

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In Re:**

**BKY No.: 17-41991  
Chapter 11**

**Aspirity Energy, LLC**

**NOTICE OF EXPEDITED HEARING  
AND MOTION FOR APPROVAL  
TO USE CASH COLLATERAL  
AND FOR ADEQUATE PROTECTION**

**Debtor.**

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**TO: THE DEBTOR, THE UNITED STATES TRUSTEE, AND OTHER PARTIES IN INTEREST AS SPECIFIED IN LOCAL RULE 9013.3.**

1. Aspirity Energy, LLC (hereinafter referred to as “Debtor”), the Debtor-In-Possession in the above-referenced proceeding, moves the Court for expedited relief and gives notice of hearing.

2. The Court will hold an expedited hearing on the Debtor's Motion at 10:30 a.m. on Monday, July 10, 2017, before the Honorable Kathleen H. Sanberg, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard. A final hearing on the Debtor's Motion for Use of Cash Collateral and for Adequate Protection (“Motion”) is set for 9:00 a.m. on Wednesday, July 26, 2017, before the Honorable Kathleen H. Sanberg, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

3. Any response to the Expedited Hearing and Motion shall be filed and served not later than 2 hours prior to the July 10, 2017 hearing date. Any response to the July 26, 2017 Final Hearing on the Debtor’s Motion shall be filed and served not later than Friday, July 21, 2017, which is five days prior to the hearing date. **THE COURT MAY ALSO**

**GRANT THE DEBTOR'S MOTIONS, INCLUDING FINAL APPROVAL OF ANY ADEQUATE PROTECTION AGREEMENTS WITHOUT A FURTHER HEARING UNLESS AN APPROPRIATE OBJECTION IS INTERPOSED IN ACCORDANCE WITH THE RULES.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The case is now pending in this Court, having been filed on June 30, 2017.

5. This Motion arises under 11 U.S.C. §§361 and 363, together with Bankruptcy Rule 4001(c) and Local Rule 4001-2. The Debtor seeks an expedited Hearing on its Motion to use cash collateral and to provide adequate protection.

6. The Debtor is in the business of providing electricity to several thousand retail customers. The Debtor has been in business for approximately two years.

7. The Debtor's pre-bankruptcy assets consist of cash, accounts receivable, and office equipment. The Debtor believes that the only entity with an interest in cash collateral is Exelon Generation Company, LLC.

8. The Debtor's verified Rule 4001-2 Statement is attached hereto or will be filed before the hearing date and is marked as **Exhibit A**. The Statement includes a four-week budget for the Debtor which includes critical expenditures for the next few weeks. As soon as possible and prior to the Final Hearing on the Debtor's Motion, the Debtor will supplement its Rule 4001-2 Statement by filing further projections, a Profit and Loss Statement and a Balance Sheet.

9. Cause exists to hear this matter on an expedited basis. The Debtor will suffer irreversible and irreparable harm if it is not able to use cash collateral. The expenditures the Debtor proposes to make between the preliminary hearing on the Debtor's Motion and the Final Hearing are described in detail on the attached verified Rule 4001-2 Statement. If the Debtor is unable to pay these expenses, it will not be able to conduct its business. The Debtor's cash collateral since the filing date will stay the same or increase and will not decrease demonstrating further adequate protection.

10. Pursuant to applicable rules, the Debtor reserves the right to call Scott Lutz, President and CEO of the Debtor in support of this Motion.

11. On an interim basis and pending the final hearing on the Debtor's Motion, the Debtor proposes to grant a replacement lien to Exelon Generation Company, LLC.

12. By making this Motion, the Debtor is not seeking to cross collateralize any pre-petition debt with post-petition collateral. The Debtor is not admitting the validity, perfection or amount of any pre-petition secured claim or waiving any right with respect thereto. The relief sought does not grant a lien on the Debtor's avoidance claims or bankruptcy causes of action as enumerated under the Bankruptcy Code. This Motion does not propose to secure pre-petition debt with post-petition loans or otherwise attempt to roll a pre-petition obligation into a post-petition obligation. This Motion does not deal with or carve out fees of any professionals. This Motion does not propose to prime any debt of the Debtor nor does this Motion provide automatic summary relief from the automatic stay to any creditor. The Debtor is simply proposing to use cash collateral to pay essential operating expenses and grant a replacement lien in the Debtor's assets to Exelon Generation Company, LLC, which replacement lien would have the same priority, dignity

and effect as the pre-petition lien held by said creditor, all pending the final hearing on the Debtor's Motion.

