

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

<p>In re:</p> <p>Sundevil Power Holdings, LLC, <i>et al.</i>,</p> <p style="padding-left: 40px;">Debtors.¹</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 16-10369 (KJC)</p> <p>Chapter 11</p> <p>(Jointly Administered)</p> <p>Objection Deadline: August 19, 2016 at 4:00 p.m.</p> <p>Hearing Date: August 23, 2016 at 2:30 p.m.</p>
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**DEBTORS’ SECOND MOTION FOR AN ORDER EXTENDING
THE EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE AND
SOLICIT ACCEPTANCES OF A PLAN PURSUANT TO 11 U.S.C. § 1121(D)**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”), by and through their undersigned counsel, hereby file this Second Motion for entry of an order further extending the exclusive periods during which Debtors may file and solicit acceptances of a plan pursuant to 11 U.S.C. § 1121(d) (the “*Motion*”). In support of the Motion, the Debtors respectfully state as follows:

I. JURISDICTION AND VENUE

1. This United States Bankruptcy Court for the District of Delaware (the “*Court*”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. The statutory basis for the relief requested herein is 11 U.S.C. § 1121(d).

¹ The Debtors in these chapter 11 cases, and their respective federal tax identification numbers, are Sundevil Power Holdings, LLC (2308) and SPH Holdco LLC (7777). The Debtors’ service address is: 701 East Lake Street, Suite 300, Wayzata, Minnesota 55391.

II. BACKGROUND

A. The Chapter 11 Cases

4. On February 11, 2016 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief with this Court under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committee has been appointed. By order of the Court entered on February 12, 2016, these chapter 11 cases are being jointly administered for procedural purposes only.

5. The Debtors are merchant power generators through Sundevil’s ownership of two of the four 550 megawatt natural gas-fired power blocks (the “*Power Blocks*”) of the Gila River Power Station (the “*GRPS*”), located in Gila Bend, Arizona. Sundevil and the other power block owners sell energy into the Southwest electric power market, specifically the sub-region of Arizona, New Mexico, and Southern Nevada known as the Desert Southwest. Most of Sundevil’s output is sold at the Palo Verde hub and to California Independent System Operator (“*CAISO*”). Sundevil also sells capacity to CAISO and is capable of reaching other market hubs such as Mead (Southern Nevada) and Four Corners. The Debtor’s sales of energy for 2015 generated approximately \$63.9 million in revenue.

6. The Debtors filed these chapter 11 cases with the goal of continuing the process for a sale of all or substantially all of the assets of Sundevil or of all of the equity interests in Sundevil through section 363 of the Bankruptcy Code. An important component of management’s intentions for prosecuting these chapter 11 cases has always been that the Debtors

would make a concerted effort to conclude the administration of these cases through confirmation of a chapter 11 plan.

B. The Sale Process

7. On the Petition Date, the Debtors filed that certain *Motion for Entry of Orders (i) Establishing Bidding and Sale Procedures; (ii) Approving Sale of Assets; and (iii) Granting Related Relief* (the “**Sale Motion**”) (Docket No. 17). Pursuant to the Sale Motion, the Debtors embarked on a process to sell substantially all of their operating assets, including the Debtors’ Power Blocks, and to assume and assign certain executory contracts in connection therewith.

8. On May 4, 2016, the Debtors advised the Court and all parties in interest that the Debtors had accepted, subject to approval of the Court and an agreement on definitive documentation, the bid of CLMG Corp., on behalf of itself and Beal Bank USA (together with any designees, the “**Successful Bidder**”) (Docket No. 154) for the purchase of substantially all of the assets related to the Debtors’ business.

9. The Debtors’ negotiation with the Successful Bidder of the definitive documentation to close upon the sale has recently concluded, and the Debtors believe they are on the eve of filing an executed asset purchase agreement and a proposed form of sale order, which the Debtors intend to present to the Court on August 23, 2016 (the “**Sale Hearing**”).

10. On June 10, 2016, the Debtors filed their first motion seeking an extension of the exclusive periods during which the Debtors may file and solicit acceptances of a plan pursuant to 11 U.S.C. § 1121(d) [Docket No. 179]. On July 7, 2016, the Court ordered the initial 120-day period after the Petition Date (the “**Plan Period**”) within which a debtor has the exclusive right to file a plan extended to August 9, 2016, and the initial 180-day period after the Petition Date (the “**Solicitation Period**” and, together with the Plan Period, the “**Exclusive Periods**”) within which a debtor has the exclusive right to solicit and obtain acceptances of a plan filed by

such debtor during the Plan Period extended to October 17, 2016. *See* Order Granting Debtors' Motion for an Order Extending the Exclusive Periods During which Debtors May File and Solicit Acceptances of a Plan Pursuant to 11 U.S.C. § 1121(d), Case No. 16-10369 [Docket No. 221] (the "*First Order Extending Exclusivity*").

