

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

**DEBTORS' MOTION FOR ENTRY OF
AN ORDER UNDER 11 U.S.C. §§ 102(1) AND 105, FED. BANKR.
R. 9006 AND D. DEL. LOCAL R. 6004-1 AND 9006-1(E) SHORTENING NOTICE
RELATING TO 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 OPTIM ENERGY TWIN
OAKS, LP TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

Optim Energy, LLC ("*Optim Energy*")² and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "*Debtors*") hereby move (the "*Motion to Shorten*") for the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 102(1) and 105 of title 11 of the United States Code (the "*Bankruptcy Code*"), Rule 9006 of the Federal Rules of Bankruptcy Procedure

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 Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Sale Motion (as defined herein).

(the "**Bankruptcy Rules**") and Rules 6004-1 and 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), shortening notice to allow 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* [D.I. 359] filed contemporaneously herewith (the "**Sale Motion**") to be considered, solely with respect to the requests to approve sale procedures, proposed purchaser payments and notice relating to a subsequent hearing to approve the proposed sale (the "**Sale Procedures Relief**"), on June 25, 2014 or the Court's earliest opportunity thereafter (the "**Sale Procedures Hearing**"). In support of the Motion to Shorten, the Debtors rely upon and incorporate by reference the *Declaration of George Mack 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 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* [D.I. 359] (the "**Mack Declaration**"), which was filed with the Court contemporaneously with the Sale Motion. In further support of

the Motion to Shorten, the Debtors, by and through their undersigned co-counsel, respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion to Shorten is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 102(1) and 105 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 9006 and Local Rule 9006-1(e).

RELEVANT BACKGROUND

4. On February 12, 2014 (the "*Petition Date*"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing these chapter 11 cases. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only under Case No. 14-10262 (BLS). Since the *Petition Date*, the Debtors have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. As described in the *Declaration of Nick Rahn, Chief Executive Officer of Optim Energy, LLC in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 4], the Debtors filed these chapter 11 cases intending to explore all strategic alternatives to address the Twin Oaks Plant assets (the "*Facility*"), including a sale pursuant to section 363 of the Bankruptcy Code. The Debtors' post-petition financing requires that a sale be approved on or before August 12, 2014, and requires that Sale Procedures be approved by this Court on or before July 11, 2014.

6. Shortly after these cases commenced, the Debtors initiated a broad-based marketing process led by Barclays, the Debtors' investment banker retained in these chapter 11 cases, as detailed in the Mack Declaration. As a result of the process, fourteen Potential Purchasers submitted non-binding preliminary proposals to purchase the Facility. These proposals ultimately—through further rounds of bidding, diligence requests, and negotiation—resulted in four binding offers to serve as a stalking horse bidder.

7. With advice from Barclays, Debtors' counsel, and the consent of the Debtors' DIP Lender and Pre-Petition Secured Parties, the Debtors determined that the Proposed Purchaser presented the Debtors with the highest and best offer for the Facility. Consequently, on the date hereof, the Debtors filed the Sale Motion, seeking entry of orders, among other things: (a) approving sale procedures (the "*Sale Procedures*") with respect to the sale of the Facility pursuant to an asset purchase and sale agreement (the "*PSA*") with the Proposed Purchaser; (b) approving certain bid protections for the Proposed Purchaser; (c) approving the form and manner of notice of the Auction and the Sale Hearing; (d) scheduling the Auction for the Purchased Assets; (e) establishing procedures relating to the assumption and assignment of certain executory contracts and unexpired leases to any purchaser of the Purchased Assets, including notice of cure amounts; and (f) scheduling a hearing to approve the Sale of the Purchased Assets (the "*Sale Hearing*") free and clear of all liens, claims, and encumbrances and establishing an objection deadline with respect to the Sale.

8. Importantly, the Proposed Purchaser has the option to terminate the PSA if an order approving Sale Procedures and Proposed Purchaser Payments is not entered on or before June 27, 2014.

9. As set forth in greater detail in the Sale Motion, the Debtors seek to schedule the Sale Hearing approximately fifty (50) days from the date hereof. The sale process outlined in the Sale Motion and the Mack Declaration represents the tireless effort put forth by Barclays and instituted by the Debtors to find the highest and best offer for the Facility. For the reasons discussed herein, in the Sale Motion, and the Mack Declaration, the Debtors believe that the Proposed Purchaser's agreement to act as stalking horse bidder benefits all creditors as it provides the Debtors with the opportunity sell the Facility to the highest and best bidder.

RELIEF REQUESTED

10. By this Motion to Shorten, the Debtors respectfully request that the Court enter an order, substantially in the form of **Exhibit A** attached hereto, (a) shortening notice with respect to the Sales Procedures Relief sought in the Sale Motion; (b) scheduling the Sale Procedures Hearing for **June 25, 2014, at 1:00 p.m. (ET)**; (c) requiring objections, if any, to the Sale Procedures to be filed on or before **June 23, 2014 at 12:00 p.m. (ET)**; and (d) granting such other relief as may be just and proper.

BASIS FOR RELIEF REQUESTED

11. Section 102(1) of the Bankruptcy Code explains that the phrase "after notice and a hearing" requires only such notice and opportunity for a hearing as may be appropriate under the circumstances. 11 U.S.C. § 102(1).

