

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

ENERGY CONVERSION DEVICES, INC.,  
et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 12-43166  
(Jointly Administered)

Judge Thomas J. Tucker

**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, INCLUDING (A) APPROVING FORM OF SOLICITATION PROCEDURES, (B) APPROVING THE FORM AND NOTICE OF THE CONFIRMATION HEARING, (C) ESTABLISHING RECORD DATE AND APPROVING PROCEDURES FOR DISTRIBUTION OF SOLICITATION PACKAGES, (D) APPROVING FORMS OF BALLOTS, (E) ESTABLISHING DEADLINE FOR RECEIPT OF BALLOTS, AND (F) APPROVING PROCEDURES FOR VOTE TABULATIONS; (II) ESTABLISHING DEADLINE AND PROCEDURES FOR FILING OBJECTIONS TO CONFIRMATION OF THE PLAN; AND (III) GRANTING RELATED RELIEF**

These jointly-administered cases are before the Court upon the motion (Docket # 628, the “**Motion**”) of Energy Conversion Devices, Inc. (“**ECD**”) and United Solar Ovonic LLC (“**USO**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) for entry of an order, pursuant to sections 1125 and 1126 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 3016, 3017, 3018 and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 3018-1 of the Local Rules for the United States Bankruptcy Court for the Eastern District of Michigan (the “**Local Rules**”), (i) establishing procedures for solicitation and tabulation of votes to accept or reject the Second Amended Joint Plan of Liquidation of Energy Conversion Devices, Inc. and United Solar Ovonic LLC [Docket No. 611] (including all exhibits thereto and as amended,



modified or supplemented from time to time, the “**Plan**”), including (a) approving the form of the solicitation packages, (b) approving the form and manner of notice of the Confirmation Hearing (as defined below), (c) establishing a record date and approving procedures for distributing solicitation packages, (d) approving the forms of ballots, (e) establishing the deadline for the receipt of ballots, and (f) approving procedures for tabulating acceptances and rejections of the Plan; (ii) establishing the deadline and procedures for filing objections to confirmation of the Plan and final approval of the Disclosure Statement; and (iii) granting related relief; upon the Supplement to the Motion [Docket No. 680] (the “**Supplement**”); and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and sufficient cause appearing therefor,

This Order establishes the following key dates applicable to creditors submitting votes for or against the Plan and/or objecting to final approval of the Disclosure Statement or to confirmation of the Plan:

- June 1, 2012 – the Record Date
- June 12, 2012 – the Debtors’ Solicitation Deadline
- July 2, 2012 – the Debtors’ Claim Objection Deadline for Voting
- July 3, 2012 – deadline for creditor constituents to serve Recommendation Letters
- July 13, 2012 at 4:30 p.m. (prevailing Eastern Time) – the deadline for Claims Estimation Motions to be filed
- July 13, 2012 at 4:30 p.m. (prevailing Eastern Time) – the deadline for objections to final approval of the Disclosure Statement and confirmation of the Plan

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<sup>1</sup> The Debtors in these jointly-administered cases are Energy Conversion Devices, Inc. (Case No. 12-43166) and United Solar Ovonic LLC (Case No. 12-43167).

- July 13, 2012 at 4:30 p.m. (prevailing Pacific Time) – the Voting Deadline
- July 16, 2012 at 12:00 noon – the Voting Tabulation Due Date
- July 18, 2012 at 12:00 p.m. (prevailing Eastern Time) – the Confirmation Hearing

**IT IS ORDERED THAT:**

1. The Motion is **GRANTED** as provided herein and any objection that has not been withdrawn is overruled.
2. The Debtors shall mail or caused to be mailed to all holders of claims entitled to vote on the Plan by no later than **June 12, 2012** (the “**Solicitation Deadline**”), a solicitation package containing: (a) written notice (the “**Confirmation Hearing Notice**”), substantially in the form attached to the Supplement as **Revised Exhibit 6-A**, of (i) the Court’s order granting preliminary approval of the disclosure statement filed with and relating to the Plan, including, without limitation, all exhibits and schedules (as may be amended from time to time, the “**Disclosure Statement**”), (ii) the deadline for voting on the Plan, (iii) the date of the Confirmation Hearing, and (iv) the deadline and procedures for filing objections to confirmation of the Plan and to final approval of the Disclosure Statement, which Confirmation Hearing Notice is approved; (b) the Plan (either by paper copy or in “pdf” format on a compact disk, at the Debtors’ discretion); (c) the Disclosure Statement, substantially in the form approved by the Court (either by paper copy or in “pdf” format on a compact disk, at the Debtors’ discretion); (d) the appropriate ballot (substantially in the form attached to the Supplement as **Revised Exhibit 6-B, 6-C or 6-D**, as applicable) and ballot return envelope; (e) a cover letter from the Debtors urging such parties to vote in favor of the Plan, substantially in the form attached to the Supplement as **Revised Exhibit 6- E** and