11. The Debtors and the other major constituencies in these cases are focusing on the successful completion of the Sale Hearing. At the same time, the Debtors are readying a chapter 11 plan to be filed and prosecuted on as expedited a timetable as is appropriate. With the Plan Period currently set to expire on August 9, 2016, the Debtors require a reasonable additional extension of time in order to conclude these chapter 11 cases in the most efficient and appropriate manner – pursuant to a chapter 11 plan.

III. RELIEF REQUESTED

12. Under the First Order Extending Exclusivity, the Plan Period is set to expire on August 9, 2016, and the Solicitation Period is set to expire on October 17, 2016. The sale process is on the threshold of completion, with the Sale Hearing likely to occur on August 23, 2016. By this Motion, the Debtors seek to extend the Plan Period a further sixty days to October 7, 2016, along with a similar extension of the Solicitation Period to December 16, 2016, to allow for a smooth and orderly completion of the sale process.

13. The Debtors have timely, if not earlier than in a typical chapter 11 sale cases, achieved key early case milestones that lay the foundation for a successful chapter 11 sale case: a prompt and uncontroversial final DIP financing order, timely filing of the Debtors' schedules and statement of financial affairs, and prompt establishment of bar dates.

14. At this juncture in their cases, the Debtors believe that it is highly prudent, and appropriate from a cost-benefit standpoint, to seek a further extension of the Exclusive Periods. Under the circumstances of these cases, the plan process could only begin in earnest after the

sales process was near completion. The extensions requested herein will allow the plan process to move forward without the risk of the substantial additional costs and disruption that could follow an expiration of either of the Exclusive Periods.

15. For the reasons set forth herein, the Debtors respectfully request that the Court extend the Exclusive Periods and set the Debtors' cases on the same plan track by establishing the same Exclusive Periods for the cases. Specifically, the Debtors respectfully request that the Court (a) extend the Plan Period sixty days through and including October 7, 2016, and the Solicitation Period through and including December 16, 2016; and (b) prohibit any party, other than the Debtors, from filing a competing plan and/or soliciting acceptances of any such competing plan during the extended Exclusive Periods.

16. This Motion is the Debtors' second request for an extension of the Exclusive Periods.

IV. APPLICABLE AUTHORITY

17. Under Bankruptcy Code section 1121(d), the Court may extend the Exclusive Periods for cause. Specifically, Bankruptcy Code section 1121(d) provides:

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

18. Courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following:

- (a) The size and complexity of a debtor's case;
- (b) The amount of time that has elapsed since the debtor filed its bankruptcy case;
- (c) Whether unresolved contingencies exist that affect the debtor's ability to reorganize;

- (d) The debtor's progress in resolving issues facing its estate; and
- (e) Whether an extension of time will harm the debtor's creditors or other interested parties.

See In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

19. In determining whether to grant a requested extension of exclusivity, courts also consider whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. *See McLean*, 87 B.R. at 833-34; *In re Texaco, Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

20. In evaluating whether an extension under Bankruptcy Code section 1121(d) is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. *See In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) (“[A]pplying the ‘flexibility’ in dealing with the question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension.”); *In re Pub. Serv. Co.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent [is] to promote maximum flexibility.”); H.R. Rep. No. 95-595, at 232 (1978) (“[T]he bill allows the flexibility for individual cases that is unavailable today.”), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

21. Turning to the *Dow Corning* factors, the first is case size and complexity. While the Debtors' cases are not exceedingly complex, their funded debt is very significant in size at \$230.7 million in prepetition secured debt, plus new money advanced postpetition under the Debtors' \$45 million DIP Facility. Until the outcome of the sale process became known, the

potential form of any chapter 11 plan would likely have involved too much uncertainty or too many variables. In this sense, the Debtors' cases sizes and complexity favor the requested exclusivity extension.

22. The second *Dow Corning* factor – time elapsed in chapter 11 – also favors an exclusivity extension. The extension requested in this Motion is the Debtors' second such request. Far from languishing in chapter 11, the Debtors have actively prosecuted their cases, particularly during the initial months following the Petition Date.

23. With respect to the third *Dow Corning* factor, the Debtors had several unresolved contingencies during much of their initial Exclusive Periods. The sale process, the DIP motion, and the bar date process, among other things, were all contingencies that required resolution. Although most of the Debtors' contingencies are behind them, certain additional matters still need to be addressed – in particular the final conclusion of the sale process. Therefore, this factor also favors the requested exclusivity extension.

24. The fourth *Dow Corning* factor also supports the exclusivity extension, in view of the major progress made by the Debtors in their cases to date. The Debtors set ambitious goals for the initial months of their cases, and essentially met or exceeded those goals, particularly with respect to the event timeline for their sale process.

25. Finally, the fifth *Dow Corning* factor supports the requested extension. The extension will not prejudice creditors or other stakeholders of the Debtors' estates. Indeed, expiration of either of the Exclusive Periods at this juncture gives rise to the risk of competing chapter 11 plans, which inevitably would involve substantially increased administrative expenses and litigation. In these cases, such an exercise would almost certainly end up decreasing net recoveries to the Debtors' creditors, and may significantly delay the Debtors' ability to confirm any plan in these bankruptcy cases.

