True Energy Assets” and such transaction, a “Sale”).

The Debtors expect to proceed with an auction (the “Auction”) to identify the Successful Bid that provides for the highest and best recovery for the Debtors’ estates and creditors. The Auction will take place pursuant to bidding procedures (the “True Energy Bidding Procedures”) approved on by the United States Bankruptcy Court for the Western District of Virginia (the “Court”) at a hearing held on December 18, 2015.²

Parties interested in obtaining additional information about the True Energy Assets should contact Gregory L. “Bernie” Mason, Telephone: (865) 474-7000.

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

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the True Energy Bidding Procedures. This notice is qualified in its entirety by reference to the True Energy Bidding Procedures.

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*

The Court established the following dates and deadlines in connection with the Auction:

- (i) **Preliminary Indications of Interest: January 8, 2016, at 5:00 p.m. (prevailing Eastern Time)**, as the deadline by which all Preliminary Indications of Interest must be **actually received** by the Debtors and counsel to the Debtors in the form and manner specified in the True Energy Bidding Procedures, in order for an interested party to become a Qualified Bidder;
- (ii) **Bid Deadline: January 14, 2016, at 5:00 p.m. (prevailing Eastern Time)**, as the deadline by which all Bids must be **actually received** by the Debtors and counsel to the Debtors in the form and manner specified in the True Energy Bidding Procedures;
- (iii) **Auction: January 19, 2016, at 10:00 a.m. (prevailing Eastern Time)**, as the date and time of the Auction, which will be held at the offices of Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 or at such other location as the Debtors may designate after consultation with the Committee and the DIP Agent; and
- (iv) **Sale Hearing: January 21, 2016, at 2:00 p.m. (prevailing Eastern Time)**, or as soon thereafter as counsel may be heard, which will be held before the Honorable Paul M. Black, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, 2nd Floor, 210 Church Avenue, Roanoke, Virginia 24011.

The True Energy Bidding Procedures, the *Motion of Debtors and Debtors in Possession for Entry of an Order (I) Approving Bidding Procedures for the Sale of All or Substantially All of the Assets of True Energy, LLC, (II) Scheduling Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof and (IV) Granting Related Relief* [ECF No. 571] (the "Motion") and further information regarding the chapter 11 cases is available on the Debtors' case information website (located at www.americanlegal.com/xinergy). **All interested bidders should carefully read the True Energy Bidding Procedures and the order approving the True Energy Bidding Procedures.**

As set forth in the True Energy Bidding Procedures, the Debtors may, in their reasonable judgment, and in consultation with the Committee and the DIP Agent, modify the True Energy Bidding Procedures at any time with notice to Qualified Bidders (as defined therein), including to adjourn the Auction, Sale Hearing or any of the dates set forth herein or therein one or more times for any reason and to terminate the True Energy Bidding Procedures at any time to pursue an alternative restructuring strategy that maximizes value for the Debtors' estates.

Objections, if any, to the relief requested in the Motion in respect of approval of the sale to a Successful Bidder (as defined in the True Energy Bidding Procedures), **must**: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Bankruptcy Rules and any case management order entered in these cases; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served, so as to **actually received no later than January 20, 2016, at 4:00 p.m.**

(prevailing Eastern Time), on: (i) the Debtors, Xinergy Ltd., 8351 East Walker Springs Lane, Suite 400, Knoxville, Tennessee, Attn: Gregory L. “Bernie” Mason, email: bmason@xinergycorp.com; (ii) counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iii) counsel to the Committee, (a) McGuireWoods LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, email mroeschenthaler@mcguirewoods.com, and (b) Whiteford Taylor & Preston, LLP, 114 Market Street, Ste 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings and Brandy M. Rapp, email: mhastings@wtplaw.com and brapp@wtplaw.com; and (iv) the attorneys for the DIP Agent and an informal group of holders of the Debtors’ pre-petition secured notes and lenders under the Debtors’ post-petition financing, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York 10019-6064, Attn: Brian S. Hermann and Lauren Shumejda, email: bhermann@paulweiss.com and lshumejda@paulweiss.com, and (b) Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Peter J. Barrett, email: peter.barrett@kutakrock.com.

