

ORIGINAL

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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\_\_\_\_\_ )  
 In re: )  
 ) Chapter 11  
 Calpine Corporation, et al., )  
 )  
 Debtors. ) Case No. 05-60200 (BRL)  
 ) Jointly Administered  
 )

COMMISSION  
CLERK

**INTERIM ORDER UNDER SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY  
 CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
 AP SERVICES, LLC AS CRISIS MANAGERS TO THE DEBTORS**

Upon the motion (the "Application")<sup>1</sup> of the above-captioned debtors (collectively, the "Debtors") for an order authorizing the employment and retention of AP Services, LLC ("APS") as crisis managers to the Debtors and upon the Declaration of Lisa J. Donahue (the "Donahue Declaration") in support of the Application; it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors and other parties in interest; it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and this Application in this District is proper pursuant to

\_\_\_\_\_ 28 U.S.C. §§ 1408 and 1409; notice of this Application and the opportunity for a hearing on this

\_\_\_\_\_ Application was appropriate under the particular circumstances and that no other or further

\_\_\_\_\_ notice need be given; and after due deliberation and sufficient cause appearing therefor, it is

\_\_\_\_\_ hereby ORDERED

1. The Application is approved on an interim basis until such time as the Court

\_\_\_\_\_ conducts a final hearing on this matter (the "Final Hearing").

\_\_\_\_\_ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

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2. A Final Hearing on this Application shall take place before this Court at 10:00 a.m. (prevailing Eastern Time) on March 22, 2006.

3. The Debtors shall serve a copy of this Interim Order and notice of the Final Hearing on all creditors and parties in interest within five (5) days of the entry of this Interim Order.

4. Any objections to the relief requested by the Application on a final basis must be filed with the Court and served on the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Paul Kenan Schwartzberg and Kirkland & Ellis LLP, attorneys for the Debtors, Matthew Cantor, Esq., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 so as to be actually received by no later than March 17, 2006 at 4:00 p.m., prevailing Eastern Time.

5. APS is found to be a "disinterested person" within the meaning of 11 U.S.C. § 101(14).

6. The Debtors are hereby authorized, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, to employ and retain, under a general retainer, upon the terms and for the purposes set forth in the Application and the First Amended Engagement Letter, APS as crisis managers to the Debtors in these Chapter 11 Cases on an interim basis effective as of the Petition Date.

7. APS shall be compensated in accordance with the Application, the First Amended Engagement Letter, and this Interim Order, in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, guidelines established by this Court, the United States Trustee Guidelines, and the orders of this Court.

8. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, any orders of this Court or any guidelines regarding submission and approval of fee applications, APS and its professionals shall only be required to maintain time records for services rendered postpetition in half-hour (.5) increments.

9. The United States Trustee and the Official Committee of Unsecured Creditors retain all rights to object to APS's interim and final fee applications (including expense reimbursement) on all grounds including but not limited to the reasonableness standard provided for in Section 330 of the Bankruptcy Code.

10. All requests of APS for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall APS be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

11. In no event shall APS be indemnified if the Debtor or a representative of the estate, asserts a claim for, and a court determines by final order that such claim arose out of, APS's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. In the event that APS seeks reimbursement for attorneys' fees from the Debtors pursuant to the Engagement Letter, the invoices and supporting time records from such attorneys shall be included in APS's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and

reimbursement of expenses and the approval of the Bankruptcy Court under the standards of §§ 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under § 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy Section 330(a)(3)(C) of the Bankruptcy Code.

13. APS shall make an additional disclosure in the form of a supplemental affidavit, to the extent such disclosure has not been previously made, no later than five (5) days prior to the Final Hearing date of any APS clients identified as either (a) Interested Parties as set forth in the Donahue Declaration or (b) the Debtors' top 100 unsecured creditors, representing equal to or greater than 1% of APS and AlixPartners's consolidated annual revenues.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Application.

15. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

16. To the extent that any term of this Interim Order is inconsistent with the Engagement Letter or Application, the terms of this Interim Order shall govern.

17. The requirement set forth in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Application or otherwise waived.

18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

19. To the extent that this Interim Order is inconsistent with any prior order or pleading with respect to the Application in these cases or the Engagement Letter, the terms of this Interim Order shall govern.

Dated: January 26, 2006  
New York, New York

/s/Burton R. Lifland  
United States Bankruptcy Judge

