

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: § **Chapter 11**
§
AZURE MIDSTREAM § **Case No. 17-30461 (DRJ)**
PARTNERS, LP, et al., §
§ **Jointly Administered**
§
Debtors.¹ §
§

**MOTION OF DEBTORS FOR ENTRY
OF AN ORDER AUTHORIZING THE REJECTION OF
EXECUTORY CONTRACT PURSUANT TO SECTIONS 105 AND
365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006**

A HEARING, IF NECESSARY, WILL BE CONDUCTED ON THIS MATTER ON APRIL 12, 2017 AT 10:00 AM IN COURTROOM 400, 4th FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Azure Midstream Partners, LP (7595), Azure ETG, LLC (3388), Azure Holdings GP, LLC (0537), Azure Midstream Partners GP, LLC (8089), Azure TGG, LLC (6233), Marlin G&P I, LLC (6073), Marlin Logistics, LLC (8460), Marlin Midstream Finance Corp. (0130), Marlin Midstream, LLC (2587), Murvaul Gas Gathering, LLC (0826), Talco Midstream Assets, Ltd. (7004), and Turkey Creek Pipeline, LLC (1161).



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Azure Midstream Partners, LP, its subsidiaries, and certain affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (this “**Motion**”):

Relief Requested

1. Pursuant to sections 105(a) and 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors respectfully request entry of an order authorizing the Debtors to reject the executory contract listed on **Exhibit B** annexed hereto, including any amendments or modifications thereto (collectively, the “**Rejected Contract**” and the counterparty thereto, the “**Contract Counterparty**”), effective as of the date of entry of an order approving this Motion (the “**Rejection Date**”).

2. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

Jurisdiction

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. On January 30, 2017 (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

5. The Debtors are a publicly-traded master limited partnership organized for the purpose of acquiring, developing, and operating midstream energy assets relating to (i) the gathering, transport, and processing of liquid natural gas and (ii) crude oil logistics services. The Debtors consist of eight operating entities, including Azure Midstream Partners, LP (“**Azure**”) and Azure Midstream Partners GP, LLC (“**Azure General Partner**”), and four non-operating entities (collectively, with the operating entities, the “**Company**”). Azure General Partner owns the general partnership interest in Azure. Approximately 97.7% of all outstanding limited partner interests in Azure are publicly held. Non-Debtor privately-held affiliate Azure Midstream Energy LLC (“**AME**”) owns all the membership interests of Azure General Partner. AME also owns midstream energy assets, independent of its interests in Azure General Partner, either directly or through its affiliates (AME and such non-Debtor affiliates, collectively, the “**Non-Debtor Affiliate Company**”).

6. Additional information regarding the circumstances leading to the commencement of these chapter 11 cases and information regarding the Debtors’ business and capital structure is set forth in the *Declaration of Ed Mosley in Support of the Debtors’ Chapter 11 Petitions and Related Requests for Relief* [Dkt. No. 15] (the “**Mosley Declaration**”) filed on the Petition Date.

The Rejected Contract

7. On February 23, 2017, this Court entered the *Order Approving (A) Bid Procedures, (B) Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Related Notices, (C) Notice of Auction, Stalking Horse Hearing and Sale Hearing, and (D) Related Relief* [Dkt. No. 116] (the “**Bid Procedures Order**”). The Bid Procedures Order approved the Debtors’ entry into a purchase and sale agreement (the “**Stalking**

Horse Agreement”) with M5 Midstream LLC (the **“Stalking Horse Bidder”**), subject to overbid, for the purchase and sale of substantially all of the Debtors’ assets (the **“Assets”**).

8. The Bid Procedures Order required that the Debtors file and serve, no later than February 24, 2017, on all counterparties to any of the Debtors’ executory contracts and unexpired leases (together, the **“Contracts”**) and all parties who requested notice in these chapter 11 cases (collectively, the **“Contract Notice Parties”**), a notice of assumption, assignment, and sale (the **“Notice of Assumption”**) listing all of the Contracts that the Stalking Horse Bidder proposed to be assumed, assigned, and sold to it in connection with the sale of the Assets (each, an **“Assumed Contract”**), including the Debtors’ calculation of the amount necessary to cure all monetary defaults (the **“Cure Costs”**) for each Assumed Contract. The Debtors timely filed and served the Notice of Assumption [Dkt. No. 124]. On March 2, 2017, the Debtors filed and served a supplement to the Notice of Assumption [Dkt. No. 133].