26. As set forth below, the proposed extension of the Exclusive Periods is warranted here because, among other things, an extension of the Exclusive Periods will give the Debtors a reasonable opportunity to complete the formulation and prosecution of a chapter 11 plan and set all Debtors on the same timeline with regard to the Exclusive Periods. Maintaining exclusivity for the extended period will benefit the Debtors and their estate stakeholders as a whole.

27. If the Exclusive Periods were to expire at this point, the risk (albeit perhaps a small risk in these cases) is that the careful balancing fostered by exclusivity would vanish, potentially undercutting the Debtors' ability to lead an organized and cost-effective plan process. Exclusivity serves several important purposes, embodying the policy that in most circumstances, a debtor in possession is best suited to lead the plan process, of course with the benefit of fulsome participation by all case stakeholders. The Debtors submit that their substantial progress in the cases to date warrants affording them a reasonable amount of additional time to have exclusive plan filing and solicitation rights – in effect to finish out the administration of these cases in the manner in which chapter 11 of the Bankruptcy Code is designed.

28. In sum, the requested extension of the Exclusive Periods will benefit the Debtors and their estates by providing the Debtors with a full and fair opportunity to seek approval of a chapter 11 plan or plans. It is in the best interests of the Debtors, their estates, and all creditors to obtain an extension of the Exclusive Periods to ensure that the Debtors are afforded a reasonable and sufficient time to solicit, confirm, and consummate a plan or plans without the costly and counter-productive prospect of competing plans. Accordingly, the Debtors believe that the requested extension is warranted and, indeed, appropriate under the circumstances.

V. NOTICE

29. Notice of this Motion has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to Beal Bank USA, as prepetition lender and proposed

post-petition lender; (c) the Debtors' twenty (20) largest unsecured creditors, as identified in their chapter 11 petitions; and (d) those persons who have formally appeared in these cases and requested service pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no additional notice need be given. No prior request for the relief requested herein has been made to this or any other court.

VI. CONCLUSION

30. WHEREFORE, the Debtors request the Court enter an order substantially in the form attached hereto: (i) extending the Plan Period sixty (60) days through and including October 7, 2016, and the Solicitation Period through and including December 16, 2016; and (ii) granting such other and further relief as is just and proper.

Dated: August 8, 2016
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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DEBTORS AND DEBTORS IN POSSESSION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Case No. 16-10369 (KJC)
)	Chapter 11
Sundevil Power Holdings, LLC, <i>et al.</i> ,)	(Jointly Administered)
Debtors. ¹)	Objection Deadline: August 19, 2016 at 4:00 p.m.
)	Hearing Date: August 23, 2016 at 2:30 p.m.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on August 8, 2016, the above captioned debtors and debtors in possession (collectively, the “*Debtors*”) filed the **Debtors’ Second Motion For An Order Extending The Exclusive Periods During Which Debtors May File And Solicit Acceptances of A Plan Pursuant To 11 U.S.C. § 1121(d)** (the “*Motion*”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for the Debtors at or before **4:00 p.m. (Eastern Time) on August 19, 2016.**

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **August 23, 2016 at 2:30 p.m. (Eastern Time).**

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT

¹ The Debtors in these chapter 11 cases, and their respective federal tax identification numbers, are Sundevil Power Holdings, LLC (2308) and SPH Holdco LLC (7777). The Debtors’ service address is: 701 East Lake Street, Suite 300, Wayzata, Minnesota 55391.

THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 8 2016
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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

In re:)	
Sundevil Power Holdings, LLC, <i>et al.</i> ,)	Case No. 16-10369 (KJC)
Debtors. ¹)	Chapter 11
)	(Jointly Administered)
)	Related Docket No.

ORDER GRANTING DEBTORS’ SECOND MOTION FOR AN ORDER EXTENDING THE EXCLUSIVE PERIODS DURING WHICH DEBTORS MAY FILE AND SOLICIT ACCEPTANCES OF A PLAN PURSUANT TO 11 U.S.C. § 1121(d)

Upon the Debtors’ Second Motion for an Order Extending the Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan Pursuant to 11 U.S.C. § 1121(d) (the “Motion”);² and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Motion 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 Debtors in these chapter 11 cases, and their respective federal tax identification numbers, are Sundevil Power Holdings, LLC (2308) and SPH Holdco LLC (7777). The Debtors’ service address is: 701 East Lake Street, Suite 300, Wayzata, Minnesota 55391.

² Capitalized terms not herein defined shall have the same meaning ascribed to them in the Motion.

1. The Motion is granted.
2. The Plan Period is hereby further extended through and including October 7, 2016, and the Solicitation Period is hereby further extended through and including December 16, 2016.
3. Nothing herein shall be construed to limit the Debtors' right to seek further extensions of time under 11 U.S.C. § 1121.
4. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: _____, 2016

The Honorable Kevin J. Carey
United States Bankruptcy Judge