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. 16, 36, 111 and 116**

DEBTORS' OMNIBUS REPLY IN SUPPORT OF MOTION FOR ENTRY OF FINAL ORDER APPROVING POST-PETITION SENIOR SECURED FINANCING

The above-captioned debtors (collectively, the "***Debtors***"), by and through their undersigned proposed counsel, hereby file this omnibus reply (the "***Omnibus Reply***") to the limited objections (each, a "***Limited Objection***" and together the "***Limited Objections***") of Walnut Creek Mining Company ("***Walnut Creek***")[2] and Lyondell Chemical Company ("***Lyondell***" and, together with Walnut Creek, the "***Objectors***")[3] to *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Post-Petition Senior Secured Financing and (B) Grant Liens and Superpriority Claims, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to the Pre-Petition Secured Parties, (IV) Scheduling a Final Hearing Pursuant To Fed. R. Bankr. P. 4001(b) and (c) and (V) Granting*

[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] *See Walnut Creek Mining Company's Limited Objection to Debtors' Motion for Entry of Final Orders (I) Authorizing Debtors to (A) Obtain Post-Petition Senior Secured Financing and (B) Grant Liens and Superpriority Claims, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to the Pre-Petition Secured Parties, (IV) Scheduling a Final Hearing Pursuant To Fed. R. Bankr. P. 4001(b) and (c) and (V) Granting Related Relief* [Dkt. No. 111] (the "***Walnut Creek Limited Objection***").

[3] *See Limited Objection of Lyondell Chemical Company to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Post-Petition Senior Secured Financing and (B) Grant Liens and Superpriority Claims, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to the Pre-*

Related Relief [Dkt. No. 16] (the "***DIP Motion***").

Preliminary Statement

Walnut Creek and Lyondell are arguably the two largest beneficiaries of the DIP Facility.[4] DIP proceeds will be used to purchase millions of dollars of coal from Walnut Creek each month. In addition, Walnut Creek will receive a new $3 million letter of credit from the DIP Facility as support for the Debtors' obligations under the Walnut Creek Fuel Supply Agreement.[5] The Debtors will also utilize the DIP Facility to purchase the natural gas that generates the steam and power that Lyondell requires to operate its petrochemical plant. In addition, the DIP Lender will replace Lyondell's existing $40 million letter of credit with a new letter of credit in the same amount but with a significantly extended termination date. Despite these substantial benefits, both parties protest the entry of the Final DIP Order that is the product of extensive arm's length negotiations between the DIP Lender, the Debtors and their respective principals and advisors.

While the Objectors make numerous unsubstantiated and uninformed allegations regarding the need to investigate the DIP Lender's relationship with the Debtors, neither Objector challenges the DIP Motion's request for a good faith finding under section 364(e) of the Bankruptcy Code. This is not surprising, given that the Debtors have provided ample and uncontested evidence that this DIP Facility is the best and most favorable financing available to the Debtors and is in the best interests of the Debtors' estates and stakeholders. Moreover, the Debtors have established the extensive arm's length negotiation of the DIP Facility between the

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Petition Secured Parties, (IV) Scheduling a Final Hearing Pursuant To Fed. R. Bankr. P. 4001(b) and (c) and (V) Granting Related Relief [Dkt. No. 116] (the "***Lyondell Limited Objection***").

[4] Capitalized terms used but not defined herein shall have the meaning given to them in the DIP Motion or in the *Declaration of Nick Rahn, Chief Executive Officer of Optim Energy, LLC, in Support of Chapter 11 Petitions and First Day Pleadings* [Dkt. No. 4] (the "***First Day Declaration***").

Debtors' independent directors and advisors and the DIP Lender, which improved the terms of the DIP Facility for the benefit of the Debtors.

Nevertheless, the Objectors oppose entry of the proposed Final DIP Order, in its current form, mostly for parochial reasons. The main Walnut Creek complaint is that the Challenge Period is too short for it to investigate whether the release of claims against the DIP Lender is justified. Yet, a 75-day Challenge Period, after which the estate or other parties in interest becomes bound, is fully compliant with Local Rules and customary practice for financings of this nature.[6] The Objectors collectively complain that the § 506(c) waiver, and the liens on avoidance action recoveries being offered to the DIP Lender are overreaching and off-market. Again, these provisions are fully contemplated by the Local Rules and represent market terms when compared with other financing transactions completed under circumstances similar to those of the Debtors. Lyondell expresses concerns that the DIP Facility should not interfere with the Debtors' operations under the Lyondell contracts. It does not. Finally, Walnut Creek inaccurately complains that the Debtors have been unresponsive to Walnut Creek's February 17, 2014 discovery request. To the contrary, the Debtors met and conferred with Walnut Creek's prior lead counsel several times (including the day after receipt of the discovery request) since receiving the voluminous request, all while handling a broad and wide-ranging array of ordinary course post-petition operating responsibilities.