**WHEREFORE**, the Debtor, through its undersigned attorney, respectfully moves the Court for an Order granting the Debtor's Motion for expedited relief and granting the Debtor's Motion authorizing it to use cash collateral and authorizing the Debtor to grant a replacement lien to Exelon Generation Company, LLC which replacement lien will have the same priority, dignity and effect as the pre-petition lien held by said creditor, and for such other and further relief as the Court may deem just and equitable.

**STEVEN B. NOSEK, P.A.**


Dated this 5<sup>th</sup> day of July 2017.

/e/ Steven B. Nosek  
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**Attorneys for Debtor**

VERIFICATION

I, Scott Lutz, President and CEO of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: 7-5, 2017.

  
\_\_\_\_\_  
Scott Lutz, President and CEO

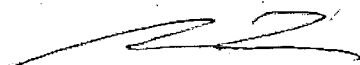
**EXHIBIT A**

**RULE 4001-2 STATEMENT**

The Debtor has filed a partial set of Schedules and asks the Court to take judicial notice thereof. A four-week budget is attached as **Exhibit 1**.

The undersigned verifies under penalty of perjury that the information contained in this pleading is true and correct according to the best of his knowledge information and belief.

Dated: July 5, 2017.

  
\_\_\_\_\_  
Scott Lutz, President and CEO

<i>week ending...</i>	<b>Week 1 7/7</b>	<b>Week 2 7/14</b>	<b>Week 3 7/21</b>	<b>Week 4 7/28</b>	<b>Week 5 8/4</b>
Payroll.....	25,700	18,000	0	18,000	0
Health Insurance.....	26,603	0	0	5,000	0
Rent.....	0	0	0	6,000	0
Telecom / IT.....	6,000	0	0	1,000	0
Office Supplies.....	250	250	250	250	250
Nosek Law Firm.....	0	0	0	0	0
Filing Fees.....	0	0	0	0	0
Other.....	500	500	500	500	500
<b>Total</b>	<b>59,053</b>	<b>18,750</b>	<b>750</b>	<b>30,750</b>	<b>750</b>
Cash in Lockbox.....	82,718	123,665	199,915	289,165	343,415
Remittances.....	100,000	95,000	90,000	85,000	80,000
Expenditures.....	(59,053)	(18,750)	(750)	(30,750)	(750)
Ending Cash Balance.....	123,665	199,915	289,165	343,415	422,665
Billings.....	90,000	85,000	80,000	75,000	70,000
A/R Balance.....	972,546	962,546	952,546	942,546	932,546

**EXHIBIT 1**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

BKY Case No.: 17-41991

Aspirity Energy, LLC,

Chapter 11

Debtor.

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**Memorandum of Law**

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Aspirity Energy, LLC (“Debtor”) submits this Memorandum of Law in support of its Motion for an Order Authorizing Use of Cash Collateral (“Motion”).

**I. STATEMENT OF FACTS**

The Debtor relies on the verified statement of facts and Local Rule 4001-2 statement contained in the Motion and incorporates the same herewith.

**II. STATEMENT OF LAW AND DISCUSSION**

Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may use cash collateral only with the secured creditor's consent or if the court, after notice and a hearing, so orders. Section 363(e) of the Bankruptcy Code provides that the court must provide the secured creditor with adequate protection of its interest upon request of the creditor. The Eighth Circuit Court of Appeals has discussed the issue of adequate protection in the following terms:

In any given case, the bankruptcy court must necessarily (1) establish the value of the secured creditor's interest, (2) identify the risks to the secured creditor's value resulting from the debtor's request for use of cash collateral, and (3) determine whether the debtor's adequate protection proposal protects values as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.

*In re Martin*, 761 F.2d 472, 476-77 (8th Cir. 1985).

Based on the facts alleged in the Motion, Exelon Generation Company, LLC.'s interests in the collateral are adequately protected by the Debtor's offer. The Debtor's cash collateral



since the filing date will stay the same and not decrease demonstrating further adequate protection.

Usually, in a Chapter 11, the risk to a secured creditor's interests in cash collateral is that the Debtor will use all of the collateral and not generate sufficient post-petition collateral to replace the used collateral. That is not a concern here, as the collateral will not decrease during the pendency of this case.