DATED: _____, 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)
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*Counsel to the Debtors
and Debtors in Possession*

EXHIBIT 3

True Energy Assumption and Assignment Notice

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

In re:

XINERGY LTD., et al.,

Debtors.¹

Chapter 11

Case No. 15-70444 (PMB)

(Jointly Administered)

**NOTICE OF DEBTORS' REQUEST FOR AUTHORITY
TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that:

1. On December 11, 2015, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), filed the *Motion of the Debtors and Debtors in Possession for Entry of an Order (i) Approving the True Energy Bidding Procedures, (ii) Scheduling Bid Deadlines and the Auction, (iii) Approving the Form and Manner of Notice Thereof and (iv) Granting Related Relief* [ECF No. [●]] (the "Motion")² with the United States Bankruptcy Court for the Western District of Virginia (the "Court").

2. On December [], 2015, the Court entered an order granting the Motion and approving the True Energy Bidding Procedures [ECF No. [●]] (the "True Energy Bidding Procedures Order"), granting certain relief sought in the Motion, including, among other things, approving (a) the True Energy Bidding Procedures and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "Assumed and Assigned Contracts").³

3. Pursuant to the True Energy Bidding Procedures, on January 19, 2016, the Debtors conducted the Auction, and the Debtors have selected, in consultation with the Committee and the DIP Agent, [●] as the Successful Bidder(s), whose Bid(s) contemplate(s) a

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

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the True Energy Bidding Procedures.

³ The True Energy Bidding Procedures, the True Energy Bidding Procedures Order, the Motion and further information regarding the chapter 11 cases is available on the Debtors' case information website (located at www.americanlegal.com/xinergy).

Sale of True Energy Assets. The Debtor will seek approval of the Sale at a hearing presently scheduled to take place on **January [], 2016, at [] (prevailing Eastern Time)** (the “Sale Hearing”).

4. **You are receiving this notice (the “True Energy Assumption and Assignment Notice”) because you are listed on Exhibit A hereto as a counterparty to a contract or lease with True Energy that the Debtors intend to assume and assign to the Successful Bidder(s) in connection with the Sale.**

5. Pursuant to section 365 of the Bankruptcy Code, there is adequate assurance that the True Energy Cure Amounts shall be paid in accordance with the terms determined at the Sale Hearing. Further, there is adequate assurance of the future performance of the Successful Bidder(s) under the executory contract or unexpired lease to be assumed and assigned because of the significant resources of the Successful Bidder(s).

6. All objections to the assignment and assumption of any Assumed and Assigned Contract, **must**: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Bankruptcy Rules and any case management order entered in these cases; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served, so as to be **actually received no later than** [●], on: (i) the Debtors, Xinergy Ltd., 8351 East Walker Springs Lane, Suite 400, Knoxville, Tennessee, Attn: Gregory L. “Bernie” Mason, email: bmason@xinergycorp.com; (ii) counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, email: tpbrown@hunton.com; (iii) counsel to the Committee, (a) McGuireWoods LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, email mroeschenthaler@mcguirewoods.com, and (b) Whiteford Taylor & Preston, LLP, 114 Market Street, Ste 210, Roanoke, Virginia 24011, Attn: Michael E. Hastings and Brandy M. Rapp, email: mhastings@wtplaw.com and brapp@wtplaw.com; and (iv) the attorneys for the DIP Agent and an informal group of holders of the Debtors’ pre-petition secured notes and lenders under the Debtors’ post-petition financing, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York 10019-6064, Attn: Brian S. Hermann and Lauren Shumejda, email: bhermann@paulweiss.com and lshumejda@paulweiss.com, and (b) Kutak Rock LLP, Bank of America Center, 1111 East Main Street, Suite 800, Richmond, Virginia 23219, Attn: Peter J. Barrett, email: peter.barrett@kutakrock.com.

Consequences of Failing To Timely File and Serve an Objection

Any Contract Counterparty to an Assumed and Assigned Contract who fails to timely file and serve an objection to the proposed assumption and assignment of such Assumed and Assigned Contract in accordance with the True Energy Bidding Procedures Order and the True Energy Assumption Procedures shall be forever barred from asserting any objection to the assumption and assignment of such Assumed and Assigned Contract, including requesting additional Adequate Assurance Information with respect to such Assumed and Assigned Contract.

DATED: _____, 2015

Respectfully submitted,

/s/ Justin F. Paget

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Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
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