The Debtors attempted to resolve the Limited Objections prior to filing this response, and will continue to work with the DIP Lender and Objectors on a consensual form of Final DIP Order prior to the Final Hearing. However, in lieu of a resolution, the Debtors respectfully

[5] The Debtors and Walnut Creek have reached an agreement in principal to resolve the Walnut Creek Suspension Motion (as defined below). Twin Oaks has agreed to, among other things, provide Walnut Creek with a $3 million letter of credit to secure Twin Oaks' post-petition payment obligations to Walnut Creek.

request this Court to overrule the Limited Objections, and enter the Final DIP Order in its current form, which includes certain revisions requested by the Debtors and approved by the DIP Lender as described further herein. The proposed Final DIP Order, if entered, will afford the Debtors ample liquidity throughout these chapter 11 cases and on the terms the Debtors and the DIP Lender have negotiated. Moreover, neither of the Objectors will suffer any prejudice from the entry of the Final DIP Order in its current proposed form. Indeed, they both are significant beneficiaries of the Final DIP Order, which authorizes financing that benefits the Objectors to the tune of tens of millions of dollars.

Relevant Background

1. Both Limited Objections exhibit a fundamental misunderstanding of the Debtors' prepetition indebtedness and its interrelationship with the DIP Facility. As set forth in the First Day Declaration, on June 1, 2007 Optim Energy entered into a Credit Agreement with Wells Fargo, which provided for up to $1 billion of credit consisting of a revolving loan facility and a letter of credit facility. First Day Declaration, ¶ 24. Optim Energy's obligations under the Credit Agreement were guaranteed by Cascade and ECJV (together, the "***Guarantors***") under a Continuing Guaranty issued by each party, on June 1, 2007 (as amended, the "***Guarantees***"), for the benefit of Wells Fargo regarding amounts owed by Optim Energy under the Credit Agreement. *Id.* at ¶ 26.

2. The Debtors are obligated to reimburse the Guarantors for any payments made to Wells Fargo under the Guarantees pursuant to a Guaranty Reimbursement Agreement, dated June 1, 2007 (as amended, the "***Reimbursement Agreement***"). The Debtors' obligations under the Reimbursement Agreement are secured by (a) a senior lien on, and first priority interest in,

[6] As discussed below, the DIP Lender, at the request of the Debtors, has agreed to extend the Challenge Period from 75 days to 90 days.

substantially all of the Debtors' assets and (b) pledges of all of the shares of equity interests in all of Optim Energy's subsidiaries (the "***Prepetition Collateral***"). Financing statements and other documents required to perfect the security interests were executed and filed contemporaneously in 2007. To be clear, all security interests at issue in these cases relating to the Prepetition Collateral were granted and perfected in 2007.

3. Immediately following the filing of the petitions, on February 12, 2014, Cascade satisfied all of its obligations under the Guarantees to Wells Fargo. Wells Fargo received $713 million (plus cash collateral for $41 million of outstanding letters of credit) in full satisfaction of Wells Fargo's claim against Cascade and ECJV under the Guarantees.[7] Importantly, no new or additional collateral or security interests were granted to the Guarantors by the Debtors or Wells Fargo in connection with the Guarantors' performance on the Guarantees.

4. Contrary to Lyondell's assertions, there is no "roll-up" of prepetition and post-petition debt. *See* Lyondell Limited Objection, ¶ 12. The $713 million prepetition secured credit facility and the DIP Facility are completely independent financing facilities, each of which stands on its own. Cascade and ECJV are prepetition secured lenders by virtue of the security interests granted to them in 2007 in connection with the Reimbursement Agreement. The DIP Facility is a completely separate lending transaction, pursuant to which Cascade has agreed to provide the Debtors with a $115 million new-money, revolving, priming senior-secured credit facility.

[7] In the Walnut Creek Limited Objection, Walnut Creek refers to transactions by Cascade that were done without this Court's approval. *See* Walnut Creek Limited Objection, ¶ 17. It is axiomatic that no court approval is necessary to authorize a non-debtor to satisfy its financial obligations to a third party lender in respect of its guaranty of a debtor's prepetition debt.