The Debtor has set forth how the value of its assets will remain the same and not decrease between the Filing Date and the dates through which the Debtor seeks use of cash collateral. The Debtor has further set forth its necessary budget. Pursuant to the Debtor's budget, the collateral position of the secured creditor does not adversely change in a material way during the period of the proposed use of cash collateral.

The Debtor's offer to the secured creditor as adequate protection of its interests is the offer of adequate protection described in the Motion. Based on the facts and circumstances of this case, the offer of adequate protection adequately protects the secured creditor from any risks to its collateral from the Debtor's use of same.

The Court should grant the motion of the Debtor authorizing the use of cash collateral. The Debtor has immediate need to use cash collateral in which the secured creditor has an interest. The Debtor's use of cash collateral during the pendency of this case poses a nominal risk to the interest of the secured creditor. The secured creditor will be adequately protected by the granting of a post-petition lien with the same status, dignity and priority as existed in the cash collateral prior to the filing of the Debtor's petition, by the carrying of insurance for the full replacement value of the collateral, by continuing to operate and to generate replacement

collateral and by any other form of protection contained in the offer of adequate protection described in the Motion.

The Debtor requests an order authorizing use of cash collateral so that the Debtor may meet the ordinary expenses of operating the Debtor's business in accordance with the budget attached to the Debtor's Rule 4001-2 Statement.

### III. CONCLUSION

For the foregoing reasons, the Court should approve the Debtor's use of cash collateral on an interim and final basis as provided in the Motion.

**STEVEN B. NOSEK, P.A.**

Dated this 5<sup>th</sup> day of July, 2017.

/e/ Steven B. Nosek  
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*Attorneys for Debtor*

## UNITED STATES BANKRUPTCY COURT

## DISTRICT OF MINNESOTA

In Re:

BKY No.: 17-41991

Chapter 11

**Aspirity Energy, LLC,  
Debtor.**

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**CERTIFICATE OF SERVICE**


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I hereby certify that on July 5, 2017, I caused a copy of **Notice of Expedited Hearing and Motion for Approval to Use Cash Collateral and for Adequate Protection; Verification; Exhibits; Memorandum of Law; Proposed Order** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

US Trustee: [ustpregion12.mn.ecf@usdoj.gov](mailto:ustpregion12.mn.ecf@usdoj.gov), [ecfbkup@comcast.net](mailto:ecfbkup@comcast.net)

Michael R. Fadlovich: [michael.fadlovich@usdoj.gov](mailto:michael.fadlovich@usdoj.gov)

I further certify that I caused a copy of the **Notice of Expedited Hearing and Motion for Approval to Use Cash Collateral and for Adequate Protection; Verification; Exhibits; Memorandum of Law; Proposed Order** to be faxed and/or emailed and/or mailed by US Mail to the following:

Aspirity Energy, LLC 12800 Whitewater Drive Suite 250 Minnetonka MN 55343 <a href="mailto:chadunderwood@aspirityenergy.com">chadunderwood@aspirityenergy.com</a>	IRS District Director Room 320 Stop 5700 30 7 <sup>th</sup> Street E #1222 St. Paul MN 55401 <b>No Fax or Email</b>	MN Dept of Revenue 551 Bankruptcy Sections PO Box 64447 St. Paul MN 55164 <a href="mailto:Mdor.bkysec@state.mn.us">Mdor.bkysec@state.mn.us</a>
IRS District Counsel 380 Jackson Street 650 Cray Plaza St. Paul MN 55101 <b>No Fax or Email</b>	US Attorney 300 South 4 <sup>th</sup> Street #600 Minneapolis MN 55415 <b>Fax: 612-664-5788</b>	ACCS Marketing LLC 2429 W Broad Street Columbus OH 43204 <a href="mailto:chipstewart@peakmail.us">chipstewart@peakmail.us</a>
ActiveDemand #732, 710-20 Crowfoot Crescent Calgary Alberta CANADA T3G 2P6 <a href="mailto:billing@activedemand.com">billing@activedemand.com</a>	American Electric Power 700 Morrison Road Columbus OH 43230 <a href="mailto:jhwatson@aep.com">jhwatson@aep.com</a>	ClearPoint Energy 120 E Washington S #304 Syracuse NY 13202 <a href="mailto:achambrone@clearpointenergy.com">achambrone@clearpointenergy.com</a>
Coherentt Solutions, Inc. Attn: Dan Schneider 1600 Utica Ave S #120 Minneapolis MN 55416 <a href="mailto:danschneider@coherentsolutions.com">danschneider@coherentsolutions.com</a>	Cozen O'Connor 1200 19th Street NW Washington DC 20036 <b>Fax: 202-861-1905</b>	Eckert Seamans Cherin Mellott PO BOx 643187 Pittsburgh PA 15264-3187 <b>Fax: 412-566-6099</b>
Energy Group Consultants LLC 203 E 29th St Pittsburg KS 66762 <a href="mailto:Matt.alexander@egc-inc.com">Matt.alexander@egc-inc.com</a>	Exelon Generation Company, LLC 1310 Point Street, 11th Floor Baltimore MD 21231 <a href="mailto:Sarang.ahuja@constellation.com">Sarang.ahuja@constellation.com</a>	Law Offices of Gerard T. Fox 203 N LaSalle St #2100 Chicago IL 60601 <a href="mailto:gerardtfox@gerardtfoxlawoffices.com">gerardtfox@gerardtfoxlawoffices.com</a>