9. On March 6, 2017 BTA Gathering LLC (**“BTA”**) submitted a competing bid for the Assets (the **“BTA Purchase Agreement”**), and, pursuant to the Bid Procedures Order, the Debtors conducted an auction (the **“Auction”**) of the Assets on March 10, 2017. At the conclusion of the Auction, the Debtors selected the final bid submitted by BTA for a purchase price of \$189 million (the **“Successful Bid”**). Following the Auction, the Debtors and BTA continued to negotiate the BTA Purchase Agreement and on March 14, 2017, BTA and the Debtors executed an amended version of the BTA Purchase Agreement (the **“Final BTA Purchase Agreement”**). The Final BTA Purchase Agreement includes a list of Contracts to be assumed (the **“BTA Assumed Contracts”**) that is identical to the Contracts listed in the Notice of Assumption. On March 15, 2017, following a hearing on the sale of the Assets to BTA, the Court entered an order approving of the sale of the Assets to BTA, free and clear of all liens,

claims, interests, and encumbrances in accordance with section § 363(f) of the Bankruptcy Code [Dkt. No. 72] (the “**Sale Order**”).

10. As stated in the Mosley Declaration, the Debtors intend to file a plan of liquidation in the near term and will cease operations and begin liquidating their remaining assets upon the closing of the sale of the Assets. Any executory contracts that will not be assumed by the Debtors and assigned to BTA (or any other purchaser of the Assets) will no longer be required and continued performance under such agreement would be unduly burdensome on the Debtors’ estates. As of the date hereof, the Debtors have identified one such contract (the “**Rejected Contract**”). The Rejected Contract is a commercial property lease that was utilized in the Debtors’ crude oil transloading business (the “**Logistics Business**”). BTA is not purchasing any of the equipment or assets (the “**Logistics Assets**”) utilized in the Logistics Business. Thus, the Debtors will be liquidating the Logistics Assets and the Rejected Contract will not be assumed by the Debtors and assigned to BTA under the BTA Purchase Agreement. The requested relief will allow for immediate rejection of the Rejected Contract effective as of the Rejection Date, and eliminate obligations that will unnecessarily deplete the Debtors’ estates. Additionally the ability to determine the amount of rejection damages (if any) in connection with the Rejected Contract will give the Debtors increased visibility into potential recoveries for creditors pursuant to any plan confirmed in these chapter 11 cases.

Basis for Relief Requested

11. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *In re Lavigne*, 114 F.3d 379, 386 (2d Cir. 1997). “[T]he

purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. at 528 (“the authority to reject an executory contract is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.”); *Matter of Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994) (noting that section 365 “allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed”).

12. The standard applied to determine whether the rejection of an executory contract or unexpired lease should be authorized is the “business judgment” standard. *See NLRB v. Bildisco & Bildisco*, 465 U.S. at 523 (recognizing the “business judgment” standard used to approve rejection of executory contracts); *Richmond Leasing Co. v. Capital Bank, N.A. (In re Richmond Leasing Co.)*, 762 F.2d 1303, 1309 (5th Cir.1985) (“It is well established that the question [of] whether a lease should be rejected . . . is one of business judgment.”); *In re Pilgrim's Pride Corp.*, 403 B.R. 413, 422 (Bankr. N.D. Tex. 2009) (“The general rule is that the decision to reject a given contract should be left to the trustee’s (or debtor in possession’s) sound business judgment.”).

13. The “business judgment” standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. *See In re Balco Equities, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) (“In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.”)

(quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994)); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 1996) (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’”) (citation omitted). Further, under the business judgment standard, “[a] debtor’s decision to reject an executory contract must be summary affirmed unless it is the product of ‘bad faith, or whim or caprice.’” *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

14. In addition, “unless a separate provision of the Bankruptcy Code provides a non-debtor party with specific protection, the debtor and its estate’s interests are paramount; adverse effects on the non-debtor contract party arising from the decision to assume or reject are irrelevant.” *In re The Great Atlantic & Pacific Tea Company*, 544 B.R. 43, 49 (Bankr. S.D.N.Y. 2016); *see also In re Sabine Oil and Gas Corp.*, 547 B.R. 66, 71 (Bankr. S.D.N.Y. 2016); *In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016).