Reply

A. The Modified Challenge Period And Release Of Claims Against The DIP Lender Satisfy The Local Rules And Should Be Approved.

5. Walnut Creek objects to the Challenge Period for being too short in duration and too burdensome on Walnut Creek and other third parties that will become bound by its terms. *See* Walnut Creek Limited Objection, ¶¶ 13-14.

6. The Challenge Period is fully contemplated in the Local Rules, and should be approved here. Local Rule 4001-2(a)(i) requires the Debtors to indicate whether the DIP Facility contains, and cite the location of:

> Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters.

Local Rule 4001-2(a)(i)(B). No creditors' committee has been appointed. Accordingly, the 75-day Challenge Period prescribed in the Final DIP Order satisfies Local Rule 4001-2(a)(i)(B).

7. Nonetheless, in an effort to resolve this Limited Objection, at the Debtors' request, the DIP Lender has agreed to increase the Challenge Period from 75 days to 90 days. This should be ample time for Walnut Creek, represented by one of the largest law firms in the world, to review the information provided by the Debtors and, as the Debtors believe will be the case, satisfy itself that none of the issues that Walnut Creek raises are valid. Moreover, the Debtors note that the scope of any such investigation should take into account the fact that Walnut Creek questions transactions that occurred almost seven years ago and fall outside of any applicable statute of limitations. *See, e.g., PSINet, Inc. v. Cisco Sys. Capital Corp. (In re PSINet, Inc.),* 271 B.R. 1, 39 (Bankr. S.D.N.Y. 2001) (finding New York's six-year catch-all statute of limitations

applied to recharacterization claims).

8. To support its argument that a longer Challenge Period is warranted, Walnut Creek inaccurately complains that the Debtors have been unresponsive to an informal discovery request dated February 17, 2014 (as subsequently supplemented, the "***Discovery Request***"). *See* Walnut Creek Limited Objection, ¶ 14. Walnut Creek emailed the Discovery Request to Debtors' counsel just hours after it filed, on an emergency basis, the Walnut Creek Suspension Motion in which it, among other things, threatened to cease delivering coal to the Twin Oaks Plant.[8] In the first instance, the Debtors' counsel discussed the Discovery Request with Walnut Creek's counsel on February 18th and on several other occasions that week. The Debtors' counsel indicated that it would wait until the committee formation meeting (then scheduled for February 25th) to determine how to proceed with the Discovery Request, but that in any event, the Debtors would assemble the prepetition financing documentation and related lien search results to be shared with any committee that may be appointed and/or Walnut Creek's counsel. That information has been compiled and will be shared with Walnut Creek's counsel upon execution of a confidentiality agreement that is currently being negotiated.

9. Moreover, the Discovery Request has been significantly broadened since the original request, to include approximately 56 categories and subcategories of documents. *See* Walnut Creek Revised Document Diligence List dated February 28, 2014, attached hereto as **Exhibit A**. Fulfilling the Discovery Request in its current form would be a costly, time-consuming and significant undertaking on the part of the Debtors. It would undoubtedly require the production of hundreds of thousands of pages of documents spanning almost seven years.

[8] *See Walnut Creek Mining Company's Emergency Motion for an Order Compelling Debtors to Provide Adequate Assurance of Performance and Authorizing Suspension of Performance Until Adequate Assurances Are Received* [Dkt. No. 63] (the "***Walnut Creek Suspension Motion***").

The Debtors respectfully suggest that Walnut Creek could make better use of the Challenge Period if the scope of investigation were more narrowly tailored. The Debtors submit that Walnut Creek (and others who may seek to challenge prepetition liens and debt) bears some burden to conduct an investigation in a reasonable manner so as not to endlessly prolong the efficient and timely administration of these chapter 11 cases. Based on the foregoing, the Debtors submit the Challenge Period, as modified, is appropriate.[9]

B. The § 506(c) Waiver and Lien on Avoidance Action Recoveries.

10. The Objectors collectively protest provisions in the DIP Credit Agreement granting the DIP Lender a § 506(c) waiver and a lien on avoidance action recoveries. *See* Walnut Creek Limited Objection, ¶¶ 21-24; Lyondell Limited Objection, ¶¶ 4, 14.

11. At the request of the Debtors, the DIP Lender has agreed not to seek a lien on avoidance actions, a change that will be reflected in a revised Final DIP Order. Accordingly, this objection has been resolved.