12. Section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a).

13. Local Rule 6004-1(c) provides, in pertinent part, as follows, "[t]he Court will only schedule a hearing to consider approval of bidding and sale procedures in accordance with the

notice procedures set forth in Del. Bankr. L.R. 9006-1, unless the requesting party files a motion to shorten notice which may be heard at the first hearing in the case and presents evidence at that hearing of compelling circumstances." Del. Bankr. L.R. 6004-1(c).

14. Local Rule 9006-1 requires "all motion papers shall be filed and served... at least eighteen (18) days (twenty-one (21) days if service is by first class mail; nineteen (19) days if service is by overnight delivery) prior to the hearing date." According to Local Rule 9006-1(e), however, the notice period may be shortened "by order of the Court, on written motion (served on all interested parties) specifying the exigencies justifying shortened notice." Del. Bankr. L.R. 9006-1(e).

15. Moreover, according to Federal Rule of Bankruptcy Procedure 9006(c), "the court for cause shown may in its discretion with or without motion or notice order the period reduced." Fed. R. Bankr. P. 9006(c)(1). In exercising such discretion, the court should "consider the prejudice to parties entitled to notice and weigh this against the reasons for hearing the motion on an expedited basis." *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 172 (3d Cir. 2012) (noting the commonality of such motions "given the accelerated time frame of bankruptcy proceedings"); *see also Hester v. NCNB Nat'l Bank (In re Hester)*, 899 F.2d 361, 364 n.3 (5th Cir. 1990) ("[M]otions for material reductions in the notice period are routinely granted by bankruptcy courts.").

16. The Debtors respectfully submit that allowing the Sale Procedures Relief requested in the Sale Motion to be considered on an expedited basis is reasonable and appropriate under the circumstances. As discussed above, in the Sale Motion, and in the Mack Declaration, Barclays conducted an extensive sale process for the Facility and that process resulted in the PSA executed between the Debtor Optim Energy Twin Oaks LP and the Proposed

Purchaser. Given the Debtors' thorough marketing efforts, the Debtors submit that the sale process timetable contemplated by the Sale Motion is more than sufficient to determine if there is any additional interest in the Facility between now and the proposed time of the Auction. Furthermore, the Debtors' post-petition financing (without which there would be no sale process) is conditioned on the Debtors' adherence to authorization by this Court of the Sale Procedures on or before July 11, 2014.

17. More importantly, the Proposed Purchaser has the option to terminate its agreement to purchase the Purchased Assets if an order approving Sale Procedures and Proposed Purchaser Payments is not entered on or before June 27, 2014. Termination of the PSA would negatively and materially impact the Debtors' efforts to market and sell the Facility and maximize the value of their estates.

18. Based on the foregoing and the evidence to be presented at any hearing on this Motion to Shorten, if necessary, the Debtors respectfully submit that allowing the Sale Procedures Relief requested in the Sale Motion to be considered on shortened notice is reasonable and appropriate under the circumstances.

NO PRIOR REQUEST

19. No prior request for the relief sought in this Motion to Shorten has been made to this Court in these Cases.

NOTICE

20. The Debtors have provided notice of this Motion to Shorten to: (a) the Office of the United States Trustee for the District of Delaware; (b) all known creditors of the Seller; (c) counsel to Cascade Investment, L.L.C. and ECJV Holdings, LLC; (d) any party who has requested notice pursuant to Bankruptcy Rule 2002 (e) the Internal Revenue Service; (f) all other

applicable state and federal taxing authorities having jurisdiction over the Purchased Assets; (g) the United States Environmental Protection Agency and any applicable state environmental agency; (h) the counterparties to each of the Designated Contracts (as defined in Sale Motion); (i) all other parties known to the Debtors who have or may have asserted liens against any of the Purchased Assets; (j) counsel to the Proposed Purchaser; and (k) all other entities known to have expressed an interest in a transaction with respect to all or part of the Purchased Assets. In light of the nature of the relief requested in this Motion to Shorten, the Debtors respectfully submit that no further notice is necessary.

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WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: June 17, 2014
Wilmington, Delaware

**MORRIS, NICHOLS,
ARSHT & TUNNELL LLP**

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Counsel for the Debtors and Debtors In Possession

Exhibit A

Proposed Order

**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. _____

**ORDER UNDER 11 U.S.C. §§ 102(1)
AND 105, FED. BANKR. R. 9006 AND D. DEL. LOCAL R. 6004-1
AND 9006-1(E) SHORTENING NOTICE RELATING TO 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 OPTIM ENERGY
TWIN OAKS, LP TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "*Motion*") of the above-captioned debtors and debtors in possession (collectively, the "*Debtors*"), pursuant to sections 102(1) and 105 of the Bankruptcy Code, Bankruptcy Rule 9006 and Local Rules 6004-1 and 9006-1(e), requesting an order shortening notice to allow 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*

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.

Free and Clear of All Liens, Claims, and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Contracts, and (III) Granting Related Relief [D.I. 359] (the "**Sale Motion**") to be considered on June 25, 2014, all as set forth more fully in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion was appropriate and no other notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing, if held, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Sale Procedures Relief requested in the Sale Motion will be considered at the Sale Procedures Hearing scheduled on June 25, 2014, at 1:00 p.m. (prevailing Eastern Time).
3. Objections, if any, to the Sale Procedures Relief requested in the Sale Motion shall be filed on or before June 23, 2014 at 12:00 p.m. (prevailing Eastern Time) (the "**Objection Deadline**").

4. This Court retains jurisdiction to construe and enforce the terms of this Order.

Dated: _____, 2014
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE