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August 24, 2011

**The Honorable Craig Gargotta**  
**Homer J. Thornberry Federal Judicial Bldg.**  
**903 San Jacinto Blvd., Suite 322**  
**Austin, Texas 78701**  
**(512) 916-5237**

Re: *Crescent Resources Litigation Trust* - Case No. 09-11507 (CAG); *In re Crescent Resources, LLC, et. al.*; In the United States Bankruptcy Court for the Western District of Texas, Austin Division.

Dear Judge Gargotta:

This letter is in reply to Mr. Spears' letter of August 22, 2011 and Mr. Landy's letter of August 23, 2011, both regarding the order for the July 28, 2011 hearing.

We will initially respond to Mr. Spears' letter. It appears that Mr. Spears disagrees with almost everything about the Trust's proposed order and requests that the Court enter Duke's proposed order instead. The Court should reject that invitation for the following reasons.

First, Duke argues that the Trust is wrong to assert that the Stay granted by this Court extends only through appeal to the District Court, even though that is exactly what Mr. Spears told this Court at the hearing:

THE COURT: Let me ask you one thing, Mr. Spears. I think I know the answer to this, but the Trust raised in their papers, well, they said well, how long do you want to stay? And I assume you want to stay until the district Court rules on this, is that correct?

MR. SPEARS: **Yes, your Honor.** (Transcript, page 19).

Now, despite that unequivocal commitment to limit the duration of the stay being sought to coincide with what Mr. Spears told the Court and the parties at the hearing—a commitment which stopped all discussion of the issue --Duke proposes in its draft order a stay without apparent end and chides the Trust for suggesting otherwise. This Court should reject that proposal, hold Duke to its lawyer's word, and enter the Trust's order with a stay that expires with the District Court's ruling. If the stay is to be extended beyond a decision by the District Court, Duke should be required to seek that stay from the District Court.

Second, Duke insists that the order provide that "the status quo" prior to the Court's order of July 22, 2011 be reinstated and that the parties be ordered "to continue to act consistently with their prior obligations for as long as" the order remain in effect. The Trust's objection to that language has a simple foundation—it was never sought by Duke in its papers, never mentioned by Mr. Spears at the hearing, never agreed to by the Trust, and, most importantly, never ordered

GEORGE & BROTHERS, L.L.P.

Honorable Craig Gargotta  
August 24, 2011  
Page 2

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by the Court. Duke's argument that this language is somehow superfluous because maintenance of the "status quo" is always the function of a stay order does not change the fact that Duke is asking the Court for relief that was never requested or granted by the Court. The Trust has very good reasons, as set out by Mr. Horton in his letter of August 19, 2011, for objecting to the insertion of this language in the proposed order. Tellingly, Mr. Spears does not even attempt to address those reasons in his letter of August 22, 2011.

Duke also objects to the insertion by the Trust of the words "in part" and "as set forth herein" to Duke's statement that "the Court has determined that the Motion to Stay and the Motion for Clarification are meritorious [in part] and should be granted [as set forth herein]."

But Duke's language, without the qualifying language proposed by the Trust, is inaccurate. For example, RBH sought, in its "Motion for Clarification," clarification that the July 22 order "does not encompass Electronically Stored Information ("ESI"). The Court quite clearly denied that "clarification" at the hearing. Yet Duke's proposed language would result in an order seemingly stating that everything Duke and RBH sought in those motions was meritorious, and "should be granted," when neither is correct. Here again, the language proposed by the Trust is more accurate, and is reflective of what really happened at the hearing.

Next, Duke argues that the stay order should include a stay of the effectiveness of the Memorandum Opinion on Duke's Expedited Motion to Dismiss Turnover Proceedings for Lack of Jurisdiction. This Opinion was not discussed at the hearing, and its effectiveness would not even arguably result in the "irreparable injury" relied on by Duke in seeking the stay. The effectiveness of this Opinion should not, therefore, be stayed.

Finally, the Trust agrees that the stay order should provide that the ruling of the Court that the Trust was RBH's sole client for certain RBH files (Row Nos. 2-218, 224, 242, 285, and 308) should be stayed until the District Court rules on Duke's appeal. The Trust has revised its proposed order in this regard. A revised proposed order is attached for the Court's convenience.

Mr. Landy's letter consists largely of the same kind of verbal gymnastics that we have heard so much of when it comes to the RBH's obligations to produce ESI related to Crescent's documents, all aimed at minimizing or evading RBH's obligation to produce ESI to the Trust.

Mr. Landy's second point makes no sense. He claims that the portion of the Trust's order providing that ESI has been ordered produced, including in the July 22 order, is inaccurate. He is incorrect. The July 22 order did require the production of documents and, at the request of RBH, the Court "clarified" that the order did indeed include ESI. (See Transcript, p. 83). As previous orders of the Court had ordered the post-Transaction files produced to the Trust, the statement that these documents, including ESI, have been ordered produced in orders, including the July 22 order, is completely accurate.