Nexxa Group, Inc. PO Box 61690 Fort Myers FL 33906 <b>Fax: 239-288-4968</b>	Nigel Solutions Group, LLC Attn: Brandi DuClos 410 Pennsylvania Road Mills River NC 28759 <a href="mailto:Brandi.duclos@nigelsolutions.com">Brandi.duclos@nigelsolutions.com</a>	NRAI, Inc. PO Box 4349 Carol Stream IL 60197-4349 <a href="mailto:Southteam3@wolterskluwer.com">Southteam3@wolterskluwer.com</a>
OpSolve LLC 707 Grant Street, Suite 1015 Pittsburgh PA 15219 <b>Fax: 412-945-5107</b>	Optimizely, Inc. Dept CH 19940 Palatine IL 60055-9940 <a href="mailto:accounting@optimizely.com">accounting@optimizely.com</a>	P.R. Quinlan Associates, Inc. Attn: Frank Caliva 1012 14th St NW, #903 Washington DC 20005 <a href="mailto:frankcaliva@prquinlan.com">frankcaliva@prquinlan.com</a>
The Sales Verification Co, LLC Attn: Accounts Receivable 9701 International Ct N, #A Saint Petersburg FL 33716 <a href="mailto:invoicing@salesverifications.com">invoicing@salesverifications.com</a>	TrustedTPV, LLC PO Box 782361 Orlando FL 32878-2361 <a href="mailto:cari@trustedtpv.com">cari@trustedtpv.com</a>	United Energy Services 9149 SW 49th Place, #101 Gainesville FL 32608 <a href="mailto:jcaridi@unitedenergyservices.com">jcaridi@unitedenergyservices.com</a>
Vorys, Sater, Seymour & Pease PO Box 73487 Cleveland OH 44193 <b>Fax: 614-719-4772</b>	Philip A. Priolo Director of Credit Exelon Generation Company, LLC 1310 Point Street, 11 <sup>th</sup> Floor Baltimore MD 21231 <a href="mailto:Philip.priolo@exeloncorp.com">Philip.priolo@exeloncorp.com</a>	

Dated this 5<sup>th</sup> day of July, 2017.

**STEVEN B. NOSEK, P.A.**

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ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In Re:**

**BKY No.: 17-41991  
Chapter 11 Case**

**Aspirity Energy, LLC,**

**INTERIM ORDER**

**Debtor.**

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The Motion of Aspirity Energy, LLC (“Debtor”) for an Order granting interim use of cash collateral and to grant adequate protection hearing came on for expedited hearing before the undersigned on the 10<sup>th</sup> day of July, 2017. Appearances were noted.

**IT IS HEREBY ORDERED:**

1. The Debtor’s Motion for expedited hearing is granted.
2. The Debtor is authorized to use cash collateral on an interim basis in the amounts of and consistent with the cash flow projections; and
3. The Debtor is authorized to grant a replacement liens to Exelon Generation Company, LLC on all assets of the Debtor-In-Possession to the extent of use of cash collateral, which replacement liens shall have the same priority, dignity and effect as the pre-petition lien held by said creditor. Assets excluded from the replacement lien are the Debtor’s bankruptcy causes of action; and
4. No additional steps need to be taken to perfect the replacement lien authorized herein; and
5. A further hearing on the motion for an order authorizing the use of cash collateral shall be held on Wednesday, July 26, 2017 at 9:00 a.m.

**Dated:**

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**Kathleen H. Sanberg  
United States Bankruptcy Judge**