

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

In re:

COBALT INTERNATIONAL ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 17-36709 (MI)
)
) (Jointly Administered)
)
)
)

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.

**MOTION FOR PAYMENT
OF ADMINISTRATIVE EXPENSE OF TOTAL E&P USA, INC.**

TOTAL E&P USA, INC. ("TEP USA") respectfully submits this motion for payment (the "Motion") of any and all amounts due to TEP USA under the TEP USA APAs (as defined herein) as an Administrative Claim. As set forth herein, the Confirmation Order explicitly accords Administrative Claim treatment to certain post-closing adjustments, and TEP USA files

¹The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.



this Motion out of an abundance of caution to ensure proper treatment of any such adjustments and any other claims related to the APAs as may arise.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334(a). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

2. On April 5, 2018, the Court entered that certain *Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates and (II) Approving the Sale Transaction* [D.I. 784] (the “Confirmation Order” and the Chapter 11 Plan attached thereto, the “Plan”). Capitalized terms used but not defined herein have the meaning given them in the Confirmation Order, including, where applicable, by reference to the definitions in the Plan.

3. The Confirmation Order became effective on April 10, 2018 (the “Effective Date”). The Administrative Claims Bar Date is the first Business Day that is 30 days following the Effective Date.

4. The Confirmation Order provides in relevant part that “[a]ny right of a Purchaser to a post-closing adjustment under the applicable Sale Transaction Documentation shall be paid in full as an Administrative Claim pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.” Confirmation Order ¶ 132.

5. TEP USA has rights to post-closing adjustments as a Purchaser under the following Sale Transaction Documentation: (i) that certain Asset Purchase Agreement between TEP USA and Cobalt International Energy, L.P. (“CIE LP”) dated as of March 12, 2018 in

respect of the Anchor assets (the “Anchor APA”); (ii) that certain Asset Purchase Agreement between TEP USA and CIE LP dated as of March 12, 2018, in respect of the exploration leases (the “Explo APA”); and (iii) that certain Asset Purchase Agreement among TEP USA, CIE LP, and Statoil, dated March 12, 2018, in respect certain assets related to the North Platte discovery (the “North Platte APA,” and together with the Anchor APA and the Explo APA, the “TEP USA APAs”). See Confirmation Order, Preamble ¶¶ s; *Notice of Filing of Successful Bid Documents* [D.I. 594, 677] (attaching TEP USA APAs).

6. The amounts (if any) due to TEP USA as post-closing adjustments under the TEP USA APAs remain subject to review and agreement by TEP USA and CIE LP during a post-closing review period of 60 days from the closing date of April 10, 2018 (the “Review Period”). In the absence of agreement, post-closing adjustment disputes may be referred to a referee for further consideration.

7. The Administrative Claims Bar Date will predate the conclusion of the Review Period, and any subsequent referee’s proceedings.

8. Other issues may arise relating to the TEP USA APAs and the transactions contemplated thereunder that give rise to Administrative Claims in favor of TEP USA against the Debtors, their Estates and/or the Plan Administrator.

RELIEF REQUESTED

9. TEP USA respectfully requests that the Court enter an order substantially in the form of the order (the “Proposed Order”) attached as Exhibit A hereto directing payment in full of any and all post-closing adjustments in favor of TEP USA under the TEP USA APAs, and any additional claims related to the TEP USA APAs that may arise and otherwise meet the standards

for Administrative Claim status, as timely Administrative Claims pursuant to the express language of the Confirmation Order and consistently with the Bankruptcy Code.

RESERVATION OF RIGHTS

10. Amounts due under this Motion are not subject to any setoff, reduction, defense or counterclaim (other than netting of post-closing amounts pursuant to the express terms of the TEP USA APAs and as agreed by TEP USA, or as determined by a referee); provided, however, that TEP USA preserves all of its rights of setoff, recoupment, bankers' lien, and all such similar rights (including, without limitation, all rights to netting of post-closing adjustments pursuant to the express terms of the TEP USA APAs and as agreed by CIE LP, or as determined by a referee), and nothing herein shall be construed as a waiver thereof.