12. The Debtors submit the § 506(c) waiver is an appropriate provision for debtor in possession financing of this sort. The Objectors fundamentally misunderstand and overstate the scope of § 506(c). Section 506(c) is not, as Lyondell suggests, intended to provide the "ability to 'surcharge' the DIP Lender['s] collateral for [the] expenses of administering the case." Lyondell Limited Objection, ¶ 14. To the contrary, "[t]he general rule is that post-petition administrative expenses and the general costs of reorganization ordinarily may not be charged to or against secured collateral. Rather, such expenses are normally chargeable only against the unburdened assets of the estate, 11 U.S.C. § 503, thus preserving for secured creditors the collateral securing

[9] Walnut Creek suggests in its Limited Objection these chapter 11 cases are "essentially a two-party dispute." Walnut Creek Limited Objection, ¶ 8. As the First Day Declaration and the pleadings filed in these cases clearly illustrate, there are many more contracts, creditors and counterparties than just Walnut Creek and its Fuel Supply

the debtor's obligations." *In re Visual Indus., Inc.*, 57 F.3d 321, 324 (3d Cir. 1995) (quoting *General Electric Credit Corp. v. Levin & Weintraub (In re Flagstaff Foodservice Corp.)*, 739 F.2d 73, 76 (2d Cir. 1984)). "Bankruptcy courts have construed § 506(c) narrowly and have held that the provisions thereof only encompass those expenses that are specifically incurred for the express purpose of ensuring that the secured property is preserved and disposed of in a way that provides the secured creditor with a maximum return on the debt, while apportioning the costs to the secured creditor who, in actuality, is assuming the costs of preserving the asset." *In re Lamont Gear Co.*, 95-17033DAS, 1997 WL 397582 (Bankr. E.D. Pa. July 9, 1997) (citing *In re C.S. Assocs.*, 29 F.3d 903, 907 (3d Cir. 1994)).

13. Here, there are no unencumbered assets and the DIP Facility is preserving the value not only of the collateral but also the reorganization prospects of the Debtors generally for the benefit of its creditors and counterparties, particularly Lyondell and Walnut Creek, who admit that they are highly dependent upon the Debtors' operations to support their own businesses. *See* Lyondell Limited Objection, ¶ 11 ("[Debtor's] performance . . . is of critical importance to Lyondell's operation of its petrochemical facility at Channelview."); Walnut Creek Limited Objection, ¶¶ 3-4 (noting "Walnut Creek's captive lignite operation" and purported $100 million potential rejection claim).[10]

Agreement. Indeed, Lyondell's Limited Objection details another creditor's concern regarding a lengthy list of executory contracts with the Debtors.

[10] Walnut Creek's assertion that the Twin Oaks Plant can only operate by burning Walnut Creek's lignite is inaccurate. Twin Oaks has a rail loop that gives it the ability to purchase coal or other fuels from alternative sources. In addition, the plant may also be retrofitted to burn natural gas, which may be an attractive feature for potential bidders for the Twin Oaks Plant.

C. The Relief Embodied In The Energy Trading Contracts Order Is Only Enhanced By Entry Of The Final DIP Order, And No Modification Of The Final DIP Order Is Necessary.

14. Lyondell seeks to clutter a carefully crafted Final DIP Order with copious amounts of language that seek to clarify matters that are not unclear, or are simply not relevant nor implicated by the Final DIP Order.

15. For example, nothing in the DIP Credit Agreement or Final DIP Order seeks (nor could it) to grant the DIP Lender a security interest in Lyondell's property. Nevertheless, Lyondell seeks extensive and exhaustive clarification that a wide variety of specific Lyondell assets are not part of the DIP collateral. *See* Lyondell Limited Objection, ¶ 23.

16. Lyondell also seeks confirmation that entry of the Final DIP Order will not supersede the relief granted in the interim Energy Trading Contracts Order, or sought by the Debtors in the final Energy Trading Contracts Order. *See* Lyondell Limited Objection, ¶ 23. Again, however, nothing in the Final DIP Order in any way implicates the relief granted by the Court, or sought by the Debtors, in the Energy Trading Contracts Orders.

17. The balance of the Lyondell Limited Objection seeks to create superpriority rights for Lyondell's contracts. These proposed provisions have no place in the Final DIP Order, and are also overreaching and unrealistic. For example, Lyondell seeks language in the Final DIP Order assuring that (a) there will be no "interference with the Debtors' performance" of Lyondell contracts, (b) the DIP financing will not "impact, affect, modify or attempt to modify" Lyondell's contractual rights, and (c) the Debtors will continue to be authorized to perform their Lyondell contracts. Lyondell Limited Objection, ¶ 23. The Final DIP Order is not the forum to address the merits of any of Lyondell's concerns.

