

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)

**STATOIL'S MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE
PRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 503(b)(1)(A) AND 11 U.S.C. § 507(a)(2)**

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: 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.



Statoil Gulf of Mexico LLC (“**Statoil**”), by and through its undersigned counsel, hereby submits this motion for an order of this Court allowing administrative expense priority claims pursuant to 11 U.S.C. § 503(b)(1)(A) and 11 U.S.C. § 507(a)(2) (the “**Motion**”), and, in support thereof, respectfully represents as follows:

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).

FACTUAL BACKGROUND

2. On December 14, 2017, Cobalt International Energy, Inc. and its affiliates (collectively, the “**Debtors**”), including Cobalt International Energy, L.P. (“**CIE LP**”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code before this Court.

3. 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* [ECF No. 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.

4. 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.

5. 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.

6. Statoil has rights to post-closing adjustments as a Purchaser under certain Sale Transaction Documentation, specifically that certain Asset Purchase Agreement among CIE LP, Statoil and Total E&P USA, Inc. (“**Total**”), dated March 12, 2018, in respect of certain assets related to the North Platte discovery (the “**North Platte APA**”). *See* Confirmation Order, Preamble ¶ s; *Notice of Filing of Successful Bid Documents* [ECF No. 594] (attaching North Platte APA).

7. The amounts (if any) due to Statoil as post-closing adjustments under the North Platte APA remain subject to review and agreement by Statoil and CIE LP during a 60-day post-closing review period from the April 10, 2018, closing date (the “**Review Period**”). In the absence of agreement within such Review Period, post-closing adjustment disputes may be referred to a nationally recognized, independent accounting firm mutually agreed upon by the parties in writing (the “**Accounting Referee**”) for further consideration.

8. The Administrative Claims Bar Date will predate the conclusion of the Review Period and any subsequent review and resolution by the Accounting Referee.

9. Other issues may arise relating to the North Platte APA and the transaction contemplated thereunder that give rise to Administrative Claims in favor of Statoil against the Debtors, their Estates and/or the Plan Administrator.

RELIEF REQUESTED

10. Statoil hereby moves this Court to enter the proposed order attached as **Exhibit A**, allowing Statoil’s Administrative Claims for any and all amounts owed to Statoil under the North Platte APA, pursuant to the express language of the Confirmation Order and consistently with the Bankruptcy Code, including, without limitation, (i) any and all post-closing adjustments in favor

of Statoil under the North Platte APA as determined by CIE LP, Statoil and Total in accordance with sections 8.9 and 8.11 of the North Platte APA, (ii) any and all post-closing adjustments in favor of Statoil under the North Platte APA as may be determined by the Accounting Referee in accordance with sections 8.9 and 8.11 of the North Platte APA, (iii) any and all amounts in favor of Statoil under section 8.1 of the North Platte APA, which amounts may be determined by this Bankruptcy Court or any other court having jurisdiction over such matter and (iv) any additional claims related to the North Platte APA that may arise and otherwise meet the standards for Administrative Claim status.

11. Such Administrative Claims shall be entitled to payment in full pursuant to the express language of the Confirmation Order and consistently with sections 503(b) and 507(a)(2) of the Bankruptcy Code.

12. 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 North Platte APA and as agreed by Statoil); provided, however, that Statoil 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 North Platte APA and as agreed by CIE LP), and nothing herein shall be construed as a waiver thereof.

13. Statoil 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 that 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 Statoil to file additional motions or claims with respect to any liability or indebtedness of any of the Debtors.

14. The execution and filing of this Motion are not: (a) a waiver or release of Statoil's rights against any person, entity or property; (b) a consent by Statoil 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 Statoil; (d) any election of remedies; or (e) a waiver of any rights or claims Statoil 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. Statoil specifically preserves all of its procedural and substantive defenses and rights (including, without limitation, all of Statoil's rights to setoff or recoupment) with respect to any claim that may be asserted against Statoil by any of the Debtors, any trustee for the Debtors' Estates, any other party-in-interest, or any other person or entity whatsoever.

LAW AND ARGUMENT

15. Paragraph 132 of the Confirmation Order provides 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," and the North Platte APA clearly contemplates Statoil having rights to post-closing adjustments as a Purchaser. In addition to the plain language of the Confirmation Order, section 507(a)(2) of the Bankruptcy Code provides for priority treatment of "administrative expenses allowed under section 503(b) of this title." *See In re Simbaki, Ltd.*, No. 13-36878, 2015 WL 1593888, at *4 (Bankr. S.D. Tex. Apr. 6, 2015) ("The Bankruptcy Code provides that administrative expenses are among the first unsecured claims to be paid. . . . Administrative

expense priority is justified on the basis that creditors must pay for those expenses necessary to produce the distribution to which they are entitled.”) (citations omitted).

16. Section 503(a) of the Bankruptcy Code states that any entity may file a request for payment of an administrative expense. Section 503(b)(1)(A) defines administrative expenses to include “the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case.” “The Fifth Circuit has held that a § 503(b)(1)(A) expense ‘must have been of benefit to the estate and its creditors.’” *In re Am. Coastal Energy Inc.*, 399 B.R. 805, 808 (Bankr. S.D. Tex. 2009) (citing *Tex. v. Lowe (In re H.L.S. Energy Co., Inc.)*, 151 F.3d 434, 437 (5th Cir. 1998)). “The benefit requirement is not an additional element to a § 503(b)(1)(A) claim, but rather a means for testing whether an expense is truly ‘necessary.’” *Id.* at 809.

17. Statoil has brought significant value to the Debtors’ Estates through the North Platte APA. *See* Apr. 5, 2018 H’rg Tr. at 23:1-5 (“I find that the sales process was conducted with integrity and good faith. And I find that it maximized the value that is available to the estate based on all the records that I have before me.”).

18. Because the Administrative Claims Bar Date will predate the conclusion of the Review Period and any subsequent Accounting Referee’s review pertaining to such post-closing adjustments, Statoil moves this Court to enter the proposed order allowing the Administrative Claims for any and all post-closing adjustments in favor of Statoil under the North Platte APA as determined in accordance with the APA or a court of competent jurisdiction in the event that such amounts are not paid following the Review Period.

CONCLUSION

19. Statoil requests that this Court grant the relief requested in this Motion and enter the proposed order attached as **Exhibit A**.

Dated: May 9, 2018

Respectfully submitted,

/s/ Stephen M. Ryan

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EXHIBIT A

Proposed Order

**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)

**[PROPOSED] ORDER GRANTING STATOIL’S MOTION FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE PRIORITY CLAIMS PURSUANT TO
11 U.S.C. § 503(b)(1)(A) AND 11 U.S.C. § 507(a)(2)**

The Court has considered the Motion for Allowance of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503(b)(1)(A) and 11 U.S.C. § 507(a)(2) (the “**Motion**”) filed by Statoil Gulf of Mexico LLC (“**Statoil**”) 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.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Statoil is allowed Administrative Claims for any and all amounts owed to Statoil under the North Platte APA, including, without limitation, any and all post-closing adjustments in favor of Statoil under Article VIII of the North Platte APA.

¹ The Debtors in these 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.

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

3. The Debtors shall pay all such Administrative Claims in full pursuant to the 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 Statoil may have to file additional motions or claims with respect to any liability or indebtedness of any of the Debtors.

6. Statoil retains all of its procedural and substantive defenses and rights (including, without limitation, all of Statoil's rights to setoff or recoupment) with respect to any claim that may be asserted against Statoil 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.

Signed this _____ day of _____, 2018.

THE HONORABLE MARVIN J. ISGUR
UNITED STATES BANKRUPTCY JUDGE