

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Optim Energy, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-10262 (BLS)

(Jointly Administered)

Re: D.I. 359

**DECLARATION OF NICK RAHN IN SUPPORT OF
DEBTORS' MOTION FOR ORDERS: (A)(I) APPROVING
SALE PROCEDURES AND PROPOSED PURCHASER PAYMENTS
IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF
OPTIM ENERGY TWIN OAKS, LP, (II) SCHEDULING AN AUCTION AND
HEARING TO CONSIDER APPROVAL OF THE SALE, (III) APPROVING
NOTICE RELATING TO THE SALE, AND (IV) GRANTING RELATED RELIEF;
AND (B)(I) AUTHORIZING AND APPROVING OPTIM ENERGY TWIN OAKS, LP
TO SELL SUBSTANTIALLY ALL OF ITS PROPERTY FREE AND CLEAR OF
ALL LIENS, CLAIMS, AND ENCUMBRANCES, (II) AUTHORIZING OPTIM
ENERGY TWIN OAKS, LP TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Nick Rahn, hereby declare as follows under the penalty of perjury:

1. I am the Chief Executive Officer of Optim Energy, LLC ("**Optim Energy**"),² a Delaware limited liability company and one of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"). I serve as Optim Energy's CEO through my employment with Competitive Power Ventures, Inc., and as the Authorized Representative who implements strategic and operational direction with respect to the other Debtors. I am generally

¹ The Debtors in these chapter 11 cases are: Optim Energy, LLC; OEM 1, LLC; Optim Energy Cedar Bayou 4, LLC; Optim Energy Altura Cogen, LLC; Optim Energy Marketing, LLC; Optim Energy Generation, LLC; Optim Energy Twin Oaks GP, LLC; Optim Energy Twin Oaks, LP. The Debtors' main corporate and mailing address for purposes of these chapter 11 cases is: c/o Competitive Power Ventures, Inc., 8403 Colesville Road, Suite 915, Silver Spring, MD 20910.

² Unless otherwise noted, all capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Motion.

familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records.

2. I submit this declaration (this "**Declaration**") in support of the *Debtors' Motion for Orders: (A)(I) Approving Sale Procedures and Proposed Purchaser Payments in Connection with the Sale of Certain Assets of Optim Energy Twin Oaks, LP, (II) Scheduling an Auction and Hearing to Consider Approval of the Sale, (III) Approving Notice Related to the Sale, and (IV) Granting Related Relief; and (B)(I) Authorizing and Approving Optim Energy Twin Oaks, LP to Sell Substantially All of its Property Free and Clear of All Liens, Claims, and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Contracts, and (III) Granting Related Relief* (the "**Motion**"). I have personally reviewed and am generally familiar with the contents of the Mack Declaration, and the Motion and the relief sought therein.

3. Except as otherwise noted herein, all facts set forth in this Declaration are based on my personal knowledge of the Debtors' operations, finances and assets; my personal knowledge developed over the course of my position as CEO of Optim; my direct participation in numerous conference calls and meetings regarding the sale process and other related matters with Optim Energy's Board of Directors, all three members of which are independent (the "**Independent Directors**"), senior management and asset managers; upon information supplied to me by employees at Barclays Capital Inc. ("**Barclays**") responsible for working on the Debtors' Barclays engagement; upon information learned from my review of relevant documents; or upon my opinion based on my professional experience. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

4. Upon filing these chapter 11 cases, the Debtors and their advisors began the process of preparing for a sale of the Twin Oaks facility (the "**Facility**") owned by Debtor entity

Optim Energy Twin Oaks, LP ("*Twin Oaks*"). The Independent Directors and management directed Barclays to assist with a broad-based marketing campaign to determine third party interest in acquiring the Twin Oaks facility.

5. Shortly after filing these chapter 11 cases, in February 2014, Barclays prepared a high level "teaser" that set forth a basic description of the Facility and general information relating to its operations. I reviewed the teaser, and I understand that after its circulation by Barclays, Barclays received a high level of interest in the Facility. I, on behalf of Twin Oaks, executed confidentiality agreements with approximately twenty-eight parties ("*Potential Purchasers*"), including one of the Facility's vendors, Walnut Creek Mining Company ("*Walnut Creek*"), to enable the Potential Purchasers to obtain information for the potential acquisition of the Facility. I understand that these confidentiality agreements precluded the Potential Purchasers from disclosing confidential information regarding the potential transaction and prohibited the Potential Purchasers from engaging in any discussions with any vendor of the Facility or other Potential Purchasers.

6. Potential Purchasers received a Confidential Information Memorandum that set forth detailed information about the Facility, including a technical Facility description, a summary of existing commercial arrangements and key contracts, historical operating data, and market and environmental overviews. On many occasions, I answered, to the best of my knowledge, numerous questions regarding the Facility's performance both operationally and financially.

7. After approximately three months of consistent communication with Potential Purchasers, and subsequent to them (a) attending tours of the Facility, and (b) meeting with management, including myself, the Debtors engaged in hard-fought, good faith, and arms'-length

negotiations with several Potential Purchasers, including directly with Major Oak Power, LLC (the "*Proposed Purchaser*"). The Debtors determined that the Proposed Purchaser provided the highest and best offer for the Facility, and on June 13, 2014 after extensive arm's-length and good faith negotiations, Twin Oaks and the Proposed Purchaser executed the PSA attached to the Motion as Exhibit 1 to Exhibit B and agreed upon the Sale Procedures attached to the Motion as Exhibit 1 to Exhibit A.

8. I am familiar with the Sale Procedures and believe they are designed to maximize the value received for the Facility by permitting a competitive auction process in which all potential bidders are encouraged to participate and submit Qualifying Bids that are superior to the Proposed Purchaser bid. The Sale Procedures also provide the Debtors with the opportunity to consider all competing offers and to select, in their reasonable business judgment, and after consultation with the Consultation Parties, the highest and best offer for the sale of the Facility.

9. I believe an important feature of the Sale Procedures is the requirement that no party seeking to become a Qualifying Bidder shall have had any communication with Walnut Creek or its affiliates relating to, among other things, the FSA, the Facility or the transactions that are the subject of the Motion. The prohibition in this transaction is specifically intended to reflect the well-reasoned business judgment of the Debtors and their Independent Directors. Put simply, based on the long-standing history of failed negotiations with Walnut Creek and the posture Walnut Creek has taken in these chapter 11 cases, contact between potential bidders and Walnut Creek carries significant risk of being counterproductive, distracting, not in the best interest of the estate, and potentially detrimental to the overall sale process.

10. The Independent Directors revisited the determination to preclude discussions with Walnut Creek several times during the course of the sale process based on, among other

things, contemporaneous conversations between representatives of the Debtors and Walnut Creek, as well as negotiations with Potential Purchasers. Based on my involvement with the Debtors' sale process, it remains the Debtors' business judgment that a sale process that, among other things, precludes discussions between potential bidders and Walnut Creek is in the best interests of the estate and will lead to a value-maximizing transaction. Walnut Creek has not put forth a commercial proposal and/or structure for a dialogue with potential bidders that were constructive or value-maximizing for the Debtors. While Walnut Creek has been and will be precluded from any communication or collaboration with any potential bidder, it is not excluded from the sale process. Walnut Creek executed a confidentiality agreement and received sale materials (through Barclays, not its litigation process). Additionally, Walnut Creek is clearly entitled to seek to submit a Qualifying Bid pursuant to the terms of the Sale Procedures, which would allow it to participate in the Auction. Walnut Creek's status as a potential bidder is another reason why the Debtors and their Independent Directors, in their business judgment, determined not to permit bidders to engage in discussions with Walnut Creek. The risk of bid collusion, given the relationship between the Facility and Walnut Creek's mine, plays a significant role in this determination.

11. In conclusion, I believe the Debtors and their advisors, including Barclays, have proposed and conducted a comprehensive marketing and sale process in good faith and designed to maximize the value of the Facility for the Debtors' estate, and that the presence of the Proposed Purchaser is important to the section 363 sale process conducted in these chapter 11 cases. To that end, approval of the Motion is an appropriate and necessary step in the Debtors' restructuring efforts.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 17, 2014

By: /s/ Nick Rahn
Name: Nick Rahn
Title: Optim Energy, LLC
Chief Executive Officer