18. If Lyondell's concerns are based on the Debtors' ability to pay post-petition amounts that may come due under the terms of the Lyondell contracts they should have no issue. Entry of the Final DIP Order, as proposed, should only enhance, not diminish, the Debtors' ability to fund their post-petition obligations including those payable to Lyondell. Moreover, as Lyondell admits, it typically owes the Debtors $2 million per month, not the other way around. As such, Lyondell's credit exposure to the Debtors is largely theoretical in nature, particularly given the extended-term $40 million letter of credit it will receive under the DIP, and the netting procedures approved in the Energy Trading Contracts Order.

19. The Debtors submit the proposed Final DIP Order is sufficient, in its current form, to provide Lyondell the comfort it desires regarding the Debtors' ability to fund amounts due under the Lyondell contracts. The Debtors respectfully request the Court enter the Final DIP Order as presented.

Conclusion

20. The Objectors largely disregard the economic circumstances that led to the filing of these chapter 11 cases. The Debtors experienced a severe liquidity crisis that compelled them to seek alternative financing to continue their operations. The result of this process was the DIP Facility, which will provide significant value to the Debtors, their creditors and other parties in interest by allowing the Debtors to continue to operate their business as a going concern, while simultaneously reviewing all strategic options to allow them to maximize the value of their assets. The terms of the DIP Facility and the proposed Final DIP Order are the product of extensive, arm's length negotiation that occurred between the Debtors and the DIP Lender, which provisions are well-supported by the Local Rules and the current lending marketplace. The terms of the Final DIP Order and DIP credit documents should not be selectively undone by the

Objectors. The Objectors' wishful list of bells and whistles to add into the Final DIP Order are off market, and simply do not reflect the agreement that was heavily negotiated amongst the parties.

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WHEREFORE, the Debtors respectfully request that the Court overrule the Limited Objections and enter the proposed Final DIP Order.

Dated: March 3, 2014
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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Proposed Counsel For The Debtors And Debtors In Possession

EXHIBIT A

Walnut Creek Revised Document Diligence List dated February 28, 2014

EXHIBIT A

1. All documents relating to the DIP Facility (as defined in the DIP Motion) and DIP Credit Agreement (as defined in the DIP Motion), including the following:

    (i) All correspondence between the Debtors relating to the DIP Facility, DIP Credit Agreement, and debtor-in-possession financing in general;

    (ii) All correspondence between the Debtors and Wells Fargo relating to the DIP Facility, DIP Credit Agreement, and debtor-in-possession financing in general;

    (iii) All correspondence between the Debtors and Cascade and/or ECJV relating to the DIP Facility, DIP Credit Agreement, and debtor-in-possession financing in general;

    (iv) All documents showing efforts by the Debtors or its advisors or consultants to obtain debtor-in-possession financing;

    (v) All documents showing negotiations relating to the terms of the DIP Facility and DIP Credit Agreement.

2. The complete Credit Agreement, dated as of June 1, 2007, between Optim Energy, LLC and Wells Fargo Bank, N.A ("Wells Fargo") (as amended, restated, supplemented or otherwise modified, the "Wells Fargo Credit Agreement"). In addition, produce:

    (i) All documents showing disbursements by Wells Fargo under the Wells Fargo Credit Agreement, including identity of recipients thereof;

    (ii) All documents showing payments to Wells Fargo under the Wells Fargo Credit Agreement, including identity of the payor;

    (iii) All documents showing the use of all proceeds of the Wells Fargo Credit Agreement;

    (iv) All correspondence between any of the Debtors and (i) Cascade Investment, L.L.C. ("Cascade") and/or (i) ECJV Holdings, LLC ("ECJV") relating to the Wells Fargo Credit Agreement;

    (v) All correspondence between Wells Fargo and (i) Cascade and/or (ii) ECJV relating to the Wells Fargo Credit Agreement;

    (vi) All other guarantees (other the Guarantees as defined below) executed in favor of Wells Fargo in connection with the Wells Fargo Credit Agreement; and

(vii) All documents showing negotiations relating to the terms of the Wells Fargo Credit Agreement.