Mr. Landy's third point is just another attempt to evade production of ESI. There, Mr. Landy takes the position that the Court's denial of RBH's Motion for Protective Order only applies to the ESI for the post-transaction documents as to which Duke no longer asserts any

GEORGE & BROTHERS, L.L.P.

Honorable Craig Gargotta  
August 24, 2011  
Page 3

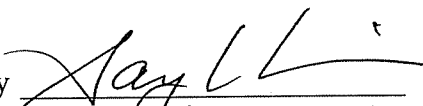
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claims of privilege. Reading between the lines, it appears clear to us that RBH is still refusing to produce either the hard copy of or the ESI documents relating to the many Rows of documents (2-218, 220, 224, 242, 285, and 308) as to which Duke concedes the Trust to be a joint client. Especially in light of the Court's own (stayed) holding that the Trust is the *sole* client as to those same files, we believe that our form of order is the more accurate reflection of the Court's rulings.

On his First point, however, we agree with Mr. Landy. The order should reflect that RBH is not required to produce the RBH files in Row Nos. 337 to 344 to the Trust, and we have revised our draft order to reflect that fact.

Yours sincerely,

GEORGE & BROTHERS, L.L.P.

By   
Gary L. Lewis

cc: Berry Spears  
Jonathan Landy  
Chris Sileo

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re:	}	
	}	Chapter 11
CRESCENT RESOURCES, LLC,	}	Case No. 09-11507 (CAG)
<i>et al.</i> ,	}	Jointly Administered
Debtors.	}	

**ORDER REGARDING MOTIONS OF DUKE ENERGY ET AL AND ROBINSON  
BRADSHAW & HINSON, P.A. TO STAY TURNOVER ORDERS**

On July 28, 2011, the Court convened a hearing to consider the *Emergency Motion to Stay Turnover Orders Pending Appellate Review* (the “Motion to Stay”) filed by Duke Energy Corporation, et al. (the “Duke Parties”) [Dkt. No. 2289] and the *Emergency Motion of Robinson, Bradshaw & Hinson, P.A. for Clarification, or in the Alternative for Reconsideration and for a Partial Temporary Stay, of the Court’s July 22, 2011 Order* (the “Motion for Clarification”) [Dkt. No. 2299]. After reviewing the Motion to Stay, the Motion for Clarification, and the Responses filed by the Crescent Resources Litigation Trust (the “Litigation Trust”), the briefing submitted by the Parties and hearing the arguments of counsel; and having determined that notice of the Motion to

Stay and Motion for Clarification was proper and in accordance with the applicable Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the United States Bankruptcy Court for the Western District of Texas, and that this Court has jurisdiction to hear the matter and enter an order thereon, the Court has determined that the Motion to Stay and the Motion for Clarification are meritorious, in part, and should be granted as set forth herein. It is therefore

ORDERED that the *Emergency Motion to Stay Turnover Orders Pending Appellate Review* [Dkt. No. 2289] is GRANTED as set forth herein. It is further

ORDERED that the *Emergency Motion of Robinson, Bradshaw & Hinson, P.A. for Clarification, or in the Alternative for Reconsideration and for a Partial Temporary Stay, of the Court's July 22, 2011 Order* [Dkt. No. 2291] is GRANTED in limited part, and denied in all other respects, as set forth herein. It is further

ORDERED that the orders of production directed to Robinson, Bradshaw & Hinson, P.A. ("RBH") in the *Memorandum Opinion Regarding the Crescent Resources Litigation Trust's Motion for Turnover* [Dkt. No. 2284] included an obligation to produce any and all electronically stored information related to the subject client files. It is further

ORDERED the Court's ruling that the Trust was RBH's sole client for the files contained at RBH Row Nos. 2-218, 224, 242, 285, and 308 and the obligation of production pursuant to the *Memorandum Opinion Regarding the Crescent Resources Litigation Trust's Motion for Turnover* [Dkt. No. 2284] is STAYED pending appeal to the United States District Court for the Western District of Texas and that, upon resolution or dismissal of such appeal, that such stay is dissolved without further order of this Court. It is further

ORDERED that, in accord with the Parties' agreement on the record at the July 28, 2011 hearing, certain RBH files (Row Nos. 219, 221-23, 225-41, 243-84, 286-307, and 309-336 of the RBH Schedule of Client Matters) for which Crescent Resources, LLC had been previously determined to be the sole client thereof pursuant to the Parties' stipulation reflected in that certain *Order Concerning Claims of Privilege to RBH Files* [Dkt. No. 1804], are not subject to the provisions of this Order or the stay as set forth herein and that production of such files, including electronically stored information, has been ordered, including in the July 22, 2011 order, as clarified herein. It is further

ORDERED that the *Motion for Protective Order* [Dkt. No. 1925] filed by RBH is hereby DENIED. It is further

ORDERED that the Duke Parties shall seek no extension with respect to any appeal of the July 22, 2011 order to which they may be entitled. It is further

ORDERED that this Order shall be immediately effective as of July 28, 2011, without the necessity of further action.

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**Approved as to form:**

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