noting that the Committee and Ad Hoc Consortium may submit their recommendations concerning the Plan in accordance with the time frame set forth in paragraph 3 below; (f) this Order; and (g) such other information as the Court may direct or approve (collectively, the “**Solicitation Package**”). The Solicitation Package and the manner of service of the Solicitation Package satisfies the requirements of Bankruptcy Rule 3017(d).

3. The Official Committee of Unsecured Creditors (the “**Committee**”) and the ad hoc consortium of holders of the Notes consisting of SMH Capital Advisors, Diamondback Capital Management, LLC, and Angelo Gordon & Co., L.P. (the “**Ad Hoc Consortium**”) may send to the same parties receiving the Solicitation Package a letter recommending that claim holders vote for or against the Plan (“**Recommendation Letter**”), provided such Recommendation Letter has been approved by this Court. Recommendation Letters must be filed by **June 29, 2012 at 5:00 pm** (prevailing Eastern Time). A hearing on any Recommendation Letters timely filed shall be held on **July 2, 2012 at 10:00 a.m.** (prevailing Eastern Time), at the United States Bankruptcy Court for the Eastern District of Michigan, 211 W. Fort Street, Suite 2100, Detroit, MI 48226. The Recommendation Letters, as approved by the Court, shall be served on or before **July 3, 2012** to the parties that received Solicitation Packages pursuant to this Order.
4. The Debtors shall mail or cause to be mailed to each of the known counterparties to all executory contracts and unexpired leases to which the Debtors were a party

prior to the Petition Date (collectively, the “**Contracts and Leases**”) the Solicitation Package.

5. Pursuant to Bankruptcy Rule 3017(d), the Debtors are not required to transmit a Solicitation Package to each of the holders of Priority Claims (Class 1); Secured Claims of Wieland-Davco Corporation (Class 2B); and the holders of claims and interests in the holders of Equity Interests (Class 5) (the “**Non-Voting Parties**”). By the Solicitation Deadline, the Debtors shall mail or cause to be mailed to each Non-Voting Party the Non-Voting Party Notice substantially in the form attached to the Supplement as **Revised Exhibit 6-F**.
6. The Debtors shall publish notice (the “**Publication Notice**”), substantially in the form attached to the Supplement as **Revised Exhibit 6-G**, in: (i) the national edition of either the New York Times, USA Today or The Wall Street Journal; (ii) the Financial Times, and (iii) The Detroit News and/or Detroit Free Press, within ten days after the entry of this Order.
7. **June 1, 2012** is established as the record date (the “**Record Date**”) for the purposes of determining the creditors and interest holders entitled to receive the Solicitation Package or the Non-Voting Party Notice and to vote on the Plan.
8. The Debtors are permitted to dispense with the mailing of Solicitation Packages or Non-Voting Party Notices to addresses and entities to which the notice of the hearing regarding the Disclosure Statement was returned by the United States Postal Service as undeliverable, unless the Debtors are provided with an accurate address by proof of claim or otherwise.

9. The ballots, substantially in the form attached to the Supplement as **Revised Exhibit 6-B, 6-C and 6-D**, are hereby approved (collectively the “**Ballots**”).
10. All Ballots must be properly executed, completed and delivered to Kurtzman Carson Consultants LLC (the “**Balloting Agent**”) in the provided return envelope by first class mail, postage prepaid, by overnight courier, or by hand, so that the Ballots are received on or before **July 13, 2012 at 4:30 p.m.** (prevailing Pacific Time) (the “**Voting Deadline**”), unless extended by the Debtors. Ballots cast by facsimile, email or other electronic transmission will not be counted unless approved in advance by the Debtors in writing.
11. For purposes of voting on the Plan, the amount of a claim held by a creditor shall be determined pursuant to the following guidelines:
  - a. The claim listed in a Debtor’s schedule of liabilities, provided that (i) such claim is not scheduled as contingent, unliquidated or disputed, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Court under applicable law).
  - b. The noncontingent and liquidated amount specified in a proof of claim timely filed with the Balloting Agent on or before June 21, 2012 (the “**Claim Bar Date**”) to the extent the proof of claim is not the subject of (i) an objection as to its allowance or (ii) or an objection by the Debtors to a claim amount solely for voting purposes as provided in paragraph 12 below.
  - c. The amount temporarily allowed by the Court for voting purposes pursuant to Bankruptcy Rule 3018(a), pursuant to a motion (a “**Claims Estimation Motion**”).
  - d. Claims filed for zero dollars (\$0.00) will be disallowed for voting purposes.
  - e. The amount resolved pursuant to a stipulation with the Debtors or order entered by the Court.
  - f. Claims that are filed in wholly contingent, unliquidated or unknown amounts that are not the subject of an objection filed by the Claims Objection Deadline for Voting (as defined below) shall be temporarily