11. TEP USA reserves the right to (i) amend, update and/or supplement this Motion at any time and in any respect, either before or after any bar date established by the Court, and/or (ii) file additional Motions in respect of Administrative Claims which may be based on the same or additional documents, at any time before or after any bar date established by the Court. This Motion is filed without prejudice and in no way limits the ability of TEP USA to file additional Motions or Claims with respect to any liability or indebtedness of any of the Debtors.

12. The execution and filing of this Motion are not: (a) a waiver or release of TEP USA's rights against any person, entity or property; (b) a consent by TEP USA to the jurisdiction of the Court with respect to the subject matter of the Motion or any objection or other proceeding commenced in this case; (c) a waiver of the right to move to withdraw the reference or otherwise to challenge the jurisdiction of the Court with respect to the subject matter of this Motion, any objections or other proceedings commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving TEP USA; (d) any election of

remedies; or (e) a waiver of any rights or claims TEP USA may have against any of the Debtors or any person or entity with respect to any pending or future litigation or to any matters related to such litigation. TEP USA specifically preserves all of its procedural and substantive defenses and rights (including, without limitation, all of TEP USA's rights to setoff or recoupment) with respect to any claim that may be asserted against TEP USA by any of the Debtors, any trustee for the Debtors' estate, any other party-in-interest, or any other person or entity whatsoever.

13. Because they are both voluminous and already (a) in the possession of the Debtors and (b) publicly filed on the docket of the Debtors' cases, the documents referenced herein are not annexed hereto.

CONCLUSION

14. For the reasons set forth herein, TEP USA requests that this Court grant the relief requested in this Motion and enter the Proposed Order attached hereto as **Exhibit A**.

[Remainder of page left intentionally blank]

Dated: May 9, 2018

Respectfully submitted,

By: /s/ David A. Hammerman

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Counsel to TOTAL E&P USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2018, a copy of the foregoing Motion was served on parties that are registered to receive electronic notice through this Court's ECF notice system.

/s/ David A. Hammerman

David A. Hammerman

Exhibit A

Proposed Order

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

In re:	:	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , ¹	:	Case No. 17-36709 (MI)
Debtors.	:	(Jointly Administered)

**[PROPOSED] ORDER GRANTING MOTION OF TOTAL E&P USA FOR
PAYMENT OF ADMINISTRATIVE EXPENSE**

The Court has considered the Motion for Payment of Administrative Expense of TOTAL E&P USA, INC., (the “Motion”) and finds that cause exists to grant the relief requested in the Motion.² Adequate notice of the Motion has been given and no other or further notice is necessary. Accordingly, it is therefore:

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. TOTAL E&P USA, INC. (“TEP USA”) is allowed Administrative Claims for any and all amounts owed to TEP USA under the TEP USA APAs, including, without limitation, any and all post-closing adjustments in favor of TEP USA under Article VIII of each of the TEP USA APAs.
3. The Debtors shall pay all such Administrative Claims in full pursuant to the

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² Capitalized terms not specifically defined herein are given the meaning ascribed to them in the Motion.

express language of the Confirmation Order and consistently with sections 503(b) and 507(a)(2) of the Bankruptcy Code.

4. Amounts due under the Motion are not subject to any setoff, reduction, defense or counterclaim.

5. The Motion is without prejudice and does not limit any right TEP USA may have to file additional motions or claims with respect to any liability or indebtedness of any of the Debtors.

6. TEP USA retains all of its procedural and substantive defenses and rights (including, without limitation, all of TEP USA's rights to setoff or recoupment) with respect to any claim that may be asserted against TEP USA by any of the Debtors, the Plan Administrator, any trustee for the Debtors' Estates, any other party-in-interest, or any other person or entity.

7. The Court shall retain jurisdiction with respect to all matters arising from or related to implementation of this Order.

_____, 2018

THE HONORABLE MARVIN J. ISGUR
UNITED STATES BANKRUPTCY JUDGE