

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
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 OPTIM ENERGY, LLC, et al., : Case No. 14-10262 (BLS)  
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 Debtors.<sup>1</sup> : Jointly Administered  
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**OBJECTION OF WALNUT CREEK MINING COMPANY TO DEBTORS' MOTION TO  
SHORTEN NOTICE REGARDING SALE PROCEDURES**

Walnut Creek Mining Company ("Walnut Creek"), by and through its undersigned counsel, hereby objects (the "Objection") to the 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

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<sup>1</sup> 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.

Executory Contracts And Unexpired Leases, And (III) Granting Related Relief [Docket No. 361] (the "Motion to Shorten"). In support of the Objection, Walnut Creek respectfully represents as follows:

**Background**

1. Just two days ago (June 17, 2014), the debtors and debtors-in-possession in the above-captioned chapter 11 cases (the "Debtors") filed 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 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 [Docket No. 359] (the "Bid Procedures Motion").

2. Thereafter, the Debtors filed the Motion to Shorten. By the Motion to Shorten, the Debtors seek an order reducing the period that the Debtors are required to afford parties in interest notice of the Bid Procedures Motion. Specifically, the Motion to Shorten seeks an order (a) scheduling a hearing to consider the Bid Procedures Motion on June 25, 2014 at 1:00 p.m., (b) establishing an objection deadline with respect to the Bid Procedures Motion of June 23, 2014 at 12:00 p.m., and (c) shortening the notice period required by the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") with respect to the relief sought in the Bid Procedures Motion. See Motion to Shorten ¶ 10.

3. The Motion to Shorten does not specify any objection deadline or hearing date.

**Objection**

4. The Court should deny the Motion to Shorten because the Debtors have failed to demonstrate any cause or prejudice that would result from providing parties in interest the time to which such parties are entitled to notice of the Debtors' Bid Procedures Motion under the Local Rules. Moreover, and as demonstrated below, granting the relief requested in the Motion to Shorten would significantly prejudice the Debtors' creditors and other parties in interest. Instead, Walnut Creek requests that the Court schedule a hearing no earlier than July 1, 2014, still a full 4 days short of the required notice period, and set an objection deadline of one day prior to the hearing.

5. Local Rule 9006-1(c)(i) requires that "all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) 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." Del. Bankr. L.R. 9006-1(c)(i). Pursuant to the Local Rules, then, parties in interest are to be afforded at least 18 days' notice of the hearing on the Debtors' Bid Procedures Motion, plus an additional one or three days depending on how notice of the Debtors' Bid Procedures Motion will be effectuated. Pursuant to Local Rule 9006-1(e), "[n]o motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except 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). Moreover, Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure provides that this period may only be shortened for "cause shown". See Fed. R. Bankr. P. 9006(c)(1).

6. Here, the Debtors have not demonstrated any exigency or cause for shortening the required notice period. In seeking to justify the relief sought by the Motion to Shorten, the Debtors' state only that "Barclays conducted an extensive sale process for the Facility and that process resulted in the PSA executed between Debtor Optim Energy Twin Oaks LP and the Proposed Purchaser", that the "Proposed Purchaser has the option to terminate the agreement to purchase the Purchased Assets if an order approving the Sale Procedures and Proposed Purchaser Payments is not entered on or before June 27, 2014", that "[t]ermination of the PSA would negatively and materially impact the Debtors' efforts to market and sell the Facility and maximize the value of their estates", and that "allowing the Sale Procedures Relief requested in the Bid Procedures Motion to be considered on shortened notice is reasonable and appropriate under the circumstances." Motion to Shorten, ¶¶ 16-18. These assertions fall far short of demonstrating cause to shorten the required notice period. The Proposed Purchaser cannot be allowed, under the guise of strict deadlines imposed in connection with its bid, to avoid the protections afforded by the Local Rules by reducing the time to which parties in interest are entitled to review, digest, and if necessary, object to the Debtors' Bid Procedures Motion. This case does not concern a debtor with rapidly depreciating assets. There is thus no prejudice that would befall the Debtors, their estates or any party in interest by providing parties with the notice to which they are entitled under the Local Rules.

7. Moreover, the relief sought in the Motion to Shorten would impose significant prejudice on parties in interest including Walnut Creek. The Debtors' Bid Procedures Motion papers are voluminous, totaling over 180 pages. Parties in interest should be afforded a full and fair opportunity to review these documents in considering whether the Debtors' Bid Procedures Motion, including the sale procedures and proposed purchaser payments, are in the

best interest of the Debtors, their estates and their creditors.. The relief sought by the Motion to Shorten would unnecessarily compress the timetable for parties to review and object to the Bid Procedures Motion. That result would effect extreme prejudice on the Debtors' creditors and other parties in interest. The Debtors should not be allowed to impose a shortened notice period for a Bid Procedures Motion that was filed just two days ago, and which will prejudice creditors and other parties in interest by limiting the possibility for consideration of whether the sale procedures are designed to maximize the value of potential bids for Optim Energy Twin Oaks, LP's assets.

8. To be clear, in filing the Objection, Walnut Creek does not seek to unnecessarily delay the Debtors' sale process. Rather, Walnut Creek seeks to afford parties in interest (a) adequate notice to which they are entitled under the Local Rules and (b) a schedule that will allow for meaningful consideration of the proposed sale procedures. To that end, Walnut Creek believes that it would be appropriate to (w) deny the Motion to Shorten, (x) provide additional notice to parties in interest, (y) schedule a hearing to consider the Debtors' Bid Procedures Motion for July 1, 2014, and (z) establish June 30, 2014 as the deadline for objections to the Bid Procedures Motion.

**Conclusion**

9. WHEREFORE, Walnut Creek respectfully requests that the Court (a) deny the relief requested in the Motion to Shorten, (b) provide additional notice to parties in interest, (c) schedule a hearing on the Debtors' Bid Procedures Motion for July 1, 2014, (d) establish June 30, 2014 as the deadline for objections to the Bid Procedures Motion, and (e) grant such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware  
June 19, 2014

*/s/ Sarah E. Pierce*

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