allowed for voting purposes only, and not for purposes of allowance or distribution, in the amount of \$1.00 each.

12. For purposes of voting only, the Debtors must object to a filed proof of claim no later than **July 2, 2012** (the “**Claim Objection Deadline for Voting**”), if no such objection is filed, the amount of such proof of claim shall be the amount allowed for voting purposes only. If an objection is filed, the creditor must file to have the claim temporarily allowed for voting purposes.
13. Creditors seeking to have a claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a) must file and serve the Claims Estimation Motion for such relief no later than **4:30 p.m. (prevailing Eastern Time) on July 13, 2012**. The Court will schedule a hearing on such motion to be heard at or prior to the Confirmation Hearing.
14. The following voting procedures and standard assumptions shall be used in tabulating the Ballots:
  - a. For purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate claims held by a single creditor in a particular class will be aggregated as if such creditor held one claim against the Debtor in such class, and the votes related to such claims will be treated as a single vote to accept or reject the Plan.
  - b. Creditors who file proofs of claim against multiple Debtors on account of the same liability, including without limitation, obligations of one Debtor that are guaranteed by another Debtor, shall be permitted to submit a ballot on account of each of the Debtors; provided that all parties reserve the right at the Confirmation Hearing to seek to disallow the vote against either Debtor on the grounds of duplicity.
  - c. Creditors must vote all of their claims within a particular class either to accept or reject the Plan and may not split their vote. Accordingly, a ballot (or multiple ballots with respect to multiple claims within a single class) that partially rejects and partially accepts the Plan will not be counted.

- d. Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- e. Only ballots that are timely received with signatures will be counted. Unsigned ballots will not be counted.
- f. Any ballot received after the Voting Deadline will not be counted.
- g. Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- h. Whenever a creditor casts more than one ballot voting the same claim prior to the Voting Deadline, the last executed, properly completed ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior ballots.
- i. If a creditor simultaneously casts inconsistent duplicate ballots, with respect to the same claim, such ballots shall not be counted.
- j. Each creditor shall be deemed to have voted the full amount of its claim. Unless otherwise ordered by the Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of ballots shall be determined by the Balloting Agent and the Debtors which resolution shall be documented in voting results filed with this Court.
- k. Notwithstanding anything to the contrary contained herein, any claimant or creditor who has filed a claim that is duplicative of another claim(s) within the same class of Claims as designated in Article III of the Plan (each a "**Class**"), as determined by the Debtors, shall be provided with only one Solicitation Package and one ballot for voting a single claim in such class, regardless of whether the Debtors have objected to such duplicate claim(s).
- l. The Debtors, subject to advance notice given to both the Committee and to the Ad Hoc Consortium received on or before the Voting Tabulation Due Date (as defined below) may waive any defect in any ballot at any time, either before or after the close of voting and without notice. Except as provided below, unless the ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may, in their discretion, reject such ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan; provided, however, that such invalid ballots shall be documented in the voting results filed with this Court
- m. Subject to contrary order of the Court, the Debtors reserve the right to reject any and all ballots not proper in form, the acceptance of which



would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid ballots shall be documented in the voting results filed with this Court; and