3. The Guarantees executed by Cascade and, ECJV in favor of Wells Fargo (as amended, restated, supplemented or otherwise modified, the "Guarantees") and the Reimbursement Agreement executed by the Debtors in favor of Cascade and ECJV (as amended, restated, supplemented or otherwise modified, collectively the "Reimbursement Agreement"). In addition, produce:

(i) All documents showing payments made by Cascade and/or ECJV under the Guarantees, including specifically the payment made by Cascade and/or ECJV to Wells Fargo post-petition;

(ii) All documents showing payments made by any of the Debtors under the Reimbursement Agreement;

(iii) All security agreements relating thereto, including all documents evidencing Cascade and/or ECJV's alleged perfected security interests in collateral of the Debtors;

(iv) All security agreements or other collateral documents executed by Cascade and/or ECJV in favor of Wells Fargo or other third parties in connection with their Guarantees;

(v) All correspondence between any of the Debtors and (i) Cascade and/or (ii) ECJV relating to the Guarantees, Reimbursement Agreement, the security agreements and documents relating thereto, and/or payments thereunder; and

(vi) All documents showing negotiations relating to the terms of the Guarantees and/or Reimbursement Agreement.

4. All documents which evidence ownership, management, or control of each of the Debtors for the period starting at the formation of the each Debtor to current date (the "Relevant Period"). Please include, where applicable, documents showing:

(i) The owners of each Debtor were during the Relevant Period;

(ii) The managers and members were for each of the limited liability company Debtors during the Relevant Period;

(iii) The identities of the parties holding controlling votes for each Debtor during the Relevant Period;

(iv) All agreements with or among members or management for each Debtor during the Relevant Period;

(v) All organizational documents and by-laws for each Debtor during the Relevant Period, including all operating agreements.

5. All documents which show the capitalization of each of the Debtors through the Relevant Period, including the sources of capitalization.

6. All documents which show Cascade and/or ECJV's role in operating, overseeing, controlling, and/or capitalizing each of the Debtors.

7. All documents which show any transfer of property from any of the Debtors to Cascade and/or ECJV during the Relevant Period, including by distribution, dividend, loan payment, or other means.

8. All documents which show any transfer of property from any of the Debtors to members, managers and/or partners, including any distribution, dividend, loan payment, or other means.

9. All documents which evidence any intercompany debts between the Debtors, Cascade and ECJV.

10. All financial statements (including income statements, balance sheets, etc.) regarding any of the Debtors during the Relevant Period.

11. List of Board of Directors meetings, agendas and minutes and all documents or presentations that were presented at or were distributed in advance of such Board meetings, relating to the Guarantees, the Reimbursement Agreement, the formation of the Debtors, Cascade's and/or ECJV's initial investment in the Debtor(s) and all subsequent investment(s) in the Debtor(s), previous sale efforts and valuation of the Debtor(s).

12. All management presentations made to any of the Debtors, Cascade or ECJV concerning the Wells Fargo Credit Agreement, the Guarantees, the Reimbursement Agreement, the Debtors' chapter 11 filings, the DIP Facility, and any sale process(es) relating to the Debtors.

13. All valuations, solvency opinions and/or analyses or appraisals of any of the Debtors or any of their significant assets prepared by Cascade, ECJV or the Debtor(s) or any of their outside experts, investment bankers, potential purchasers or other parties.

14. Any cash flow forecasts prepared by or for the Debtors.

15. Any documentation concerning the Debtors' views of their liquidity and future capital needs.

16. Tax returns for the Relevant Period.

17. All disbursements paid by the Debtors to any of Cascade, ECJV or its principals, officers or directors for the one year period ending as of the Petition Date.

18. All intercompany activity by and between (i) any of the Debtors and/or (ii) any Debtor(s) and Cascade or ECJV, including balances, transactions, reconciliations, dividends, distributions, guarantees and indemnifications.

19. List of the Debtors' contracts and leases (including real property and capital leases) with material terms.

20. All information, including email correspondence, letters of intent, marketing / solicitation materials, and offers, related to any sale process(es) for the Debtors and/or their assets.

21. All reports and/or presentations from professionals and/or advisors to the Debtors or related parties in connection with any sale process(es) for the Debtors and/or their assets.

22. An undredacted copy of the prepetition management asset agreement dated as of October 31, 2011 by and between certain of the Debtors and Competitive Power Ventures, Inc. (the "CPV Management Agreement").

~~10.~~23. Any documents relating to any employment or other relationship between Cascade, ECJV or any of the Debtors, on the one hand, and Nick Rahn and/or any other current or former employee of Competitive Power Ventures, Inc., other than the CPV Management Agreement.