15. The Debtors, in their sound business judgment, have determined that the Rejected Contract is no longer necessary for, or beneficial to, the Debtors’ businesses and creates and unnecessary and burdensome expense for Debtor’ estates. Additionally, expeditiously rejecting this Contract will allow the Debtors to liquidate any potential rejection damages, assisting the Debtors in allocating creditor recoveries under any plan confirmed in these chapter 11 cases.

16. In view of the foregoing, the Debtors respectfully request that the Court approve the rejection of the Rejected Contract pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure in the manner requested herein.

Reservation of Rights

17. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, (iii) a waiver or limitation of the Debtors' right to assert at a later date that the Rejected Contract is not an executory contract, or (iv) a concession or evidence that the Rejected Contract has not expired, been terminated, or is otherwise currently not in full force and effect.

Request for Bankruptcy Rule 6004 Waiver

18. The Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As explained above, if the Debtors do not expeditiously reject the Rejected Contract, the Debtors' estates will accrue unnecessary expense to the detriment of creditors and parties-in-interest. Accordingly, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

Notice

19. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) Baker & McKenzie LLP, 452 Fifth Avenue, New York, NY 10018 (Attn: James Donnell, Esq. and Peter S. Goodman, Esq.), counsel to Wells

Fargo Bank, N.A., as administrative agent under the Credit Agreement; (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Southern District of Texas; (vii) the Contract Counterparty to the Rejected Contract; and; (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

No Previous Request

20. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: March 20, 2017
Houston, Texas

/s/ Christopher M. López
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*Attorneys for the Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on March 20, 2017, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s / Christopher M. López

Christopher M. López

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
AZURE MIDSTREAM PARTNERS, LP, et al.,	§	Case No. 17-30461 (DRJ)
	§	
	§	Jointly Administered
	§	
Debtors.¹	§	
	§	

**ORDER AUTHORIZING REJECTION OF
EXECUTORY CONTRACT PURSUANT TO SECTIONS 105 AND
365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006**

Upon the motion, dated March 20, 2017 (the “**Motion**”),² of Azure Midstream Partners, LP, its subsidiaries, and certain affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for authority to reject the executory contract listed on **Exhibit B** to the Motion pursuant to sections 105(a) and 365 of the Bankruptcy Code, as more fully set forth in the Motion; 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 being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue is allowed before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Azure Midstream Partners, LP (7595), Azure ETG, LLC. (3388), Azure Holdings GP, LLC (0537), Azure Midstream Partners GP, LLC (8089), Azure TGG, LLC (6233), Marlin G&P I, LLC (6073), Marlin Logistics, LLC (8460), Marlin Midstream Finance Corp. (0130), Marlin Midstream, LLC (2587), Murvaul Gas Gathering, LLC (0826), Talco Midstream Assets, Ltd. (7004), and Turkey Creek Pipeline, LLC (1161).

² All capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to such terms in the Motion.

Court having reviewed the Motion; 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 it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; 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 as set forth herein.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006, the Reject Contract, listed on **Exhibit B** to the Motion, is deemed rejected as of the date of this Order.
3. Nothing contained in this Order or any action taken by the Debtors in implementing this Order shall be deemed (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, (iii) a waiver or limitation of the Debtors' right to assert at a later date that the Rejected Contract is not an executory contract, or (iv) a concession or evidence that the Rejected Contract has not expired, been terminated, or is otherwise currently not in full force and effect.
4. The requirements of Bankruptcy Rule 6004(a) are waived.
5. Notwithstanding the provisions of Bankruptcy Rules 6004(h), this Order shall be immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2017
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Rejected Contract

Rejected Contract

Contract Counterparty	Description of Contract	Debtor Entity
Intermountain Power Agency Attn: James A. Hewlett 10653 South River Front Parkway, Suite 120 South Jordan, Utah 84095	Lease Agreement dated November 14, 2013 between Intermountain Power Agency and Marlin Logistics LLC in connection with 90 acres of real property located on the western side of the Wildcat Loadout facility in Carbon County, Utah. IPA Agreement No. 636.	Marlin Logistics, LLC