- n. Any ballot transmitted to the Balloting Agent by facsimile or other electronic means, except in the Debtors' sole discretion, will not be counted.
15. The following voting procedures and standard assumptions shall be used in tabulating the beneficial holder ballots (the "**Beneficial Holder Ballots**"):
- a. Record Date Amounts. Votes cast by beneficial holders of any Claim arising from or relating to the Notes, excluding the fees and expenses of the Indenture Trustee, (the "**Notes Claims**") in Class 3 (General Unsecured Claims) as of the Record Date (June 1, 2012) (collectively, the "**Beneficial Holders**") through a bank, brokerage account or similar party (each, a "**Nominee**") will be applied to the applicable positions held by such Nominees, as of the Record Date, as evidenced by the record and depository listings. Except as provided in subsection 15(e) below, votes submitted by a Nominee pursuant to a master ballot (the "**Master Ballot**") or pre-validated Beneficial Holder Ballot will not be counted in excess of the amount of Notes Claims held by such Nominee as of the Record Date.
  - b. Over-Votes. If conflicting votes or "over-votes" are submitted by a Nominee, whether pursuant to a Master Ballot or pre-validated Beneficial Holder Ballot, the Debtors will use reasonable efforts to reconcile discrepancies with the Nominees. If over-votes on a Master Ballot or pre-validated Beneficial Holder Ballot are not reconciled prior to the preparation of the vote certification, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot or pre-validated Beneficial Holder Ballot that contained the over-vote, but only to the extent of the Nominee's position.
  - c. Principal Amount Voted. For purposes of tabulating votes, each Beneficial Holder will be deemed to have voted the principal amount of the Notes that it holds.
  - d. Multiple Master Ballots. A single Nominee may complete and deliver to the Balloting Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest dated Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior Master Ballot; provided, however, that in instances where ambiguity exists with respect to which Master Ballot was the latest dated,

the Balloting Agent has the right to contact the respective Nominee to determine their intent and calculate the vote according thereto.

- e. Beneficial and Master Ballots Not Counted. Any Beneficial Holder Ballot cast by a Beneficial Holder holding securities in “street name” that is not pre-validated, but is nevertheless sent by a Beneficial Holder directly to the Balloting Agent, will not be counted; provided that, to the extent practicable and such information is known, the Balloting Agent shall use commercially reasonable efforts to send such Beneficial Holder Ballot to the applicable Nominee for inclusion to be counted as part of the applicable Master Ballot.
16. The Debtors will file with the Court a voting tabulation summary by no later than **July 16, 2012 at 12:00 noon** (the “**Voting Tabulation Due Date**”)
  17. Any objection, comment or response to confirmation of the Plan or final approval of the Disclosure Statement (including any supporting memoranda) must be in writing, served on the parties identified below, and filed with the Court, together with proof of service, such that the foregoing are received by such parties and the Court on or **before July 13, 2012 at 4:30 p.m.** (prevailing Eastern Time).
  18. The Court shall consider only timely filed written objections. All objections not timely filed and served in accordance with the provisions of this Order are hereby deemed waived. Objections to confirmation of the Plan or final approval of the Disclosure Statement should provide proposed language to remedy such objections and shall be served on the following parties:
    - a. To the Debtors: In care of Honigman Miller Schwartz and Cohn LLP, 2290 First National Building, 660 Woodward Avenue, Detroit, MI 48226, attention Robert B. Weiss and Aaron M. Silver, T: 313-465-7000, F: 313-465-8000;
    - b. To the Committee: In care of Foley & Lardner LLP, 500 Woodward Avenue, Suite 2700, Detroit, MI 48226, attention Judy A. O’Neill, John A. Simon, and Tamar N. Dolcourt, T: 313-234-7100;
    - c. To the Ad Hoc Consortium: Brown Rudnick LLP, Seven Times Square, New York, New York 10036, attention Howard Siegel and Robert Stark;

and Pepper Hamilton LLP, 4000 Town Center, Suite 1800, Southfield, Michigan 48075-1505, attention Robert S. Hertzberg;

- d. The Office of the United States Trustee, 211 W. Fort Street, Suite 700, Detroit, MI 48226, attention Leslie Berg and David K. Foust.
19. Any party supporting the Plan shall be afforded an opportunity to file a response to any objection to confirmation of the Plan or final approval of the Disclosure Statement prior to the Confirmation Hearing.
20. A hearing shall be held before this Court on **July 18, 2012 at 12:00 p.m.** (prevailing Eastern Time), at the United States Bankruptcy Court for the Eastern District of Michigan, 211 W. Fort Street, Suite 2100, Detroit, MI 48226, or as soon thereafter as counsel can be heard, to consider final approval of the Disclosure Statement and confirmation of the Plan (the “**Confirmation Hearing**”).
21. The Confirmation Hearing may be adjourned from time to time without further notice to creditors and other parties-in-interest other than an announcement of the adjourned date at the Confirmation Hearing.
22. Prior to mailing the Disclosure Statement, Solicitation Packages, or the Non-Voting Party Notices, the Debtors may fill in any missing dates and other information, correct any typographical errors and make such other non-material, non-substantive changes as they deem appropriate.
23. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

**Signed on June 07, 2012**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**